

Consultation Paper

# Listing Regime for Overseas Issuers



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## **SCHEDULES**

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## HOW TO RESPOND TO THIS CONSULTATION PAPER

The Exchange, a wholly-owned subsidiary of HKEX, invites written comments on the matters discussed in this paper, or comments on related matters that might have an impact upon the matters discussed in this paper, on or before **31 May 2021**.

To submit written comments please complete the questionnaire that can be accessed via the link and QR code below.

Link: [https://hkex.sydney1.qualtrics.com/jfe/form/SV\\_b7Sn2WrbwpawPSC](https://hkex.sydney1.qualtrics.com/jfe/form/SV_b7Sn2WrbwpawPSC)

QR code:



Our submission enquiry number is (852) 2840 3844.

Respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in **Schedule A**.

Submissions received during the consultation period by **31 May 2021** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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# EXECUTIVE SUMMARY

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## Purpose

1. This consultation paper solicits market feedback on our proposed amendments to the Listing Rules in order to streamline the listing regime for Overseas Issuers (including those with centre of gravity in Greater China).

## Background

2. The Listing Rules apply to three categories of issuers: Hong Kong issuers, PRC issuers and issuers that are incorporated in neither Hong Kong nor the PRC<sup>1</sup>. The scope of this paper is primarily focussed on the third category of issuers (defined as “Overseas Issuers” for the purpose of this paper and the draft Rules set out in Schedule D)<sup>2</sup>. However, there are aspects of our proposals (particularly those relating to shareholder protection standards) that, if adopted, will affect all issuers, including Hong Kong issuers and PRC issuers.
3. The Listing Rules administered by the Exchange apply as much to Overseas Issuers as they do to Hong Kong issuers and PRC issuers, subject to the additional or modified requirements set out in the Listing Rules<sup>3</sup>. The JPS and Country Guides provide further guidance to assist Overseas Issuers incorporated in Acceptable Jurisdictions when they apply for listing in Hong Kong.
4. Since the implementation of the Exchange’s Listing Regime Reforms in April 2018<sup>4</sup>, an increasing number of US-listed Greater China Issuers have sought “homecoming” secondary listings on the Exchange. We expect many more such listings in future.
5. In February 2019, HKEX announced its Strategic Plan 2019-2021<sup>5</sup>, which sets out its vision and strategic objectives for the next three years. One of the initiatives covered by the plan is to continue to develop Hong Kong as a listing and capital raising hub for major global and regional companies on either a primary or secondary basis, thereby attracting global investments seeking exposure to Asia Pacific companies and Mainland investors seeking international exposure.

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<sup>1</sup> Chapter 19A of the Listing Rules sets out the additional requirements, modifications and exceptions to the Listing Rules that are applicable to PRC issuers seeking or maintaining a primary listing on the Exchange, and states that the rules in Chapter 19 of the Listing Rules in relation to primary listing for Overseas Issuers are not applicable to PRC issuers.

<sup>2</sup> Proposed changes to Chapter 19A and Part D of Appendix 13 to the Listing Rules for PRC issuers are consequential amendments that flow from the proposals in this paper for Overseas Issuers.

<sup>3</sup> Chapters 19 and 19C of and Appendices 3 and 13 to the Listing Rules.

<sup>4</sup> As part of the reforms, the Exchange added three new chapters in the Main Board Listing Rules to: (a) permit listings of biotech issuers that do not meet any of the Main Board financial eligibility tests; (b) permit listings of companies with WVR structures; and (c) establish a new concessionary secondary listing route for Greater China Issuers and Non-Greater China Issuers.

<sup>5</sup> <https://www.hkexgroup.com/-/media/HKEX-Group-Site/ccd/About-HKEX/Strategic-Plan-2019-to-2021/HKEX-20192021-Strategic-Plan.PDF>

6. In this context, the Exchange has carried out a holistic review of our current listing regime for Overseas Issuers, particularly regarding shareholder protection standards, dual primary listings, secondary listings and the codification of the policy rationale for granting waivers to applicants seeking dual primary listing or secondary listing in Hong Kong. The product is a set of proposals that aim to strike a balance between market development and investor protection for the benefit of the market as a whole.

## Issues

### **Complexity of Requirements for Overseas Issuers**

7. As our Overseas Issuer regime has developed over the years, the requirements that apply to these issuers have become scattered in various places in the Listing Rules, the JPS and Country Guides, resulting in market feedback that they have become fragmented, complex and difficult to navigate. The complexity of these requirements may not be conducive to compliance. The current Rules could also be seen as unduly burdensome and unappealing to prospective applicants unfamiliar with the Hong Kong listing regime.

### **Inconsistent Shareholder Protection Standards for Recognised Jurisdictions and Acceptable Jurisdictions Arising from a “Shortfall” Approach**

8. No two jurisdictions have identical shareholder protection standards. The company law of some jurisdictions of incorporation share a similar legislative heritage to the HKCO (e.g. Bermuda and the Cayman Islands). Other jurisdictions may have broadly comparable shareholder protections to those of the HKCO but implement them in a very different way (e.g. Brazil, France, Germany, Italy and Japan).
9. The Listing Rules currently aim to address the shortfalls between the shareholder protection standards provided by the laws and regulations of a jurisdiction of incorporation and those of Hong Kong whereas the JPS sets out the key shareholder protection standards. This has led to different requirements as to the shareholder protection standards for Acceptable Jurisdictions (Section 1 of the JPS) and Recognised Jurisdictions (Appendix 13 to the Listing Rules). This differential treatment is out of line with the Exchange’s objective of providing the same protection for investors of all issuers, irrespective of the place of incorporation.

### **Co-existence of Two Secondary Listing Regimes**

10. The Exchange offers two routes to secondary listing: through the JPS and through Chapter 19C of the Listing Rules. This may cause confusion to the market. In particular, the two regimes have different eligibility and suitability requirements for Overseas Issuers that do not have a centre of gravity in Greater China (see Table 6 in Chapter 4 for details).

## **Secondary Listing Requirements for Issuers with a Centre of Gravity in Greater China are More Restrictive**

11. In the past few years there have been an increasing number of overseas listed issuers with a centre of gravity in Greater China seeking a “homecoming” secondary listing in Hong Kong. However, these applicants face more restrictive requirements than other issuers as set out below. For those without WVR structures, these heightened restrictions may not be commensurate with the level of risk to shareholders’ interests that these applicants pose (which is no higher than that posed by issuers with a centre of gravity outside Greater China and without WVR structures).

### *Higher Quantitative Eligibility Requirements*

12. To secondary list with Automatic Waivers, Non-WVR issuers with a centre of gravity in Greater China must have at least a two full financial years track record of good compliance on a Qualifying Exchange, and an expected market capitalisation at the time of their secondary listing of at least HK\$40 billion (or at least HK\$10 billion with revenue of at least HK\$1 billion for the most recent audited financial year).
13. In contrast, the quantitative eligibility requirements for Non-WVR issuers with a centre of gravity outside Greater China are lower. They can secondary list with Automatic Waivers by meeting the same track record requirement as above in paragraph 12, but with only a HK\$10 billion market capitalisation. These issuers can also choose to list via the JPS route, an option that is not open to issuers with a centre of gravity in Greater China. They can do so if they are listed on any Recognised Stock Exchange and have an expected market capitalisation of only US\$400 million (approximately HK\$3.1 billion) or more, as long as they have a track record of good compliance of at least five years on a Recognised Stock Exchange<sup>6</sup>.

### *“Innovative Company” Requirement*

14. Even if they do not have a WVR structure, overseas listed issuers with a centre of gravity in Greater China must demonstrate that they are “Innovative Companies” before they can secondary list on the Exchange. Many good-quality issuers in Greater China that operate in traditional industries are therefore prevented from secondary listing.

### *Trading Migration Requirement*

15. The Trading Migration Requirement for secondary listed issuers only applies to Greater China Issuers and does not apply to Overseas Issuers that secondary list through the JPS route, or to Non-Greater China Issuers that secondary list through the Chapter 19C route.

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<sup>6</sup> A five-year track record is not required if the applicant seeking a secondary listing via the JPS route is well-established and has a market capitalisation significantly larger than US\$400 million (paragraph 95(b) of the JPS).

## **Need for guidance on Trading Migration Requirement and De-listings from overseas exchanges for secondary listed issuers**

16. The Exchange has received requests from the market to clarify (a) the application of the Listing Rules where the majority of trading in the securities of a secondary listed issuer migrates to the Exchange's markets; and (b) our approach to secondary listed issuers that may de-list from the stock exchange on which they are primary listed (including whether they can retain the Automatic Waivers and Common Waivers previously granted, Non-compliant WVR and/ or VIE Structure).

## **Grandfathered Greater China Issuers and Non-Greater China Issuers cannot apply for a direct dual primary listing and retain their Non-compliant WVR and/or VIE Structures**

17. Under the current regime, issuers with WVR and/ or VIE structures must comply with the relevant requirements under Chapter 8A of the Listing Rules and/ or LD43-3 (as the case may be) if they want to apply for a primary or dual primary listing in Hong Kong. However, Grandfathered Greater China Issuers with Non-compliant WVR and/ or VIE Structures may become dual primary listed in Hong Kong if they secondary list in Hong Kong first, and there is significant demand for their shares such that the Trading Migration Requirement is triggered (i.e. the "two-step" route). Non-Greater China Issuers are allowed to retain their Non-compliant WVR and/ or VIE Structures if they secondary list in Hong Kong, and they are not subject to the Trading Migration Requirement. The current regime therefore enables such issuers to retain their Non-compliant WVR and/ or VIE Structures which would otherwise not be permitted under the direct dual primary listing route.

## **Common Waivers and Automatic Waivers for issuers (other than Automatic Waivers for Qualifying Issuers) are not codified in Listing Rules**

18. The Common Waivers and Automatic Waivers available to Overseas Issuers are set out in the JPS, which only has the status of guidance. Automatic Waivers are codified in Chapter 19C of the Listing Rules but only for Qualifying Issuers. Neither the Listing Rules nor the JPS set out the principles on which we grant these waivers.

## **Proposals**

19. In view of the issues above, this paper sets out proposals, for comment, on amendments to the Listing Rules to streamline the existing listing regime for Overseas Issuers (including those with a centre of gravity in Greater China), and also make consequential amendments to the requirements for all issuers (including Hong Kong issuers and PRC issuers).
20. The Exchange believes that these proposals represent the best way forward to develop the listing regime for Overseas Issuers to meet their needs while ensuring appropriate safeguards. The Exchange has included further explanations of the proposals, where appropriate, throughout this paper to help the public better understand the thinking behind them.

## Upholding Our Investor Protection Standards

21. Protection of shareholders of an issuer listed on an exchange is primarily determined by the local company laws and legal framework and the constitutional documents of the issuer. Each exchange may however impose additional requirements on issuers listed and traded on their markets.
22. As more overseas listed issuers are expected to seek a listing in Hong Kong (either on a primary basis or secondary basis), the Exchange has revisited those provisions commonly found in the company laws of leading jurisdictions which are essential for shareholder protection and is proposing to promulgate them as the Core Standards for all companies listed in Hong Kong (whether primary or secondary listed and wherever incorporated) in order to ensure a baseline level of protection.
23. In respect of a secondary listed issuer where the majority of trading in its securities remains primarily in an overseas market, reliance is placed on the regulations and enforcement of the overseas market (which not only includes local listing rules but also other aspects of its legal system, such as the class action regime in the US), with a number of Listing Rules waived on that basis. However, relevant statutory requirements for corporate misconduct or management misfeasance (such as the SFO) in Hong Kong continue to apply to companies listed in Hong Kong (whether primary or secondary listed).

## Summary of Proposals

24. Our proposals are summarised in Table 1 below with a comparison of the existing regime and our proposed regime:

Requirement	Existing Regime	Proposed Regime
<b>Recognised Jurisdictions and Acceptable Jurisdictions</b>	<ul style="list-style-type: none"> <li>• Three Recognised Jurisdictions – Bermuda, the Cayman Islands and the PRC</li> <li>• 28 Acceptable Jurisdictions<sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>• No distinction between Recognised Jurisdictions and Acceptable Jurisdictions</li> </ul>
<b>Shareholder protection standards</b>	<ul style="list-style-type: none"> <li>• All issuers must comply with Appendix 3 to the Listing Rules</li> <li>• Overseas Issuers incorporated in Recognised Jurisdictions must comply with the applicable part of Appendix 13 to the Listing Rules</li> <li>• Overseas Issuers incorporated outside of Recognised Jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>• The shareholder protection standards in Chapter 19C of and Appendices 3 and 13 to the Listing Rules and the JPS will be replaced by one common set of Core Standards applicable to all issuers to establish a baseline level of investor protection for all issuers regardless of their places of incorporation</li> <li>• The Equivalence Requirement</li> </ul>

<sup>7</sup> As of the date of this paper.



Requirement	Existing Regime	Proposed Regime
	<p>must demonstrate they can comply with the Equivalence Requirement by meeting the JPS Key Shareholder Protection Standards</p>	<p>will be repealed as a result</p>
<p><b>Dual primary listings</b></p>	<ul style="list-style-type: none"> <li>• Grandfathered Greater China Issuers with Non-compliant WVR and/ or VIE Structures cannot retain such structures while applying for dual primary listing directly, but may become dual primary listed on the Exchange with such structures if they secondary list in Hong Kong first, and subsequently there is significant demand for their shares such that the Trading Migration Requirement is triggered</li> <li>• Common Waivers available to primary and dual-primary listed Overseas Issuers are set out in the JPS</li> </ul>	<ul style="list-style-type: none"> <li>• Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures may apply directly for a dual primary listing and retain the non-compliant structures, as long as they meet the eligibility and suitability requirements of Chapter 19C for Qualifying Issuers with a WVR structure</li> <li>• Codification of some conditional Common Waivers for dual-primary listed issuers and the principles for granting Common Waivers</li> </ul>
<p><b>Secondary listings</b></p>	<ul style="list-style-type: none"> <li>• Two routes: the JPS (only available to Overseas Issuers that do not have a centre of gravity in Greater China) and Chapter 19C of the Listing Rules</li> <li>• Common Waivers available to secondary listed Overseas Issuers are only set out in the JPS</li> <li>• Automatic Waivers are (a) set out in the JPS for JPS Secondary Issuers; and (b) codified in Chapter 19C of the Listing Rules for issuers with, or seeking, a secondary listing under that chapter</li> </ul> <ul style="list-style-type: none"> <li>• Greater China Issuers with or without a WVR structure must: <ul style="list-style-type: none"> <li>- demonstrate that they are “Innovative Companies”;</li> <li>and</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Codification and consolidation of requirements of the two routes to secondary listing</li> <li>• Codification of all secondary listing related JPS provisions (including Common Waivers and Automatic Waivers for JPS Secondary Issuers) into Chapter 19C of the Listing Rules</li> </ul> <ul style="list-style-type: none"> <li>• Non-WVR Greater China Issuers seeking a secondary listing: <ul style="list-style-type: none"> <li>- are no longer required to demonstrate that they are “Innovative</li> </ul> </li> </ul>

Requirement	Existing Regime	Proposed Regime
	<ul style="list-style-type: none"> <li>- have a minimum market capitalisation at listing of HK\$40 billion (or HK\$10 billion with revenue of HK\$1 billion in the most recent audited financial year)</li> <li>• Only Greater China Issuers are subject to the Trading Migration Requirement</li> </ul>	<p>Companies”; and</p> <ul style="list-style-type: none"> <li>- have the option of meeting a minimum market capitalisation at listing of either HK\$3 billion or HK\$10 billion</li> <li>• All secondary listed issuers are subject to the Trading Migration Requirement</li> </ul>
	<ul style="list-style-type: none"> <li>• JPS Automatic Waivers eligibility requirements: <ul style="list-style-type: none"> <li>- Listing on a Recognised Stock Exchange (as set out in JPS)</li> <li>- Five years’ good compliance record</li> <li>- Market capitalisation of US\$400 million (approximately HK\$3.1 billion) or more</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Codification of JPS Automatic Waiver eligibility requirements with minor modifications: (a) the compliance record requirement changed from “five years” to “five full financial years”; and (b) the minimum expected market capitalisation requirement changed from US\$400 million to HK\$3 billion</li> </ul>
	<ul style="list-style-type: none"> <li>• Listing Rules are silent on the application of Automatic Waivers for a secondary listed issuer that de-lists from the stock exchange on which it is primary listed</li> <li>• Listing Rules are silent on whether a Grandfathered Greater China Issuer or a Non-Greater China Issuer can retain its Non-compliant WVR and/ or VIE Structures if it de-lists from the overseas exchange on which it was primary listed</li> </ul>	<ul style="list-style-type: none"> <li>• An issuer will be regarded as having a primary listing on the Exchange upon its de-listing from the stock exchange on which it is primary listed. The issuer shall notify the Exchange in advance of any anticipated de-listing (voluntary or involuntary) from the stock exchange on which it is primary listed and, among other things, details of any proposed waivers or continued relief/ grace period for full compliance with any Listing Rules requirements (including the bases for requesting such waivers/ relief/ grace period)</li> <li>• The Exchange may, on a case by case basis, exercise its discretion to grant a time-relief waiver, suspend trading of the issuer’s shares or impose other measures as it considers necessary for the</li> </ul>

Requirement	Existing Regime	Proposed Regime
		<p>protection of investors and the maintenance of an orderly market. The Exchange will issue relevant guidance.</p> <ul style="list-style-type: none"> <li>• A Grandfathered Greater China Issuer or a Non-Greater China Issuer is allowed to retain its Non-compliant WVR and/ or VIE Structures (subsisting at the time of its secondary listing in Hong Kong) if it de-lists from the Qualifying Exchange on which it is primary listed</li> </ul>

**Table 1: Comparison between the Existing Regime and our Proposed Regime**

25. Table 2 below is a summary of the subject of relevant Listing Rules and guidance materials before and after the adoption of the proposals discussed in paragraph 24:

Listing Rules/ Guidance Materials	Subject Now	Subject After Adoption of the Proposals
<b>Chapter 19 of the Listing Rules</b>	Primary and secondary listing of Overseas Issuers	Primary listing of Overseas Issuers only
<b>Chapter 19C of the Listing Rules</b>	Secondary listing of Qualifying Issuers	Secondary listing of all Overseas Issuers
<b>Appendix 3 to the Listing Rules</b>	Provisions required in the Articles of Associations of all issuers	Core Standards applicable to all issuers
<b>Appendix 13 to the Listing Rules</b>	Provisions required in the Articles of Associations of issuers incorporated in Recognised Jurisdictions	Repealed (except for requirements for PRC issuers, i.e. Part D of Appendix 13 to the Listing Rules) with some provisions moved to Appendix 3 as Core Standards
<b>The JPS and FAQ Series 25</b>	Guidance for issuers incorporated in an Acceptable Jurisdiction with, or seeking a primary listing, and for Overseas Issuers which do not have a centre of gravity in Greater China with, or seeking, a secondary listing	Withdrawn with relevant guidance either codified into the Listing Rules, or consolidated into a new guidance letter for Overseas Issuers (see Schedule E)

Listing Rules/ Guidance Materials	Subject Now	Subject After Adoption of the Proposals
<b>Country Guides</b>	Guidance on application of Equivalence Requirement for issuers incorporated in Acceptable Jurisdictions	<ul style="list-style-type: none"> <li>• Equivalence Requirement and concept of Acceptable Jurisdictions repealed and no new Country Guides will be issued</li> <li>• Guidance may be issued on a case-by-case basis if there are novel issues relating to listing of securities of companies incorporated in a new jurisdiction. Existing Country Guides will be retained</li> </ul>

**Table 2: Listing Rules and Guidance Materials Before and After the Adoption of the Proposals**

### **Request for comment**

26. We would like to invite public comments on the proposals. Any final Rule amendments and details regarding implementation would be published in a conclusions paper after we have considered the responses. When providing your comments please give reasons for your views. We also welcome any alternative suggestions regarding the conditions and safeguards we have set out in this paper.

### **Proposed timetable and next steps**

27. Responses to this consultation paper should be submitted to us by **31 May 2021**. The Exchange will take into account these responses and comments before deciding upon any further appropriate action and publishing a conclusions paper.

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## CHAPTER 1      BACKGROUND

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### History of the Development of the Overseas Listing Regime

28. The Exchange introduced the Listing Rules for Overseas Issuers in 1989, setting out the additional requirements, modifications or exceptions for issuers that are incorporated or otherwise established outside of Hong Kong. The then Listing Rules<sup>8</sup> focused primarily on issuers incorporated in one of the Recognised Jurisdictions, as these jurisdictions were, and still are, the most common non-Hong Kong jurisdictions of incorporation for listing on the Exchange (see paragraph 61).
29. The JPS was first published in March 2007 jointly by the Exchange and the SFC (“**2007 JPS**”), with a view to providing a clear roadmap to Overseas Issuers incorporated outside the Recognised Jurisdictions seeking a listing in Hong Kong. The 2007 JPS set out, among other things, guidance on how these issuers could meet the Equivalence Requirement.
30. The 2007 JPS stated that such an issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, meet a set of key shareholder protection standards. These standards were based on key provisions of the CWUMPO (which have now been moved to the HKCO).
31. A jurisdiction that met both those key shareholder protection standards and the Regulatory Co-operation Requirement could be approved by the Exchange as an Acceptable Jurisdiction.
32. After the publication of the 2007 JPS, a wave of Overseas Issuers from various jurisdictions applied for listing in Hong Kong, such as Brazil, Germany, Italy, Jersey, Luxembourg, Singapore and UK. These jurisdictions were all approved by the Exchange as Acceptable Jurisdictions.
33. In September 2013, the Exchange and the SFC updated the 2007 JPS (“**2013 JPS**”) to refine and streamline the key shareholder protection standards to 11 key shareholder protection standards (i.e. JPS Key Shareholder Protection Standards), and also published FAQ Series 25<sup>9</sup> to assist applicants and professional advisers in understanding and complying with the 2013 JPS. Following the publication of the 2013 JPS, the Exchange started publishing a Country Guide for each new Acceptable Jurisdiction<sup>10</sup> to provide guidance for Overseas Issuers incorporated in that jurisdiction on how they can meet the JPS Key Shareholder Protection Standards, as well as the Exchange’s expectations, practices, procedures and the criteria it considers when applying the Listing Rules to such issuers.
34. Following the publication of the 2013 JPS and up to the date of this paper, the

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<sup>8</sup> Chapter 19 of and Appendix 13 to the Listing Rules.

<sup>9</sup> FAQ Series 25, Listing of Overseas Companies ([link](#)).

<sup>10</sup> Prior to that, the relevant information was published in the form of listing decisions.

Exchange has accepted seven additional jurisdictions, and primary listed 23 issuers from Acceptable Jurisdictions and secondary listed two issuers from Acceptable Jurisdictions.

35. In February 2018, the Exchange published the consultation paper “A Listing Regime for Companies From Emerging and Innovative Sectors”<sup>11</sup> to broaden the existing listing regime and facilitate the listing of emerging and Innovative Companies. Following general support from the market, the proposals in the consultation paper were adopted and, among other things, Chapter 19C of the Listing Rules was introduced and became effective on 30 April 2018 to facilitate the secondary listing of Qualifying Issuers (including those that have a centre of gravity in Greater China). The JPS was updated accordingly. References to the “JPS” in this paper refer to this 2018 version.
36. As of the date of this paper, 13 Qualifying Issuers<sup>12</sup> are secondary listed on the Exchange pursuant to Chapter 19C of the Listing Rules. Most of them are “homecoming” Greater China Issuers. We expect that more “homecoming” Greater China Issuers will seek a secondary listing on the Exchange in future.
37. Table 3 below shows a breakdown by place of incorporation of issuers that are listed on the Exchange as of 31 December 2020:

Place of incorporation	Number of issuers	Percentage
Acceptable Jurisdictions	46	2%
Bermuda	505	20%
Cayman Islands	1,482	58%
Hong Kong	214	8%
PRC	291	12%
<b>Total</b>	<b>2,538</b>	<b>100%</b>

**Table 3: Breakdown by place of incorporation of issuers that are listed on the Exchange (as of 31 December 2020)**

## Current Requirements

### Equivalence Requirement

38. The Listing Rules require an Overseas Issuer to demonstrate that its jurisdiction of incorporation provides shareholder protection standards at least equivalent to those of Hong Kong (the Equivalence Requirement). An Overseas Issuer, where necessary, has to vary its constitutional documents in order to meet the Equivalence Requirement.

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<sup>11</sup> <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/February-2018-Emerging-and-Innovative-Sectors/Consultation-Paper/cp201802.pdf>

<sup>12</sup> 12 were incorporated in the Cayman Islands and one was incorporated in the State of Delaware, the US.

## **Recognised Jurisdictions vs. Acceptable Jurisdictions**

39. Bermuda, the Cayman Islands and the PRC are Recognised Jurisdictions. Issuers incorporated in these jurisdictions are regarded as meeting the Equivalence Requirement as long as they amend their constitutional documents in accordance with the respective parts in Appendix 13 to the Listing Rules to make up for the shortfalls in the shareholder protection standards of the relevant jurisdiction.
40. The JPS sets out, among other things, guidance on how an Overseas Issuer incorporated outside the Recognised Jurisdictions can meet the Equivalence Requirement. Upon application and approval by the Exchange, a jurisdiction providing the JPS Key Shareholder Protection Standards and meeting the Regulatory Co-operation Requirement will be regarded as an Acceptable Jurisdiction. There are 28 Acceptable Jurisdictions as at the date of this paper and the Exchange has published a Country Guide for all but one<sup>13</sup> of them.

## **Primary Listings vs. Secondary Listings**

41. An Overseas Issuer may apply for a primary or dual primary listing on the Main Board or GEM, or a secondary listing on the Main Board.
42. Primary or dual primary listed issuers normally have all or the majority of their listed equity securities traded on the Exchange and therefore are required to fully comply with the Listing Rules, unless specifically waived.
43. For secondary listings, the issuer must engage a sponsor, comply with the relevant eligibility tests and issue a listing document as it would otherwise be required to do in the event of a primary listing. The Exchange relies more upon the framework of regulations and enforcement in an issuer's market of primary listing to principally govern the issuer and waives a considerable number of the Listing Rules (through Automatic Waivers) that would otherwise apply in the case of a primary or dual primary listing, provided that the issuer meets additional eligibility requirements (e.g. market capitalisation of at least US\$400 million). As a consequence, in addition to meeting the Equivalence Requirement, we require a secondary listing applicant to demonstrate that its market of primary listing also has shareholder protection standards equivalent to those provided in Hong Kong<sup>14</sup>. The Exchange and the SFC have recognised 15 overseas stock exchanges as Recognised Stock Exchanges meeting these standards<sup>15</sup>.
44. There are currently two routes to secondary listing on the Exchange:
  - (a) the JPS route, which is only available to Overseas Issuers that do not have a centre of gravity in Greater China. We grant these issuers Automatic Waivers if they are listed on any of the Recognised Stock Exchanges and

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<sup>13</sup> No Country Guide has been published for Ontario, Canada as its acceptance pre-dates the existing regime for Overseas Issuers.

<sup>14</sup> Listing Rule 19.30(1)(b).

<sup>15</sup> See paragraph 96 of the JPS for a list of these Recognised Stock Exchanges ([link](#)).

can meet the relevant additional eligibility requirements in Section 5 of the JPS (including a good listing compliance record of five years and a market capitalisation at secondary listing (US\$400 million) that is significantly larger than the minimum market capitalisation requirement for a primary listing (HK\$500 million))<sup>16</sup>; or

- (b) the Chapter 19C route, for Qualifying Issuers that are Innovative Companies and meet the relevant suitability and additional eligibility requirements in Chapter 19C of the Listing Rules and related guidance materials. Qualifying Issuers may or may not have a centre of gravity in Greater China. Grandfathered Greater China Issuers and Non-Greater China Issuers may list with Non-compliant WVR and/ or VIE Structures whereas, for the purpose of preventing regulatory arbitrage, the Exchange will evaluate Non-Grandfathered Greater China Issuers with WVR structures in a similar manner as those that apply for primary or dual-primary listing under Chapter 8A of the Listing Rules, and retains the discretion to reject an application for secondary listing if it believes an issuer has acted intentionally to avoid any relevant rules under Chapter 8A.

- 45. Therefore, issuers with a centre of gravity in Greater China can only apply for secondary listing through the Chapter 19C route, which is more restrictive than the requirements for issuers with a centre of gravity outside Greater China. As explained further in Chapter 4 of this paper, this is to prevent regulatory arbitrage (see paragraphs 174 and 175).

### **Waivers**

- 46. All issuers may apply for waivers from strict compliance with the Listing Rules based on their specific facts and circumstances, and the Exchange may exercise its discretion and waive, modify or not require compliance with specific Listing Rules in each individual case pursuant to Listing Rule 2.04.
- 47. The JPS sets out a list of Common Waivers that are available to primary, dual primary and secondary listed Overseas Issuers. These waivers are granted on a case-by-case basis and the issuer must, at a minimum, meet the relevant prescribed conditions.
- 48. Automatic Waivers are granted to eligible JPS Secondary Issuers and all Qualifying Issuers on the basis that reliance can be placed on the regulations in and enforcement by the market where these issuers are primary listed (e.g. the laws under which shareholders may take action for corporate misconduct or management misfeasance). These waivers are granted automatically if the issuers can meet the applicable criteria set out in either the JPS or Chapter 19C of the Listing Rules, as the case may be.

### **Trading Migration Requirement**

- 49. The Trading Migration Requirement states that the Automatic Waivers granted to a Greater China Issuer listed under the Chapter 19C route will be revoked if the

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<sup>16</sup> Otherwise, they would need to apply for each waiver separately.



majority of trading in its listed shares migrates to the Exchange's markets on a permanent basis. If this occurs, Grandfathered Greater China Issuers can, however, still retain their Non-compliant WVR and/ or VIE Structures without the need to comply with the relevant requirements under Chapter 8A of the Listing Rules and/ or LD43-3. The Trading Migration Requirement is not applicable to Overseas Issuers listed under the JPS route, or Non-Greater China Issuers listed under the Chapter 19C route.

## Remedies Available to Shareholders of non-Hong Kong issuers

50. A shareholder of a non-Hong Kong issuer listed on the Exchange is entitled to seek certain remedies from the Hong Kong courts (including statutory relief under the HKCO<sup>17</sup>, enforcement/ recognition of judgments made by courts outside Hong Kong pursuant to Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap.319) ("**FJREO**")<sup>18</sup> and Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap.597) ("**MJREO**")<sup>19</sup> and, in extreme cases, winding-up the issuer under CWUMPO<sup>20</sup> as well as other applicable common law remedies). There are however limitations with such remedies, including but not limited to:
- (a) enforcement of a Hong Kong judgment against the overseas assets, operations and/ or directors of a non-Hong Kong issuer listed on the Exchange is not a straightforward exercise because whether or not a Hong Kong judgment is enforceable in the relevant overseas jurisdiction is a matter of the laws of that jurisdiction and must be determined on a case by case basis and the effectiveness of the judgement may also depend on the corporate structure of the listed group<sup>21</sup>; and
  - (b) in terms of enforcement of an overseas judgment, FJREO applies to a limited number of jurisdictions (which do not include the British Virgin Islands and the Cayman Islands)<sup>22</sup> whilst enforcing overseas judgments under common law (whether or not the issuers were incorporated in a common law or civil law jurisdiction) is limited to judgement for a debt or a definite sum of money<sup>23</sup>.

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<sup>17</sup> Section 725 of the HKCO (unfair prejudicial) and sections 737 and 738 of the HKCO (derivative actions).

<sup>18</sup> Sections 3(2) and 4(1) of FJREO.

<sup>19</sup> Hong Kong Civil Procedure (Hong Kong White Book) 2021, para.E3/0/5.

<sup>20</sup> Section 327 of the CWUMPO.

<sup>21</sup> In the example of a Cayman-BVI-Mainland China group structure, based on the current law and practice governing the recognition and assistance of foreign liquidators in the PRC, Cayman Islands and the BVI, any liquidator appointed by the Hong Kong court would not be able to change control of the Cayman Islands issuer's BVI intermediate subsidiaries and obtain control of the PRC operating companies to ultimately recover assets from its operating indirect subsidiaries in the PRC (Re China Huiyuan Juice Group Limited [2020] HKCFI 2940).

<sup>22</sup> Section 3 of FJREO.

<sup>23</sup> The PRC judgments must be made by the Supreme People's Court, a Higher People's Court, an Intermediate People's Court, or a recognised Primary People's Court (First Schedule to MJREO). The contractual agreement in dispute must also specify that the PRC courts have exclusive jurisdiction (section 5(2)(b) of MJREO). The PRC judgment should also be final and conclusive (section 6(1)(b) of MJREO).

These limitations mean that an aggrieved shareholder may need to explore other avenues to seek remedies, for example, initiating a claim or legal proceedings in the relevant overseas jurisdictions directly.

## Jurisdictional Comparison

51. A comparison of the regulation of overseas issuers in other major jurisdictions is set out in Schedule B to this paper and summarised below.

### Australia

52. Australia operates a “Foreign Exempt Listing” regime whereby a “foreign entity” (i.e. incorporated or otherwise established outside Australia) listed on an acceptable securities exchange is permitted to have a secondary listing on the ASX<sup>24</sup>. These issuers are entitled to certain relief from prospectus requirements and are subject to minimal requirements under the listing rules of the ASX. However, they must meet higher financial eligibility thresholds to list.

### Singapore

53. Similar to Hong Kong, a “foreign issuer” (i.e. incorporated or otherwise established outside Singapore) may list in Singapore by primary listing on SGX Main Board or Catalist<sup>25</sup>, or secondary listing on SGX Main Board. Primary listed issuers are largely subject to equivalent financial eligibility listing and prospectus requirements as those imposed on domestic issuers. Secondary listed issuers must maintain a primary listing on an acceptable foreign exchange and be subject to the primary home rules, but they are not required to comply with the listing rules in Singapore if they provide certain undertakings<sup>26</sup> to SGX.

### UK

54. The UK does not have a secondary listing regime. Its primary listing regime of LSE’s Main Market is divided into “premium” and “standard” tiers, and a High Growth Segment. A “premium” listing imposes broadly equivalent requirements to those imposed on a Main Board primary listed issuer in Hong Kong. Its “standard” tier allows any company (domestic or overseas) to list in the UK by meeting minimum EU requirements only. The High Growth Segment provides medium and large sized high growth companies incorporated in the UK or the

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<sup>24</sup> <https://www.asx.com.au/documents/asx-compliance/appendix-1c-information-form-and-checklist-asx-foreign-exempt-listing.doc>

<sup>25</sup> Catalist is a listing platform for fast-growing enterprises seeking a primary listing on SGX. Catalist listing requirements are much less strict than those for listing on SGX Main Board. Companies listing on Catalist are not subject to any minimum profit requirement and are eligible to list as long as they can show they have secured enough working capital to cover their needs for the first 12 months after listing.

<sup>26</sup> SGX Listing Rule 217 requires undertakings to: (a) release all information and documents in English to the SGX at the same time as they are released to the home exchange; (b) inform the SGX of any issue of additional securities in a class already listed on the SGX and the decision of the home exchange; and (c) comply with such other listing rules as may be applied by the SGX from time to time.

European Economic Area (and that do not meet certain eligibility criteria (in particular the free float requirement) for joining the “premium” segment of the Main Market) with an additional route to the Main Market to raise capital and build their business. Only the shares of “premium” listed issuers are eligible for inclusion in major domestic Financial Times Stock Exchange (FTSE) indices. LSE also operates AIM for small and medium size growth companies (domestic or overseas) with more relaxed regulations and listing requirements<sup>27</sup>.

## **US**

55. The US operates a “Foreign Private Issuer” regime (with no distinction between primary and secondary listings) whereby these non-US issuers are exempted from some IPO requirements and most ongoing listing requirements. The US has operated this regime since the 1930s to attract foreign issuers to list in the US by imposing fewer requirements on them than it imposes on its domestic issuers. “Foreign Private Issuers” must meet higher financial eligibility thresholds to list unless they can meet the share distribution requirements within North America that apply to domestic US issuers.

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<sup>27</sup> For instance, companies may gain admission to AIM without a trading record, an established management team or any minimum market capitalisation and they are not subject to a minimum free float requirement.

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## CHAPTER 2      CORE SHAREHOLDER PROTECTION STANDARDS

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### Background

#### Concept of Recognised Jurisdictions and Acceptable Jurisdictions

56. To list on the Exchange, an Overseas Issuer must be either incorporated in a Recognised Jurisdiction or an Acceptable Jurisdiction. Overseas Issuers must also demonstrate how they meet the Equivalence Requirement – i.e. the requirement that they are subject to shareholder protection standards at least equivalent to those of Hong Kong<sup>28</sup>.

#### Recognised Jurisdictions

57. Bermuda, the Cayman Islands and the PRC are Recognised Jurisdictions. To meet the Equivalence Requirement, Overseas Issuers incorporated in the Recognised Jurisdictions are required to conform their constitutional documents with the provisions set out in Appendix 13 to the Listing Rules.
58. Part A (Bermuda) and Part B (the Cayman Islands) of Appendix 13 to the Listing Rules were introduced in the third edition of the Listing Rules published in December 1989. These parts aim to prevent avoidance of Hong Kong shareholder protection measures by Hong Kong issuers which were, at the time, re-domiciling to Bermuda or the Cayman Islands in significant numbers, even though their shareholder base and share trading remained predominantly in Hong Kong.
59. The Exchange took the approach of identifying the “shortfalls” in the provisions of the company law of each of Bermuda and the Cayman Islands at the time as compared to the then company law of Hong Kong, with a view to bridging these shortfalls with requirements in the Listing Rules. The provisions in these parts of Appendix 13 have however remained largely unchanged irrespective of the developments in the company laws of these jurisdictions.
60. PRC issuers are required to include the Mandatory Provisions issued in 1994 by PRC regulatory authorities in their articles of association<sup>29</sup>. Part D of Appendix 13 to the Listing Rules was introduced to ensure that applicable PRC laws and the articles of association of PRC issuers, in combination, provide a sufficient level of protection to shareholders<sup>30</sup>.
61. Since 1989, most Overseas Issuers have continued to be companies incorporated in one of the Recognised Jurisdictions. As of 31 December 2020, 90% of the issuers listed on the Exchange are companies incorporated in a Recognised Jurisdiction (see Table 3 above). Most of these issuers have their

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<sup>28</sup> Listing Rule 19.05(1)(b).

<sup>29</sup> This is required under Zheng Wei Fa (1994) No. 21 issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System.

<sup>30</sup> Listing Rule 19A.03(4).

headquarters, operations or otherwise a centre of gravity in Greater China.

Acceptable Jurisdictions

62. Overseas Issuers incorporated outside the Recognised Jurisdictions are required to meet the Equivalence Requirement by demonstrating how their domestic laws, the rules and regulations to which they are subject and their constitutional documents, in combination, meet the JPS Key Shareholder Protection Standards. This process ordinarily results in the Exchange approving that jurisdiction as a new Acceptable Jurisdiction - i.e. an eligible jurisdiction of incorporation for subsequent Overseas Issuers incorporated in the same jurisdiction seeking a listing on the Exchange.
63. As of 31 December 2020, the Exchange has approved 28 Acceptable Jurisdictions and published a Country Guide for each but one<sup>31</sup> of them. Most of the issuers incorporated in the Acceptable Jurisdictions do not have a centre of gravity in Greater China. As of 31 December 2020, 2% of the issuers listed on the Exchange are incorporated in an Acceptable Jurisdiction (see Table 3 above).

**Summary of Requirements on Making up for Shortfalls to the Equivalence Requirement**

64. Issuers (except for Grandfathered Greater China Issuers and Non-Greater China Issuers which are required to comply with the relevant requirements in Chapter 19C of the Listing Rules) incorporated in Recognised Jurisdictions and Acceptable Jurisdictions are required to make up any shortfalls in meeting the Equivalence Requirement by complying with the Listing Rules or guidance summarised in Table 4 below:

Place of incorporation	Applicable Listing Rules / Guidance
Bermuda	Part A of Appendix 13 to the Listing Rules
The Cayman Islands	Part B of Appendix 13 to the Listing Rules
The PRC	Part D of Appendix 13 to the Listing Rules
Acceptable Jurisdictions	Country Guides based on the JPS Key Shareholder Protection Standards

**Table 4: Summary of Applicable Shareholder Protection Requirements**

65. In addition to these requirements, all issuers (except for Grandfathered Greater China Issuers and Non-Greater China Issuers) must ensure that their constitutional documents conform with the provisions set out in Appendix 3 to the Listing Rules. The purpose of Appendix 3 is to ensure that all issuers' constitutional documents contain additional shareholder protection standards that the Exchange considers necessary but are not required by the HKCO or the

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<sup>31</sup> No Country Guide has been published for Ontario, Canada as its acceptance pre-dates the existing regime for Overseas Issuers.

Mandatory Provisions (with respect to PRC issuers).

## Issues

### Complexity of Requirements for Overseas Issuers

66. We have received feedback that the current requirements for Overseas Issuers are fragmented, complex and difficult to navigate as they are scattered in various places in the Listing Rules (Chapter 19, Chapter 19C and Appendices 3 and 13), the JPS, Country Guides and various guidance materials. The complexity of the requirements may not be conducive to compliance. The current Rules could also be seen as unduly burdensome and unappealing for prospective applicants unfamiliar with the Hong Kong listing regime.

### Inconsistent Shareholder Protection Standards

67. The shareholder protection requirements for Overseas Issuers incorporated in Bermuda and the Cayman Islands<sup>32</sup> under the Listing Rules and those in Acceptable Jurisdictions in the JPS are not the same, and there are gaps between the requirements for each group as illustrated in Table 5 below. This differential treatment of Overseas Issuers is out of line with the Exchange's objective of providing the same protection for investors of all issuers, irrespective of the place of incorporation.

	Shareholder protection requirements	Recognised Jurisdictions		Acceptable Jurisdictions
		Bermuda	Cayman Islands	
<b>A. Appendix 13 to the Listing Rules:</b>				
<b>Annual General Meeting and Accounts</b>				
(a)	Accounts must be sent with AGM notice <sup>33</sup>	No <sup>A</sup>	Yes	No <sup>D</sup>
(b)	Accounts must be laid before members at AGM <sup>34</sup>	Yes	Yes	No <sup>D</sup>
(c)	Books of account must give true and fair view <sup>35</sup>	Yes	Yes	No <sup>D</sup>
<b>Directors</b>				
(d)	Simple majority approval to remove directors	No <sup>A</sup>	Yes	No <sup>C</sup>

<sup>32</sup> Our analysis does not include the requirements for PRC issuers for reasons set out in paragraph 2 of this paper.

<sup>33</sup> This is also required under Listing Rule 13.46(1) and (2).

<sup>34</sup> This is also required under Notes 2 and 2(b) of Listing Rule 13.46(1)(b).

<sup>35</sup> This is also required under paragraph 2 of Appendix 16 to the Listing Rules and Listing Rules 19.22, 19.24, 19.49 and 19.51.

	Shareholder protection requirements	Recognised Jurisdictions		Acceptable Jurisdictions
		Bermuda	Cayman Islands	
(e)	Simple majority approval of compensation to director for loss of office <sup>36</sup>	Yes	Yes	No <sup>D</sup>
(f)	Restrictions regarding loans to directors and close associates equivalent to Hong Kong law <sup>37</sup>	No <sup>A</sup>	Yes	No <sup>D</sup>
(g)	Requirement on directors to declare material interests <sup>38</sup>	No <sup>A</sup>	Yes	No <sup>D</sup>
<b>Register of Members</b>				
(h)	Branch register of members to be open for inspection	No <sup>A</sup>	Yes	No <sup>C</sup>
<b>Proxies and corporate representatives</b>				
(i)	Member's right to appoint proxy	No <sup>A</sup>	Yes	No <sup>C</sup>
<b>B. Section 1 of the JPS</b>				
<b>Shareholder Voting</b>				
(a)	Super majority to vary class rights	Yes <sup>B</sup>	Yes <sup>B</sup>	Yes
(b)	Individual members to approve increase in members liability	No	No	Yes
(c)	Simple majority to approve appointment, removal and remuneration of auditors	No	No	Yes
(d)	Super majority to approve voluntary winding up	No	No	Yes
<b>Annual General Meetings and Accounts</b>				
(e)	AGM held at least every 15 months	Yes <sup>B</sup>	Yes <sup>B</sup>	Yes
(f)	Members have right to speak and vote at general meetings	No	No	Yes
(g)	Members holding 10% of the share capital must be able to	No	No	Yes

<sup>36</sup> The connected transaction rules under Chapter 14A of the Listing Rules also apply to transactions with the issuer's directors and past directors.

<sup>37</sup> The connected transaction rules under Chapter 14A of the Listing Rules also apply to transactions with the issuer's directors and past directors.

<sup>38</sup> This is also required under Listing Rule 13.44.

	Shareholder protection requirements	Recognised Jurisdictions		Acceptable Jurisdictions
		Bermuda	Cayman Islands	
	convene a general meeting			

*Note A: These standards are not included in Part A of Appendix 13 to the Listing Rules for Bermuda incorporated issuers because these provisions are already required by the Bermuda Companies Act.*

*Note B: These requirements are provided in Part A or Part B (as the case may be) in Appendix 13 to the Listing Rules.*

*Note C: These standards (together with standards set out in part B (a), (c)-(g) of the Table 5)) will be included in our proposed Core Standards. Accordingly, Overseas Issuers will be required to comply with them.*

*Note D: Overseas Issuers are required to comply with these requirements under other Listing Rules.*

### **Table 5: Comparison between Shareholder Protection Requirements for Recognised Jurisdictions and Acceptable Jurisdictions**

#### Reasons for inconsistencies in requirements

68. The inconsistencies between the shareholder protection requirements of Parts A and B of Appendix 13 to the Listing Rules for issuers incorporated in Bermuda and the Cayman Islands, respectively, have arisen because of the differences in the shareholder protection standards already provided by the respective local laws of these two jurisdictions (for example, more protection standards are provided in the local laws of Bermuda than the local laws of the Cayman Islands (see Note A in Table 5). As such, the Listing Rules require issuers incorporated in the Cayman Islands and Bermuda to make up for different shortfalls from the relevant shareholder protections in their constitutional documents that are not already provided by the respective local laws.
69. The inconsistencies between the shareholder protection requirements for Bermuda and Cayman Islands incorporated issuers (under Parts A and B of Appendix 13) and those applicable to Acceptable Jurisdictions under the JPS have arisen from a difference in approach to meeting the Equivalence Requirement. While the shareholder protection requirements applicable to Bermuda and the Cayman Islands refer to the identified shortfalls in local laws that are specific to these two jurisdictions, the JPS Key Shareholder Protection Standards were developed to provide a benchmark (based on the provisions of the company law of Hong Kong at the relevant time) that could be compared against the local laws of any jurisdiction to determine whether the Equivalence Requirement could be met.

#### Other issues regarding existing shareholder protection standards

70. In addition to the inconsistencies noted above, a number of the shareholder protection standards required by the Listing Rules (particularly those in Appendix 3) have become outdated, unnecessary or superfluous over time due to changes in law, the Listing Rules and practice. Some duplicate other Listing Rules



requirements (with occasional inconsistencies) while others do not concern fundamental shareholders' rights commonly found in the company laws or listing rules of leading stock markets. Please refer to Schedule C for detailed explanations in respect of each of these provisions which we propose to repeal.

## Proposals

### A. Streamlining shareholder protection standards into one set of "Core Standards"

71. We propose to streamline the shareholder protection standards that issuers are required to provide into one set of Core Standards for all issuers and, as a result, repeal the Equivalence Requirement. The concepts of "Recognised Jurisdictions" and "Acceptable Jurisdictions" will be removed as a consequence.
72. We propose to introduce the 14 standards set out in paragraphs 79 to 137 below as the Core Standards. We consider these proposed Core Standards to be sufficient as they cover the most fundamental shareholders' rights relating to the notice and conduct of shareholders' meetings, approval of important matters, members' right to requisition a meeting, remove directors, vote, speak and appoint proxies/corporate representatives, auditors, appointment of directors to fill casual vacancies and inspection of shareholders' register, etc. which are based on standards set out in the HKCO or already required under the Listing Rules. A majority of the proposed Core Standards are the same as the key shareholder protection standards identified in the last two reviews (reviews conducted jointly by the SFC and the Exchange that produced the JPS in March 2007 and updated in September 2013). Detailed reasons for adopting these as the Core Standards are set out for each in paragraphs 79 to 137 below.
73. The proposed Core Standards will be applicable to all issuers<sup>39</sup>, including PRC Issuers and Hong Kong issuers. PRC issuers will need to comply with the requirements under Chapter 19A of and Part D of Appendix 13 to the Listing Rules, in addition to the Core Standards. However, this should not significantly increase the compliance burden on PRC issuers as the Core Standards are identical to the Mandatory Provisions and the Listing Rules that PRC issuers are already required to comply with except for the Core Standard on HKSCC's right to appoint proxies and corporate representatives (see paragraphs 126 to 128)<sup>40</sup>. While they may have to amend their constitutional documents to expressly provide this Core Standard, we note that existing listed PRC issuers currently comply with this standard in practice.
74. We also propose to repeal some provisions currently required under Appendix 3

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<sup>39</sup> Issuers of HDRs will also have to demonstrate compliance with all shareholder protection standards that apply to issuers of shares in order to be admitted to listing. The rights of a shareholder and a HDR holder are not identical (e.g. the rights of a HDR holder arise from the deposit agreement) but are in general equivalent. HDR holders who want to enforce their rights as shareholders may choose to convert their HDRs into shares of the underlying company (see [HKEX's framework for HDRs – Frequently Asked Questions released on 9 May 2008 and last updated on 15 February 2018](#)).

<sup>40</sup> While the PRC Company Law and the Mandatory Provisions provide for shareholders' right to appoint proxies/ corporate representatives, they do not contain any express reference to HKSCC's right to appoint proxies/corporate representatives.

or Appendix 13 to the Rules as they: (a) overlap with other Rule requirements; (b) have become obsolete over time; and/ or (c) otherwise do not concern fundamental shareholders' rights commonly found in the company laws/ listing rules of leading stock markets (see Schedule C).

75. An Overseas Issuer should notify the Exchange of any laws or regulations to which it is subject or provisions in its constitutional documents, with regards to matters not covered by the Core Standards or the Listing Rules, 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<sup>41</sup>). The Exchange reserves the right to consider an issuer to be unsuitable for listing in such cases.
76. An Overseas Issuer is expected to review the domestic laws and regulations to which it is subject and its constitutional documents to ensure that they, in combination, provide the Core Standards. It should monitor its on-going compliance with these Core Standards and notify the Exchange if it becomes unable to comply with any Core Standard after listing.
77. Overseas Issuers must also disclose in the Listing Documents the risks associated with the limitations on the extent to which Hong Kong courts may be used as an avenue for aggrieved shareholders of non-Hong Kong issuers as noted in paragraph 50 above.
78. We believe that all matters that are fundamental to shareholder protection are covered by either the Core Standards or other Listing Rules. However, we seek feedback on our choice of Core Standards and whether additional matters should be included within them.

## **Directors**

### Removal of directors

79. We propose the following as a Core Standard:

*“Where not otherwise provided by law, members in general meeting shall have the power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office.*

*Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.”*

80. This standard is currently provided in Appendix 3 and Part B of Appendix 13 to

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<sup>41</sup> Listing Rule 2.13(2).

the Listing Rules<sup>42</sup> in substance with a slight difference<sup>43</sup> in the wording used in the underlined portion of the above text. The HKCO<sup>44</sup> and the Mandatory Provisions<sup>45</sup> contain similar requirements. We propose to apply this standard as a Core Standard for all issuers as we believe shareholders' ability to remove any director by ordinary resolution is important for effective corporate governance and is fundamental to shareholder protection. However, we propose to replace the reference to "*the issuer*" with "*members*" to explicitly provide shareholders with the safeguard. We expect all existing listed issuers to be able to comply with this standard. A minority of Grandfathered Greater China Issuers may need to change their constitutional documents to comply.

81. In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR Structures permitted under the Rules, the non-WVR shareholders' right to remove directors may, however, undermine the effectiveness of their permitted WVR structure. We consider that the Exchange shall take a case-by-case approach to determining the applicability of this standard to such issuers in such circumstances. The wording used in the note to this Core Standard provides for such flexibility.

Casual vacancy appointments

82. We propose the following as a Core Standard:

*"Any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.*

*Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case."*

83. This standard is currently provided in Appendix 3 to the Listing Rules<sup>46</sup>. The HKCO<sup>47</sup> provides that a vacancy created by the removal of director may be filled as a casual vacancy although it does not stipulate that such director shall hold office only until the next annual general meeting. We propose to apply the Core Standard to all issuers to preserve shareholders' ability to elect directors after a casual vacancy has arisen. We expect all existing listed issuers to be able to

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<sup>42</sup> Paragraph 4(3) of Appendix 3 to the Listing Rules and paragraph 5(1) under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>43</sup> Currently, "members" is only stated in the provision applicable to issuers incorporated in the Cayman Islands in paragraph 5(1) of Part B of Appendix 13 to the Listing Rules whereas "issuer" is used in Appendix 3 to the Listing Rules.

<sup>44</sup> Section 462(1) of HKCO provides that a company may by an ordinary resolution passed at a general meeting remove a director before the end of the director's term of office.

<sup>45</sup> Electing and changing director and deciding the remuneration of directors are the duties performed by shareholders' meeting under Article 50 of the Mandatory Provisions and they are not matters to be approved by special resolution under Article 71 of the Mandatory Provisions.

<sup>46</sup> Paragraph 4(2) of Appendix 3 to the Listing Rules.

<sup>47</sup> Section 462(5) of HKCO.

comply with this standard. Some Grandfathered Greater China Issuers may need to change their constitutional documents to comply.

84. In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR Structures permitted under the Rules, the WVR beneficiaries' powers to appoint directors as provided in the constitutional documents of such issuers may be an integral part of the permitted WVR structure. The Exchange proposes to take a case-by-case approach to determining the applicability of this standard to such issuers in such circumstances. The wording used in the note to this Core Standard provides for such flexibility.
85. The Corporate Governance Code in Appendix 14 to the Listing Rules contains the same requirement on casual vacancy appointments<sup>48</sup>. However, the provision under the Corporate Governance Code allows an issuer to choose to either comply with the requirement or explain why it has not complied. As we propose that this standard be a Core Standard, we propose to repeal the "comply or explain" requirement on casual vacancy appointments in the Corporate Governance Code to address this current inconsistency in the Rules.

## **General Meetings**

### *Timing of annual general meeting*

86. We propose the following as a Core Standard:

*"An issuer must hold a general meeting for each financial year as its annual general meeting.*

*Note: Generally, an issuer must hold its annual general meeting within six months after the end of its financial year."*

87. This proposed Core Standard is based on provisions in the HKCO and the Mandatory Provisions<sup>49</sup>. The provisions in Part A and Part B of Appendix 13 to the Listing Rules<sup>50</sup> and the JPS Key Shareholder Protection Standards applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>51</sup> also require an annual general meeting to be held each year, but generally within 15 months from the date of the previous annual general meeting.
88. As stated in some of the Country Guides<sup>52</sup> previously issued by the Exchange,

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<sup>48</sup> Code Provision A.4.2 under Appendix 14 to the Listing Rules.

<sup>49</sup> Article 52 of the Mandatory Provisions states that the annual general meeting shall be held once a year, within six months after the conclusion of the preceding fiscal year. Section 610(1) of the HKCO provides that a public company must hold an annual general meeting within six months after the end of its accounting reference period.

<sup>50</sup> Paragraph 4(2) under Section 1 in Part A of Appendix 13 to the Listing Rules and paragraph 4(2) under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>51</sup> Paragraph 41 of the JPS and Listing Rule 19C.07(4).

<sup>52</sup> Country Guides for France and Luxembourg.

we do not consider that the requirement for holding an annual general meeting within six months after the end of the financial year is materially different from the requirement that no more than 15 months should elapse between two annual general meetings. We propose to apply this standard to require the holding of an annual general meeting within six months after the end of the financial year as a Core Standard for all issuers in line with the requirements under the HKCO.

89. For existing issuers currently subject to a requirement that not more than 15 months should elapse between two annual general meetings, the Exchange will consider them to be compliant with this Core Standard if they comply with the relevant requirements that were applicable to them at listing. As such, we expect all existing listed issuers to be able to comply with this standard.

*Notice of annual general meeting*

90. We propose the following as a Core Standard:

*“An issuer must give its members reasonable written notice of its general meetings.*

*Note: “Reasonable written notice” normally means at least 21 days for an annual general meeting and at least 14 days for other general meetings. This is unless it can be demonstrated that reasonable written notice can be given in less time.”*

91. Currently, issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers) are only required to give their members “reasonable written notice” of general meetings with no specific time limit imposed<sup>53</sup>.
92. For PRC issuers, the Mandatory Provisions require them to provide 45 days’ notice of a general meeting<sup>54</sup> and the PRC Company Law requires a notice period of 20 days for annual general meetings and 15 days for special general meetings<sup>55</sup>. It is noted that PRC Issuers whose shares are listed in Hong Kong have, in practice, adopted a notice period of 20 days for annual general meetings in line with the PRC Company Law<sup>56</sup>.
93. Issuers incorporated in Bermuda or the Cayman Islands are required by Appendix 13 to the Listing Rules<sup>57</sup> to stipulate in their constitutional documents

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<sup>53</sup> Paragraph 42 of the JPS and Listing Rule 19C.07(5).

<sup>54</sup> Article 53 of the Mandatory Provisions provides that when convening the general meeting of shareholders, the company shall issue a written notice 45 days in advance to all the registered shareholders.

<sup>55</sup> Listing Rule 19A.53 provides that a PRC issuer shall observe and comply with the, among others, the PRC Company Law and the PRC issuer’s articles of association. See also FAQ series 070-2019.

<sup>56</sup> China Securities Regulatory Commission published a news release in October 2019 about the abolition of the 45 days’ notice period stipulated in the Special Provisions of the State Council Concerning the Floatation and Listing Abroad of Stocks by Limited Stock Companies. However, the Mandatory Provisions have not been referred to in the press release and have not been formally amended accordingly.

<sup>57</sup> Paragraph 3 under Section 1 in Part A of Appendix 13 to the Listing Rules and paragraph 3 under Section 1 in Part B of Appendix 13.

that any annual general meeting must be called by notice of at least 21 days, and that any other general meeting must be called by notice of at least 14 days. These requirements are consistent with the HKCO<sup>58</sup>. In comparison, the JPS provides more flexibility to issuers incorporated in Acceptable Jurisdictions by requiring them to give their members reasonable written notice of general meetings. The same requirement applies to Grandfathered Greater China Issuers and Non-Greater China Issuers seeking a secondary listing under Chapter 19C of the Listing Rules.

94. We propose to apply this standard as a Core Standard for all issuers. The proposed Core Standard (with flexibility allowed as per the current wording) reflects the existing requirements for Hong Kong issuers and issuers incorporated in Bermuda and the Cayman Islands and only slightly varies from the existing requirements for PRC Issuers. It also aims to accommodate variation in the provisions of overseas company laws on this matter.
95. For PRC Issuers, the minimum length of the notice period as stipulated in the PRC Company Law is slightly different (i.e. 20 days for annual general meetings and 15 days for special general meetings) and we would consider such differences to be still acceptable. For existing listed issuers that have been allowed to list with a shorter notice period, they will be considered to be in compliance with the Core Standard if they comply with the requirements that were applicable to them in this regard at listing. As such, we expect all existing listed issuers to be able to comply with this standard.
96. The Corporate Governance Code in Appendix 14 to the Listing Rules contains a “comply or explain” provision that an issuer should arrange for notice to shareholders to be sent for an annual general meeting at least 20 *clear business days* before the meeting<sup>59</sup>. We propose to repeal this provision to avoid any possible conflict and/or confusion between the proposed Core Standard and the Corporate Governance Code.

#### *Right to speak and vote at general meetings*

97. We propose the following as a Core Standard:

*“Members must have the right to (1) speak at a general meeting; and (2) vote at a general meeting except where a member is required, by these Exchange Listing Rules, to abstain from voting to approve the matter under consideration.*

*Note 1: An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.*

*Note 2: If an issuer is subject to a foreign law or regulation that prevents the restriction of a members’ right to speak and/or vote at general meetings, the issuer can enter into an undertaking with the Exchange to put in place measures that achieve the same outcome as the restriction under this paragraph (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction*

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<sup>58</sup> Section 571(1) of the HKCO.

<sup>59</sup> Code Provision E.1.3 under Appendix 14 to the Listing Rules.

*must not be counted towards the resolution).”*

98. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>60</sup>. Neither the JPS nor the Listing Rules specifically impose this standard on issuers incorporated in Bermuda, the Cayman Islands<sup>61</sup>, Hong Kong or the PRC. However, it is implied in the HKCO and the Mandatory Provisions that members do have the right to speak and vote at general meetings<sup>62</sup>. Further, under the Corporate Governance Code, issuers should ensure that the chairman should attend general meetings to answer shareholders’ questions (Code Provision E.1.2) and directors should attend general meetings to gain an understanding of the views of shareholders (Code Provision A.6.7). Consequently, there is an expectation in the Rules that all issuers should provide members with a right to speak. As such, we expect all existing listed issuers to be able to comply with this standard.
99. We propose to apply this standard as a Core Standard for all issuers to close the current gap between the JPS Key Shareholder Protection Standards and the standards applicable to other jurisdictions.

*Restriction on shareholder voting*

100. We propose the following as a Core Standard:

*“Where any shareholder is required under these Exchange Listing Rules to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.”*

101. This standard is currently provided in Appendix 3 to the Listing Rules<sup>63</sup>. The standard was introduced in 2004 as part of the corporate governance Rule amendment exercise, which aimed to raise the standards of corporate governance of issuers and to enhance investor protection. The HKCO also

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<sup>60</sup> Paragraph 43 of the JPS and Listing Rule 19C.07(6).

<sup>61</sup> The Bermuda laws and the Cayman Islands laws provide that members present at a meeting have voting rights but are not explicit in requiring issuers to provide members with the right to speak at general meetings.

<sup>62</sup> For instance, section 584 of HKCO provides that a company may hold a general meeting at multiple locations by using electronic technology which enables members at different locations to listen, speak and vote at the meeting. Section 588 of HKCO provides that on a vote on a resolution on a show of hands at a general meeting, every member present in person has one vote. For PRC issuers, Article 59 of the Mandatory Provisions provides that any shareholder who has the right to attend the shareholders’ meeting and vote is entitled to entrust one or more persons as his or her agent to attend the meeting and vote. The agent may exercise the shareholder’s right of speech according to the shareholder’s entrustment.

<sup>63</sup> Paragraph 14 of Appendix 3 to the Listing Rules.

contains similar requirements<sup>64</sup>. This is also currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>65</sup>. We consider this to be a fundamental shareholder protection and propose to apply it as a Core Standard for all issuers. We expect all existing listed issuers to be able to comply with this standard. Where issuers can demonstrate that arrangements have been put in place that achieve the same effect, for example two-tier voting arrangements, the Exchange may consider them to be in compliance with this Core Standard.

*Right to convene an extraordinary general meeting*

102. We propose the following as a Core Standard:

*“Members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the issuer.”*

103. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>66</sup>. It is not currently applicable to issuers incorporated in Bermuda, the Cayman Islands or the PRC. However, the company laws of Bermuda and the Mandatory Provisions<sup>67</sup> have equivalent provisions. The company laws of the Cayman Islands do not have an equivalent provision. The Exchange has previously permitted certain secondary listed issuers to have a requisition threshold higher than 10% taking into consideration very specific facts and circumstances. Having conducted a review, we believe all existing primary-listed issuers incorporated in the Cayman Islands already have such standard incorporated in their constitutional documents. Under the HKCO<sup>68</sup>, shareholders representing at least 5% of the total voting rights of all members may request that the directors call a general meeting. We expect all existing listed issuers to be able to comply with this standard.

104. We propose to apply this standard as a Core Standard for all issuers to close the current gap between the JPS Key Shareholder Protection Standards and the

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<sup>64</sup> The HKCO requires disinterested members' voting for connected transactions and various prohibited transactions (i.e. loans, quasi-loans and credit transactions; payments for loss of office; and directors' long-term employment). If the company is subject to the disinterested members' approval requirement, the resolution at a general meeting of such a company is passed only if every vote in favour of the resolution by the interested members is disregarded (sections 496(2)(b)(ii) and (5), 515(1)(b)(ii) and (4), 518(2)(b)(ii), (4) and (5) and 532(2)(b)(ii) and (4)).

<sup>65</sup> Paragraph 43 of the JPS and Listing Rule 19C.07(6).

<sup>66</sup> Paragraph 44 of the JPS and Listing Rule 19C.07(7).

<sup>67</sup> Article 52 (III) of the Mandatory Provisions provides that the board of directors shall convene the shareholders' meeting upon written request of convening a special shareholders' meeting from any shareholder holding at least 10% of the company's issued voting stocks.

<sup>68</sup> Section 566 of HKCO.



standards applicable to other jurisdictions.

## **Other Shareholder Rights**

### Variation of Class Rights<sup>69</sup>

105. We propose the following as a Core Standard:

*“A super-majority vote of the issuer’s members of the class to which the rights are attached shall be required to approve a change to those rights.*

*Note 1: A “super-majority vote” means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.*

*Note 2: For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the voting rights of the members who are present at the classified members’ meeting and have voting rights to amend class rights as satisfying the threshold of a “super-majority”.*”

106. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>70</sup>. However, the JPS defines a “super-majority vote” as a “two-thirds majority” and does not specify the level of quorum requirement. “Two-thirds majority” is clarified in Chapter 19C, for certain Qualifying Issuers, as meaning a two-thirds majority of “members present and voting”<sup>71</sup>.

107. The Mandatory Provisions applicable to PRC Issuers also require a two-thirds majority vote of the shareholders who are present at the classified shareholders’ meeting and having voting rights to amend class rights<sup>72</sup>. Any shareholder is

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<sup>69</sup> For general rights of shareholders, they can be varied by amending the issuer’s constitutional documents. Amendment of constitutional documents would require a super-majority vote of shareholders (see paragraph 113). In respect of variation of the rights of shareholders holding shares of a particular class (where an issuer has more than one class of shares), this is subject to further protection as provided in this Core Standard which is in line with section 180 of the HKCO.

<sup>70</sup> Paragraph 36(b) of the JPS, Listing Rule 19C.07(1)(a) and Section 566 of HKCO.

<sup>71</sup> Listing Rule 19C.07(1)(a) and Note.

<sup>72</sup> Article 79 of the Mandatory Provisions provides that any variation of class rights shall be approved by a special resolution in the shareholders’ meeting and approved by the affected shareholders in the shareholders’ meetings convened separately. Article 82 of the Mandatory Provisions provides that the resolution of the classified shareholders’ meeting shall be made with at least two-thirds of the votes from the shareholders present at the classified shareholders’ meeting with voting rights.

entitled to entrust a proxy to attend the meeting and vote<sup>73</sup>.

108. For issuers incorporated in Bermuda or the Cayman Islands, Appendix 13 to the Listing Rules<sup>74</sup> requires their constitutional documents to stipulate that variation of rights to a class of shares shall be approved by a three-fourths majority as set out in the proposed Core Standard above. The HKCO<sup>75</sup> similarly requires consent of holders representing at least a three-fourths majority of shares in that class or a special resolution passed at a separate general meeting of holders of shares in the class sanctioning the variation for varying class rights unless the company's articles provide otherwise.
109. We propose to apply this proposed standard to all issuers, and use the three-fourths majority definition of a "super-majority vote" for the Core Standard so as to align it with the current requirements for issuers incorporated in Bermuda and the Cayman Islands and with the HKCO. For PRC issuers we propose to maintain the current requirements under the Mandatory Provisions. What constitutes variation of class rights remains a matter of the relevant company laws and constitutional documents and is not affected by the Core Standard.
110. For existing issuers currently subject to the JPS Key Shareholder Protection Standard which defines a "super-majority vote" as a "two-thirds majority", we do not intend to impose a higher threshold on them. These issuers will be considered to be in compliance with the Core Standard if they comply with the requirements that were applicable to them in this regard at listing. As such, we do not expect existing listed issuers to be required to make amendments to their constitutional documents to comply with this standard.
111. The proposed approach (with flexibility allowed as per the current wording) aims to reflect the existing requirements for PRC issuers, Hong Kong issuers and issuers incorporated in Bermuda and the Cayman Islands while accommodating variation in provisions of overseas company law on this matter.

#### Amendment of Constitutional Documents

112. We propose the following as a Core Standard:

*"A super-majority vote of the issuer's members in a general meeting shall be required to approve changes to an issuer's constitutional documents, however framed.*

*Note 1: A "super-majority vote" means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher*

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<sup>73</sup> Article 59 of the Mandatory Provisions provides that any shareholder who has the right to attend the shareholders' meeting and vote is entitled to entrust one or more persons (who may not be a shareholder) as his or her agent to attend the meeting and vote.

<sup>74</sup> Paragraph 2(1) under Section 1 in Part A of Appendix 13 to the Listing Rules and paragraph 2(1) under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>75</sup> Section 180 of the HKCO.

*quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.*

*Note 2: For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.*

113. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>76</sup>. However, the JPS defines a “super-majority vote” as a “two-thirds majority”. “Two-thirds majority” is clarified in Chapter 19C, for certain Qualifying Issuers, as meaning a two-thirds majority of “members present and voting”<sup>77</sup>.
114. The Mandatory Provisions applicable to PRC Issuers also require a two-thirds majority vote of the shareholders who are present at the meeting and have voting power<sup>78</sup>. Any shareholder is entitled to entrust a proxy to attend the meeting and vote.
115. For issuers incorporated in Bermuda and issuers incorporated in the Cayman Islands, Appendix 13 to the Listing Rules<sup>79</sup> requires their constitutional documents to (a) stipulate that they may not be changed without a special resolution, and (b) define “special resolution” to mean a resolution passed by members holding three-fourths of the voting rights of those present and voting in person or by proxy at a meeting of members.
116. The HKCO<sup>80</sup> similarly provides that a company may only alter its articles by “special resolution”, which is defined to mean a resolution that is passed by a majority of at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution<sup>81</sup>.
117. We propose to apply this standard as a Core Standard for all issuers, and use this three-fourths majority definition of a “super-majority vote” for the Core Standard so as to align it with the current requirements for issuers incorporated in Bermuda and the Cayman Islands and with the HKCO. For PRC issuers we

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<sup>76</sup> Section 566 of HKCO, paragraph 36(b) of the JPS and Listing Rule 19C.07(1)(b).

<sup>77</sup> Listing Rule 19C.07(1)(b) and Note.

<sup>78</sup> Article 71 paragraph (IV) of the Mandatory Provisions provides that revision of the articles of association requires the approval of shareholders’ meeting in special resolutions. Article 64 of the Mandatory Provisions provides that the special resolution made at the shareholders’ meeting requires at least two-thirds of the votes of the present shareholders (including shareholders’ agents) who have the voting power.

<sup>79</sup> Paragraph 1 under Section 1 in Part A of Appendix 13 to the Listing Rules; paragraph 1 under Section 1 in Part B of Appendix 13 to the Listing Rules and Listing Rule 19C.07(1)(b).

<sup>80</sup> Section 88(2) of the HKCO.

<sup>81</sup> Sections 564(1) and (3) of the HKCO. This is the requirement for resolutions being passed on a poll. Listing Rule 13.39 requires that any vote of shareholders at a general meeting must be taken by poll except for procedural or administrative matters in respect of which the chairman decides to allow voting by a show of hands.

propose to maintain the current requirements under the Mandatory Provisions.

118. The proposed approach (with flexibility allowed as per the current wording) aims to reflect the existing requirements for PRC issuers, Hong Kong issuers and issuers incorporated in Bermuda and the Cayman Islands while accommodating variation in provisions of overseas company law on this matter.
119. For existing issuers currently subject to the JPS Key Shareholder Protection Standard which defines a “super-majority vote” as a “two-thirds majority”, we do not intend to impose a higher threshold on them. These issuers will be considered to be in compliance with the Core Standard if they comply with the requirements that were applicable to them in this regard at listing. As such, we do not expect existing listed issuers to be required to make amendments to their constitutional documents to comply with this standard.

#### Appointment of auditors

120. We propose the following as a Core Standard:

*“The appointment, removal and remuneration of auditors must be approved by a majority of the issuer’s members or other body that is independent of the board of directors.*

*Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.”*

121. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>82</sup>. The HKCO<sup>83</sup> and the Mandatory Provisions applicable to PRC issuers<sup>84</sup> also have equivalent provisions. The Listing Rules do not require issuers incorporated in Bermuda or the Cayman Islands to comply with this shareholder protection standard. The company laws<sup>85</sup> of Bermuda have similar provisions (except that two-thirds of the votes cast at a general meeting are required to remove an auditor), while the company laws of the Cayman Islands do not have this requirement. Existing issuers incorporated in the Cayman Islands<sup>86</sup> might not

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<sup>82</sup> Paragraph 40 of the JPS and Listing Rule 19C.07(3).

<sup>83</sup> Section 396 of HKCO provides that a company must appoint the auditor of the company for a financial year by a resolution passed at a general meeting. Section 404 provides that the remuneration of an auditor of a company appointed by the members may be fixed by a resolution passed at a general meeting. Section 419(1) provides that a company may by an ordinary resolution passed at a general meeting remove an auditor.

<sup>84</sup> Article 147 of the Mandatory Provisions provides that the employment, dismissal or rejection of reappointment of the accounting firm shall be decided by the shareholders’ meeting and submitted to the State Council’s securities authority for record. Article 145 of the Mandatory Provisions provides that the shareholders’ meeting may, before the expiry of the term of any accounting firm, dismiss it through an ordinary resolution. Article 146 of the Mandatory Provisions provides that the remuneration of the accounting firm or the method to decide the remuneration shall be decided by the shareholders’ meeting.

<sup>85</sup> Section 89 of Bermuda Companies Act.

<sup>86</sup> Representing approximately 58% of issuers listed on the Exchange.

meet this Core Standard and may have to amend their constitutional documents accordingly.

122. We propose to apply the Core Standard to all issuers as we believe shareholders' power to approve the appointment, removal and remuneration of an auditor is important for ensuring auditor independence and effective corporate governance, and thus it is fundamental to shareholder protection.

*Proxies and corporate representatives*

123. We propose the following as a Core Standard:

*“Every member shall be entitled to appoint a proxy who need not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend and vote at any general meeting of the issuer and, where a corporation is so represented, it shall be treated as being present at any meeting in person. A corporation may execute a form of proxy under the hand of a duly authorised officer.”*

124. Under the Listing Rules, this requirement relating to the appointment of proxies/corporate representatives applies to only issuers incorporated in the Cayman Islands<sup>87</sup> and PRC Issuers<sup>88</sup>. However, the company laws of Bermuda<sup>89</sup> have equivalent provisions. The standard is also consistent with the HKCO<sup>90</sup>. Existing issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>91</sup> might not meet this Core Standard and may have to amend their constitutional documents accordingly.
125. We explicitly stipulate in the proposed Core Standard that the appointed representative should be entitled to vote as well as attend any general meeting. The proposed Core Standard is complementary to the requirement that CCASS be entitled to appoint corporate representatives (see paragraph 126) and is also consistent with the proposed Core Standard that a member must have the right to both speak and vote at general meetings (see paragraph 97).

*HKSCC's right to appoint proxies or corporate representatives*

126. We propose the following as a Core Standard:

*“HKSCC must be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors meetings and those proxies/corporate representatives must enjoy rights comparable to the rights of other*

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<sup>87</sup> Paragraph 2(2) under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>88</sup> Article 59 of the Mandatory Provisions provides that any shareholder who has the right to attend the shareholders' meeting and vote is entitled to entrust one or more persons (who may not be a shareholder) as his or her agent to attend the meeting and vote. The agent may exercise certain shareholders' rights according to the shareholder's entrustment.

<sup>89</sup> Section 77(1) of the Bermuda Companies Act.

<sup>90</sup> Section 596 of HKCO provides that a member of a company is entitled to appoint a proxy.

<sup>91</sup> Representing approximately 78% of issuers listed on the Exchange.

*shareholders, including the right to speak and vote.*

*Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/corporate representatives enjoying the rights described by this paragraph, the issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.”*

127. This standard is currently applicable to issuers incorporated in Bermuda and the Cayman Islands<sup>92</sup> and is also a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>93</sup>. Although the Listing Rules do not require Hong Kong issuers and PRC issuers to comply with this shareholder protection standard, existing listed issuers incorporated in these jurisdictions comply with the standard in practice. As such, we expect all existing listed issuers to be able to comply with this standard.
128. As this standard protects the rights of shareholders whose shares are deposited with HKSCC, we propose to apply this standard as a Core Standard for all issuers to maintain the current proxy voting arrangements.

*Inspection of Hong Kong Branch Register*

129. We propose the following as a Core Standard:

*“The branch register of members in Hong Kong shall be open for inspection by members but the company may be permitted to close the register on terms comparable to section 632 of the Companies Ordinance.”*

130. This standard is currently applicable to issuers incorporated in the Cayman Islands<sup>94</sup> and is consistent with the HKCO<sup>95</sup>. The company law of Bermuda contains an equivalent provision<sup>96</sup>. The Mandatory Provisions for PRC Issuers also provide for shareholders’ right to inspect the branch register<sup>97</sup>. However, this standard is not a JPS Shareholder Protection Standard. We propose to apply this standard as a Core Standard for all issuers as we consider this to be a fundamental shareholder protection given that members’ registers provide important evidence of legal ownership. Existing issuers incorporated in the Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China

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<sup>92</sup> Paragraph 6 under Section 1 in Part A of Appendix 13 to the Listing Rules, and paragraph 6 under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>93</sup> Paragraph 46 of the JPS and Listing Rule 19C.07(8).

<sup>94</sup> Paragraph 3(2) under Section 1 in Part B of Appendix 13 to the Listing Rules.

<sup>95</sup> Sections 631, 632 and 637 of the HKCO.

<sup>96</sup> Section 65(4) and (6) of the Bermuda Companies Act.

<sup>97</sup> Article 36 of the Mandatory Provisions provides that the company shall keep a complete register of shareholders which shall include, the register of shareholders of the company’s foreign capital stocks listed abroad which is kept at the domicile of the overseas listed stock exchange. Article 45 of the Mandatory Provisions provides that a shareholder is entitled to inspect and copy all parts of register of shareholders after paying a reasonable fee.

Issuers and Grandfathered Greater China Issuers)<sup>98</sup> might not meet this Core Standard and may have to amend their constitutional documents accordingly<sup>99</sup>.

Voluntary winding up

131. We propose the following as a Core Standard:

*“A super-majority vote of the issuer’s members in a general meeting shall be required to approve a voluntary winding up of an issuer.*

*Note 1: A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.*

*Note 2: For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.*

132. This is currently a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers (i.e. Non-Greater China Issuers and Grandfathered Greater China Issuers)<sup>100</sup>. However, the JPS defines a “super-majority vote” as a “two-thirds majority”. “Two-thirds majority” is clarified in Chapter 19C, for certain Qualifying Issuers, as meaning a two-thirds majority of “members present and voting”<sup>101</sup>.

133. The Mandatory Provisions for PRC Issuers also require a two-thirds majority vote of the shareholders who are present at the meeting and have voting rights for a winding-up<sup>102</sup>. Any shareholder is entitled to entrust a proxy to attend the meeting and vote. The Listing Rules do not require issuers incorporated in Bermuda or the Cayman Islands to comply with this shareholder protection standard.

134. The CWUMPO provides that a company may be wound up voluntarily if the

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<sup>98</sup> Representing approximately 13.3% of issuers listed on the Exchange.

<sup>99</sup> For HDRs, issuers are not required to keep a register in Hong Kong of holders of the shares represented by depositary receipts. However, issuers must ensure that the depositary maintains through an approved Hong Kong share registrar a register of holders of the depositary receipts (Listing Rule 19B.13) and such register must be made available for inspection by HDR holders (Listing Rule 19B.16).

<sup>100</sup> Paragraph 36(c) of the JPS and Listing Rule 19C.07(1)(c).

<sup>101</sup> Listing Rule 19C.07(1)(c) and Note.

<sup>102</sup> Article 71 of the Mandatory Provisions provides that dissolution of a company needs the approval of shareholders’ meeting by special resolution. Article 64 of the Mandatory Provisions provides that the special resolution made at the shareholders’ meeting requires at least two-thirds of the votes of the present shareholders (including shareholders’ agents) who have the voting power.

company resolves that the company be wound up voluntarily by “special resolution”<sup>103</sup>, which is defined in the HKCO to mean a resolution that is passed by a majority of at least 75% of the total voting rights of all the members who (being entitled to do so) vote in person or by proxy on the resolution.

135. We propose to apply this standard as a Core Standard for all issuers to close the current gap between the JPS Key Shareholder Protection Standards and the standards applicable to Bermuda and the Cayman Islands. However, we propose to use a three-fourths majority definition of a “super-majority vote” for the Core Standard so as to align with the requirements of the CWUMPO and HKCO. For PRC issuers we propose to maintain the current requirements under the Mandatory Provisions.
136. For existing issuers currently subject to the JPS Key Shareholder Protection Standard which defines a “super-majority vote” as a “two-thirds majority”, we do not intend to impose a higher threshold on them. These issuers will be considered to be in compliance with the Core Standard if they comply with the requirements that were applicable to them in this regard at listing. We do not expect such existing listed issuers to be required to make amendments to their constitutional documents to comply with this standard.
137. The proposed approach (with flexibility allowed as per the current wording) aims to reflect the existing requirements for PRC issuers, Hong Kong issuers and issuers incorporated in Acceptable Jurisdictions whilst accommodating variation in the provisions of overseas company law on this matter.

## **B. Repeal of some existing shareholder protection standards**

138. We propose to repeal various shareholder protection standards in Appendices 3 and 13 and the JPS as set out in Schedule C. We consider that these requirements do not concern fundamental shareholder rights commonly found in the company laws / listing rules of leading stock markets.

## **C. Consequential changes**

139. Our proposals to amalgamate the shareholder protection standards in Chapter 19C and Appendices 3 and 13 to the Listing Rules and the JPS Key Shareholder Protection Standards into one set of Core Standards will result in the following consequential changes (see Schedule D for the proposed Rule changes):
  - (a) the text of Appendix 3 to the Listing Rules will be replaced with the text of the Core Standards;
  - (b) the JPS (including Section 1) will be withdrawn and the distinction between Recognised Jurisdictions and Acceptable Jurisdictions will no longer be applicable;
  - (c) Listing Rules 19C.06 to 19C.09 setting out shareholder protection standards for Grandfathered Greater China Issuers and Non-Greater China

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<sup>103</sup> Section 228 of the CWUMPO.



Issuers will be repealed and superseded by the Core Standards;

- (d) Section 1 in Part A and Section 1 in Part B of Appendix 13 to the Listing Rules will be repealed. Shareholder protection standards relating to issuers incorporated in Bermuda and the Cayman Islands will be replaced with the Core Standards set out in the revised Appendix 3 to the Listing Rules;
- (e) the definition for Overseas Issuers in Chapter 1 of the Listing Rules will be amended (in line with the “Definitions” section of this paper);
- (f) the Equivalence Requirement in Listing Rules 19.05(1)(b) and 19.05(6)(b) will be repealed; and
- (g) consequential changes will be made to Chapter 19A.

#### **D. Application of Core Standards to Existing Listed Issuers**

140. Subject to responses to this consultation, the Core Standards will also apply to existing listed issuers. Other than in the circumstances described above (see paragraphs 110, 119 and 136), these issuers would 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. Having conducted a review we have concluded that the vast majority of existing listed issuers are already providing the proposed Core Standards and therefore we believe that the implementation of the Core Standards will not cause them an undue compliance burden. However, if any issuer foresees any difficulty in complying with the Core Standards, it should contact the Exchange at the earliest opportunity.

**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.

**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.

**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.

**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.

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

**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.

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## CHAPTER 3 DUAL PRIMARY LISTING

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### Background

#### Waivers for Overseas Issuers seeking dual primary listing

141. For primary listed issuers, normally all or the majority of their listed equity securities are traded on the Exchange and therefore these issuers are required to fully comply with the Listing Rules, unless specifically waived. Secondary listed issuers are primary listed on another stock exchange with the majority of their listed equity securities traded outside Hong Kong, and are already subject to the regulations in and enforcement of the market of primary listing and therefore are granted extensive waivers from the Listing Rules (see Chapter 4 for details).
142. An issuer can also opt for a dual primary listing where it is subject to full listing requirements of both the Exchange and those of the overseas exchange(s) on which its securities are, or will be, listed. An issuer that is considered to have a dual primary listing may either (a) already have a primary listing on one or more overseas stock exchanges; or (b) be an unlisted company applying to primary list simultaneously on the Exchange and one or more overseas exchanges.
143. Chapter 19 of the Listing Rules sets out the additional requirements, modifications or exceptions which apply to Overseas Issuers, depending on whether they apply for a primary or secondary listing on the Exchange. Issuers with a centre of gravity in Greater China cannot apply for secondary listing pursuant to the JPS and can only do so through the Chapter 19C route.
144. The Appendix to the JPS (Main Board Rule Application Table for Overseas Issuers of Equity Securities) explains how the Listing Rules apply to an Overseas Issuer that is primary listed, dual primary listed or secondary listed on the Exchange. In particular, it sets out 14 Common Waivers (with conditions) that are available to dual primary listed issuers. An Overseas Issuer wishing to avail itself of any of such Common Waivers must submit a waiver application demonstrating its need for such waiver and that it can meet the prescribed conditions. The Exchange will consider each waiver application based on the issuer's own facts and circumstances.

#### Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR/ VIE Structures

145. Listing Rule 19C.12 states that Grandfathered Greater China Issuers and Non-Greater China Issuers that have, or are seeking, a secondary listing pursuant to Chapter 19C of the Listing Rules are exempted from the relevant requirements on WVR structures under Chapter 8A of the Listing Rules<sup>104</sup>. These issuers are

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<sup>104</sup> The Exchange reserves the right to reject an applicant on suitability grounds if its WVR structure represents an extreme case of non-conformance with governance norms.

also exempted from the “narrowly tailored” requirement<sup>105</sup> on VIE structures under LD43-3, as set out in GL94-18. Accordingly, Grandfathered Greater China Issuers and Non-Greater China Issuers are allowed to secondary list in Hong Kong with Non-compliant WVR and/ or VIE Structures. However, issuers with WVR and/ or VIE structures must comply with the relevant requirements under Chapter 8A of the Listing Rules, HKEX-GL93-18 (Suitability for Listing with a WVR Structure) and LD43-3, as the case may be, if they apply for primary or dual primary listing.

146. Listing Rule 19C.13 states that if the majority of trading in a Greater China Issuer’s listed shares migrates to the Exchange’s markets on a permanent basis<sup>106</sup>, the Exchange will regard the issuer as having a dual primary listing and consequentially all Automatic Waivers will cease to have effect (i.e. the Trading Migration Requirement). Similarly, certain specific waivers granted to the issuer due to its primary listing status in the Qualifying Exchange will also be revoked. These Greater China Issuers would be required to comply with all of the requirements applicable to a primary listing, unless they apply for, and are granted, specific waivers on a case by case basis, similar to other dual primary listed issuers. However, Grandfathered Greater China Issuers are permitted to retain their Non-compliant WVR and/ or VIE Structures even after they become dual primary listed in Hong Kong.
147. The Trading Migration Requirement aims to prevent Greater China Issuers from attempting to avoid compliance with the full extent of the Listing Rules (i.e. regulatory arbitrage) through a secondary listing. The Trading Migration Requirement is not applicable to Non-Greater China Issuers.

## Issues

### **No clear guidance on Common Waivers in Listing Rules**

148. A dual primary listed issuer is subject to the full listing requirements of both the Exchange and the overseas exchange(s) on which its securities are, or will be, listed, unless specifically waived. As such, dual primary listed issuers are likely to encounter duplication of regulation on certain listing matters due to their multiple listings, and could be granted certain waivers if they could demonstrate, among other things, strict compliance with the Listing Rules would be unduly burdensome or unnecessary (for example, where the relevant overseas requirements conflict with those in Hong Kong, strict compliance with the relevant Listing Rules is impossible).

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<sup>105</sup> LD43-3 requires, among other things, a VIE structure to be narrowly tailored to achieve the issuer’s business purpose and minimise the potential for conflict with relevant PRC laws and regulations, and the issuer may be required, on a case by case basis, to demonstrate that it is able to comply with the requirements under the draft PRC Foreign Investment Law in the event that the legislation is promulgated.

<sup>106</sup> The notes to Listing Rule 19C.13 set out the Exchange’s interpretation of migration of trading on a “permanent” basis and state that a 12-month grace period is granted for the issuer to comply with applicable Listing Rules.

149. We have in the past granted Common Waivers to dual primary listed issuers. These Common Waivers were granted on the basis that the issuers (a) met the specific conditions of the Common Waivers as currently set out in the JPS; and (b) had demonstrated that their jurisdictions of incorporation and markets of primary listing (where relevant) provided shareholder protections that met the Equivalence Requirement<sup>107</sup>. These together are believed to provide sufficient safeguards for investors.
150. The list of Common Waivers and prescribed conditions for primary or dual primary listed Overseas Issuers is set out in the JPS. Neither the Listing Rules nor the JPS set out the principles underlying the grant of these Common Waivers. The Exchange has not published guidance or codified the bases on which we grant waivers to primary and dual primary listed issuers, as the case may be, from strict compliance with these Listing Rules.

**Grandfathered Greater China Issuers and Non-Greater China Issuers cannot apply for a direct dual primary listing and retain their Non-compliant WVR and/ or VIE Structures**

151. Under the current regime, all issuers with Non-compliant WVR and/ or VIE Structures must amend these structures to comply with the relevant requirements under Chapter 8A of the Listing Rules and LD43-3, as the case may be, if they want to apply for a primary or dual primary listing in Hong Kong.
152. However, if a Grandfathered Greater China Issuer with Non-compliant WVR and/ or VIE Structures first applies for a secondary listing pursuant to Chapter 19C of the Listing Rules, and subsequently the demand for its shares in Hong Kong increases such that the majority of trading in its listed shares migrates to the Exchange's markets on a permanent basis, such issuer will be regarded as dual primary listed in Hong Kong and has to fully comply with the requirements under the Listing Rules unless specifically waived by the Exchange, but is allowed to retain its Non-compliant WVR and/ or VIE Structures (i.e. a "two-step" route).
153. Similarly, a Non-Greater China Issuer with Non-compliant WVR and/ or VIE Structures can apply for secondary listing pursuant to Chapter 19C of the Listing Rules, and can retain such non-compliant structures regardless of whether the majority of trading in its listed shares takes place in the Exchange's markets, as the Trading Migration Requirement is currently not applicable to Non-Greater China Issuers because we do not have concern about regulatory arbitrage for these issuers.
154. Further, the Listing Rules and relevant guidance materials do not provide guidance on whether a Grandfathered Greater China Issuer or Non-Greater China Issuer can similarly retain its Non-compliant WVR and/ or VIE Structures if it is de-listed from the overseas exchange on which it is primary listed.

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<sup>107</sup> Listing Rule 19.05(1)(b).

## Proposals

### A. Codify the Common Waivers for dual primary listed issuers and the underlying principle

155. Although all Overseas Issuers need to submit applications for Common Waivers to demonstrate their need for the waivers and the waivers are granted on a case by case basis, the Exchange makes its assessment mainly based on a common underlying principle that the issuer has demonstrated that strict compliance with both the relevant Listing Rules and the overseas regulations would be unduly burdensome or unnecessary.
156. Accordingly, the Exchange reserves the right to revoke the exemptions/ waivers granted to dual primary listed issuers if the circumstances underpinning the justifications for the exemptions/ waivers cease to exist or apply (e.g. a dual primary listed issuer is de-listed from the overseas exchange).
157. We propose to codify (a) our principle with regards to granting waivers to issuers that seek a dual primary listing as set out in paragraph 155; and (b) certain Common Waivers set out in the Appendix to the JPS, the underpinning principle and conditions of which are unlikely to change and evolve in the foreseeable future.
158. Our proposal to codify certain Common Waivers<sup>108</sup> and the prescribed conditions as well as the principle of granting waivers to dual primary listed issuers will (a) increase the transparency of our listing regime; and (b) allow issuers to develop a reasonable expectation and better assess the regulatory compliance requirement to list in Hong Kong. This in turn can help improve the market's confidence in the Hong Kong listing regime and encourage more Overseas Issuers to primary, or dual primary, list in Hong Kong which can improve the Hong Kong market's liquidity and diversity.
159. Our proposals will still require applicants to apply for all Common Waivers and such waivers will be granted on a case-by-case basis subject to the applicants demonstrating, at a minimum, that the prescribed conditions can be satisfied.

**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.

**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.

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<sup>108</sup> The waivers to be codified do not include the Common Waivers in the JPS for Listing Rules 3.28, 8.12, 10.04, 10.07(1), 10.08, paragraph 5(2) of Appendix 6 and Appendix 3 to the Listing Rules.

**B. Allow Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures to dual primary list**

160. We propose that Grandfathered Greater China Issuers and Non-Greater China Issuers be allowed to dual primary list directly on the Exchange while retaining their Non-compliant WVR and/ or VIE Structures (see Chapter 4 for our proposal to impose the Trading Migration Requirement on Overseas Issuers with a centre of gravity outside Greater China).
161. However, such issuers with Non-compliant WVR and/ or VIE Structures must still meet the suitability and eligibility requirements of Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure even though they are applying for dual primary listing. The Exchange reserves the right to reject an applicant on suitability grounds if its WVR structure represents an extreme case of non-conformance with governance norms.
162. Our proposal will not result in an expansion of concessions to these issuers as the Listing Rules currently already allow these issuers to become dual primary listed through a “two step” route in the event of trading migration (see paragraphs 151 to 153). On the contrary, allowing these issuers to dual primary list will mean that these issuers will be subject to the full set of the Listing Rules (except otherwise specifically waived) even if the majority of trading in their listed securities remains outside Hong Kong.

**C. Allow Grandfathered Greater China Issuers and Non-Greater China Issuers to retain Non-compliant WVR and/ or VIE Structures if they are de-listed from their Qualifying Exchange**

163. We have set out in Schedule E a draft Guidance Letter on requirements that would apply when a Grandfathered Greater China Issuer’s majority of trading migrates to the Exchange’s market or if it de-lists from its overseas exchange of primary listing. Please refer to Chapter 4 for further details.
164. Listing Rule 19C.03 and GL94-18 allow Grandfathered Greater China Issuers and Non-Greater China Issuers to retain their pre-existing WVR/ VIE structures. As stated in the Consultation Conclusions on A Listing Regime for Companies From Emerging and Innovative Sectors, the Exchange reserves the right to reject an applicant on suitability grounds if its Non-compliant WVR Structure represents an extreme case of non-conformance with governance norms. To align with our proposal to permit these secondary listed issuers to retain their Non-compliant WVR and/ or VIE Structures in the event of de-listing (paragraph 235), and taking into account the more stringent requirement for such issuers applying for dual primary listing as set out in paragraph 162 and the policy intention behind the exemptions regarding WVR and VIE structures for such issuers, we propose that in the event a Grandfathered Greater China Issuer or a Non-Greater China Issuer that applied for dual primary listing is subsequently de-listed from the Qualifying Exchange on which it is listed, the issuer will be allowed to retain its Non-compliant WVR and/ or VIE Structures (subsisting at the time of its dual primary listing in Hong Kong). Our proposal would mean Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures that apply for dual primary listing will be assessed in the same way as

those that apply for secondary listing.

**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.

**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? Please give reasons for your views.



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## CHAPTER 4      SECONDARY LISTING

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### Background

#### Regulatory Philosophy

165. The Exchange, in common with other exchanges such as ASX and SGX (see paragraphs 52 and 53), allows issuers to apply for a “secondary” listing. To do so, an issuer must already be listed on an overseas exchange (or will simultaneously primary list on an overseas exchange and secondary list in Hong Kong) and must be principally regulated by the rules and authorities of the jurisdiction of its primary listing. The issuer must also not have received waivers from or be exempted from the rules, regulations or legislation that generally applies to entities listed on its primary market<sup>109</sup>.

#### Restriction to Large Issuers with Listing Track Records of Good Compliance

166. To safeguard investors and help ensure that only quality companies can list through the secondary listing concessionary route, the Exchange restricts entry to issuers that have demonstrated a listing track record of good regulatory compliance on their exchange of primary listing and are of a significant size. These issuers must have an expected market capitalisation of at least US\$400 million at listing, which is six times higher than the HK\$500 million normally expected of an applicant for primary listing (see Table 6 below for market capitalisation requirements).

#### Sponsor Requirement and Equivalent Standards of Shareholder Protection

167. Each Overseas Issuer applying for a listing (whether primary or secondary) must engage a sponsor to advise it on compliance with the Listing Rules (including the suitability requirement). It must also demonstrate how the domestic laws, rules and regulations to which it is subject, and its constitutional documents, in combination, provide equivalent standards of shareholder protection to those of Hong Kong law, i.e. meet the Equivalence Requirement. For this purpose, the Exchange may require an issuer to amend its constitutional documents.

168. Secondary listed issuers must continue to retain these standards on an ongoing basis after listing. These standards ensure, among other things, that the issuer: (a) holds a general meeting each year as their annual general meeting; (b) enables minority shareholders to call an extraordinary general meeting; and (c) holds a “super-majority” vote to amend the rights attached to a class of shares or to amend their constitutional documents. A full list of these shareholder protection standards is set out in the JPS and the Listing Rules<sup>110</sup>.

#### SFO Provisions

169. In addition, SFO provisions such as those on false or misleading disclosure,

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<sup>109</sup> Section 5 of the JPS, paragraph 96.

<sup>110</sup> Section 1 of the JPS and Listing Rule 19C.07.

inside information, market manipulation and insider dealing that cover primary listed issuers also apply to secondary listed issuers. The SFC has the power to seek redress (e.g. financial compensation) on behalf of the shareholders of listed issuers, including secondary listed issuers<sup>111</sup>.

### Recognised Stock Exchanges

170. If a secondary listing applicant meets all of the conditions set out in paragraphs 167 to 169 and is primary listed on, and complies with the highest standards and full rigour of the rules and regulations of the main market of, a Recognised Stock Exchange, it will be granted Automatic Waivers. This is on the basis that we consider that Recognised Stock Exchanges provide standards of shareholder protection that are at least equivalent to those provided in Hong Kong<sup>112</sup>.
171. For Greater China Issuers listed under Chapter 19C, Automatic Waivers will be revoked if the majority of trading in these issuers' securities migrates permanently to the Exchange's markets (i.e. the "Trading Migration Rule").

### **Secondary Listings of Hong Kong issuers and PRC issuers**

172. The JPS route is applicable to Overseas Issuers only and Hong Kong issuers and PRC issuers cannot list via this route. However, Hong Kong issuers and PRC issuers are not expressly excluded from secondary listing via Chapter 19C.

### **Regulatory Arbitrage Risk**

173. As we grant Automatic Waivers to eligible secondary listed issuers, many Listing Rules are not applicable to them and there is a risk that some issuers may attempt to use the secondary listing route to avoid the full rigour of our primary listing requirements.
174. Transactions such as reverse takeovers undertaken by an overseas listed company may not have been subject to a regulatory vetting process that is as rigorous as that which applies to an IPO under the rules of the relevant overseas exchange. There is a possibility that a business that is based in Greater China or elsewhere primary lists overseas through a reverse takeover and subsequently seeks regulatory arbitrage by secondary listing on the Exchange to enjoy a host of automatic waivers from strict compliance with the Listing Rules.
175. To mitigate the risks of regulatory arbitrage and safeguard the quality of secondary listings, Overseas Issuers with a centre of gravity in Greater China (a category of issuers that we would normally expect to primary list rather than secondary list on the Exchange) are currently prohibited from secondary listing through the JPS route and must instead meet the higher quantitative eligibility criteria of Chapter 19C (see paragraphs 183 and 184 for these criteria).
176. This JPS restriction was implemented as part of the September 2013 update to the JPS. The Chapter 19C route to secondary listing for good quality and high

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<sup>111</sup> Parts XIII, XIV and XIVA of the SFO.

<sup>112</sup> Section 5 of the JPS, paragraph 90.

growth companies from innovative sectors listed overseas, including those with a centre of gravity in Greater China, was implemented as part of the Listing Regime Reforms in April 2018.

### **Foreign Private Issuers**

177. A majority of the Greater China Issuers that have secondary listed on the Exchange have been Foreign Private Issuers listed in the US and this is likely to continue to be a characteristic of the issuers that seek a secondary listing here. This means that they are exempt from certain US obligations that would otherwise apply to them. For example, Foreign Private Issuers are exempt from the requirement to hold a general meeting on an annual basis, to have independent directors on their boards and to obtain shareholder approval for large transactions and connected transactions.
178. A Qualifying Issuer applying for secondary listing on the Exchange must clearly disclose that it is a Foreign Private Issuer in its Listing Document and explain the exemptions it enjoys as a result<sup>113</sup>. Also, the requirements that we impose on secondary listed issuers as set out in paragraph 167 negate some US exemptions available to a Foreign Private Issuer. For example, the Listing Rules require Foreign Private Issuers that are secondary listed on the Exchange to hold a general meeting each year and to ensure that at least a third of their board is composed of non-executive directors that meet our independence requirements<sup>114</sup>.
179. The US listing regime places greater emphasis on post-event methods of redress for shareholders than the Hong Kong regime and, for this purpose, has a class action regime that is well utilised by private plaintiffs and that acts as a strong deterrent against misconduct. Reliance on the US regime, in combination with the preventative Hong Kong shareholder protection requirements and our listing eligibility thresholds (described in paragraphs 166 and 167), as well as our stringent disclosure requirements, provides protection for Hong Kong investors of Greater China Issuers that are Foreign Private Issuers.

### **Two Routes to Secondary Listing**

180. There are currently two routes to secondary listing on the Exchange:
- (a) the JPS route: Overseas Issuers that have a centre of gravity outside Greater China<sup>115</sup> can secondary list provided they can meet the additional eligibility requirements in Section 5 of the JPS; or
  - (b) the Chapter 19C route: Qualifying Issuers, that may or may not have a centre of gravity in Greater China, can secondary list provided that they meet the additional eligibility requirements of Chapter 19C of the Listing Rules.

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<sup>113</sup> Listing Rule 19C.14.

<sup>114</sup> Listing Rules 3.10 to 3.15.

<sup>115</sup> Paragraphs 99 and 100 of the JPS.

181. The additional eligibility requirements of these two routes to secondary listing and their entitlement to waivers are summarised in Table 6 below.

	<b>JPS ROUTE</b>	<b>CHAPTER 19C ROUTE</b>
<b>Centre of Gravity in Greater China</b>	Prohibited	Permitted
<b>Stock Exchange of Primary Listing</b>	Recognised Stock Exchanges*	Qualifying Exchanges
<b>“Innovative Company” requirement</b>	Not required	Required <sup>116</sup>
<b>Minimum Market Capitalisation at Listing</b>	US\$400m*	<b>Non-Greater China Issuers without a WVR structure:</b> HK\$10 billion
		<b>Other Qualifying Issuers:</b> HK\$40 billion; or HK\$10 billion with at least HK\$1 billion of revenue in the most recent audited financial year
<b>Minimum Track Record on Primary Exchange</b>	Five years of listing and good compliance record (unless market capitalisation significantly larger than US\$400 million)*	Two full financial years of good compliance
<b>Automatic Waivers</b>	Yes <sup>117</sup>	Yes <sup>118</sup>
<b>Common Waivers</b>	Yes <sup>119</sup>	Granted on a case by case basis, based on the issuer’s individual circumstances

\* JPS Secondary Issuer that meets these eligibility requirements will be granted Automatic Waivers.

**Table 6: Key Requirements of Two Routes to Secondary Listing<sup>120</sup>**

## ISSUES

### Co-existence of Two Secondary Listing Regimes

182. The co-existence of two parallel routes to secondary listing regimes through the JPS and Chapter 19C of the Listing Rules has caused confusion to the market

<sup>116</sup> Paragraphs 3.1 to 3.4 of GL94-18.

<sup>117</sup> Appendix to the JPS.

<sup>118</sup> Listing Rule 19C.11.

<sup>119</sup> Appendix to the JPS, granted on a case by case basis.

<sup>120</sup> The requirements set out in Table 6 are in addition to the basic eligibility criteria set out in Chapters 8, 18 or 18A of the Listing Rules, as applicable.

and is unappealing to potential applicants.

## **More Restrictive Requirements for Issuers with a Centre of Gravity in Greater China**

### Higher Quantitative Eligibility Requirements

183. To secondary list with Automatic Waivers, Non-WVR issuers with a centre of gravity in Greater China must have at least a two full financial years track record of good compliance on a Qualifying Exchange and an expected market capitalisation at the time of their secondary listing of at least HK\$40 billion (or at least HK\$10 billion with revenue of at least HK\$1 billion for the most recent audited financial year)<sup>121</sup>.
184. In contrast, Non-WVR issuers with a centre of gravity outside Greater China can enjoy Automatic Waivers by secondary listing via the Chapter 19C route by only having to meet a HK\$10 billion market capitalisation threshold (with a two full financial years track record of good compliance on a Qualifying Exchange). Alternatively, issuers with a centre of gravity outside Greater China that are listed on a Recognised Stock Exchange can choose to secondary list under the JPS route, which has an even lower minimum market capitalisation requirement. This route requires them to have an expected market capitalisation of only US\$400 million (approximately HK\$3 billion) or more, as long as they demonstrate at least a five-year track record of good compliance on their Recognised Stock Exchanges.
185. As explained in paragraphs 173 to 175, the higher quantitative eligibility thresholds imposed on issuers with a centre of gravity in Greater China, relative to those imposed on other issuers, safeguards the quality of secondary listings and mitigates the higher regulatory arbitrage risk associated with issuers that have a centre of gravity in Greater China. However, this approach also prevents good quality issuers from secondary listing here even if they have no intention to avoid our primary listing requirements through regulatory arbitrage.

### Imposition of “Innovative Company” Requirement on Issuers with a Centre of Gravity in Greater China

186. Only Qualifying Issuers that demonstrate to the Exchange that they are “Innovative Companies” can secondary list through the Chapter 19C route. Chapter 19C is the only route to secondary listing for issuers with a centre of gravity in Greater China.
187. The purpose of this requirement is to prevent WVR structures from becoming commonplace in the Hong Kong market by “ring-fencing” them to new economy issuers that will provide a more diverse range of investment opportunities to Hong Kong investors<sup>122</sup>. However, the current mandatory application of the “Innovative Company” requirement to all secondary listing applicants seeking to list through

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<sup>121</sup> Listing Rules 19C.04 and 19C.05.

<sup>122</sup> The Exchange’s “Consultation Conclusions on New Board Concept Paper” ([link](#)), paragraphs 248 to 250 (see also “Concept Paper on Weighted Voting Rights” paragraphs 163 and 164 ([link](#))).

the Chapter 19C route – including those without a WVR structure - exceeds this regulatory intention. This results in large and good quality Greater China Issuers operating in traditional industries not being able to secondary list on the Exchange.

*Trading Migration Requirement only applies to Greater China Issuers*

188. If the majority of trading in a Greater China Issuer's listed shares migrates to the Exchange's markets on a permanent basis, the Exchange will regard the issuer as having a dual primary listing and consequently the Automatic Waivers that it enjoys will cease to have effect<sup>123</sup>. This requirement only applies to Greater China Issuers. Issuers with a centre of gravity outside Greater China secondary listing under either the JPS or Chapter 19C are able to retain Automatic Waivers even if the majority of trading in their shares is on the Exchange's markets.
189. This narrow application of this requirement was premised on the assumption that it is unlikely that the majority of trading in the securities of an issuer that does not have its centre of gravity in Greater China will migrate to the Exchange's markets<sup>124</sup>.

**Unclear Approach to Granting Waivers**

190. The Exchange believes that strict compliance with the full extent of the Listing Rules would be unduly burdensome for issuers seeking a secondary listing. This is because these issuers are subject to the laws and regulations of the regulatory regime of their place of primary listing where the majority of trading in their securities takes place and so a degree of reliance can be placed on that regime to regulate such issuers<sup>125</sup>.
191. We have granted Automatic Waivers and Common Waivers to these issuers on more than one occasion on the basis of the principles set out in paragraph 190. However, as with waivers granted to dual primary applicants (see paragraph 150 above), we have not codified these principles.
192. Also, Automatic Waivers are codified for Qualifying Issuers listing through the Chapter 19C route but not for issuers seeking a secondary listing through the JPS route. Similarly, Common Waivers for issuers seeking a secondary listing via either routes are also not codified.
193. The absence of codification of these waivers and the principles on which we grant them means that there may be a lack of clarity to the market as to our requirements.

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<sup>123</sup> Listing Rule 19C.13.

<sup>124</sup> There are currently two issuers with a centre of gravity outside Greater China that are secondary listed on the Exchange (Fast Retailing Co., Ltd. and Manulife Financial Corporation). Both of these issuers have very low trading volumes on the Exchange compared to the total trading volumes of their securities on their primary exchange.

<sup>125</sup> Paragraphs 87 and 91 under section 5 of the JPS.

## Trading Migration Requirement and De-listing

194. The Exchange has received requests from the market to clarify the dis-application of Automatic Waivers and other waivers granted to a secondary listed issuer where (a) the majority of trading in the securities of the secondary listed issuer migrates to the Exchange's markets; and (b) the secondary listed issuer is considering de-listing from the stock exchange on which it is primary listed.

## PROPOSALS

### A. Consolidation of Requirements to Reduce Complexity

195. To reduce the complexity of existing requirements, we propose to codify (with the amendments set out in this paper) Section 5 of the JPS into Chapter 19C of the Listing Rules and re-purpose Chapter 19C as one dedicated to secondary listings as a whole. Applicable requirements relating to secondary listings that are currently located in Chapter 19 of the Listing Rules would be moved to Chapter 19C of the Listing Rules. Section 5 of the JPS would be withdrawn.
196. As stated in Chapter 2, we propose to re-purpose Chapter 19 of the Listing Rules as a chapter dedicated to the primary listing of Overseas Issuers only and propose to remove superfluous Listing Rules from this chapter (e.g. those Listing Rules that only draw attention to other Listing Rules without setting additional requirements).

<p><b>Question 11</b> 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.</p>
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### Requirement for an Applicant to be Subject to the Regulatory Requirements of its Market of Primary Listing

197. Similar to the current JPS requirement<sup>126</sup>, we will make it clear in the Listing Rules that the Exchange reserves the right to exercise its absolute discretion under Rule 2.06 to refuse to list the securities of a secondary listing applicant if it has received waivers from or is exempt from rules, regulations or legislation that result in it being subject to regulatory requirements that are materially less stringent than those which generally apply to entities of its nature (e.g. Foreign Private Issuers in the US market) listed on its primary market.
198. The purpose of the above proposed provision is to ensure that for every secondary listed issuer, the Exchange can place reliance upon the regulatory regime of the issuer's market of primary listing. It also reflects the Exchange's intention not to prevent the listing of applicants that have been granted minor waivers/ exemptions and/ or those that comply with requirements that are generally applicable to issuers of their nature listed on their Recognised Stock

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<sup>126</sup> Section 5 of the JPS, paragraph 96

Exchange of primary listing (e.g. those categorised as Foreign Private Issuers in the US).

### Quantitative Eligibility Requirements

199. We propose that all Overseas Issuers without WVR structures (including those with a centre of gravity in Greater China) be allowed to seek a secondary listing<sup>127</sup> (and so enjoy Automatic Waivers) by meeting one of the following two sets of quantitative eligibility requirements:

#### Criteria A

- (a) A track record of good regulatory compliance of at least five full financial years on a Qualifying Exchange (for any Overseas Issuer without a WVR structure) or on any Recognised Stock Exchange (only for Overseas Issuers without a WVR structure and without a centre of gravity in Greater China); and
- (b) an expected market capitalisation at the time of secondary listing of at least HK\$3 billion<sup>128</sup>.

or

#### Criteria B

- (a) A track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
- (b) an expected market capitalisation at the time of secondary listing of at least HK\$10 billion.

200. This proposal aims to consolidate the existing two routes to secondary listing by codifying the JPS requirements for issuers without WVR structures (Criteria A) alongside the requirements of Chapter 19C (Criteria B).

201. Criteria A is substantially the same as the existing requirements under the JPS except for the following amendments:

- (a) to clarify that five full financial years of good regulatory compliance on the exchange of primary listing is required; and
- (b) to set the minimum expected market capitalisation threshold at HK\$3 billion, rather than the US\$400 million as currently set out in the JPS, to be consistent with the round number format and currency denomination (i.e. HK Dollar) used for other market capitalisation thresholds in the Listing

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<sup>127</sup> An Overseas Issuer can apply to secondary list if it already has a primary listing on another stock exchange, or it is unlisted and is applying to list simultaneously in multiple jurisdictions, which includes a secondary listing in Hong Kong.

<sup>128</sup> Criteria A is based on the requirements in paragraph 95 of the JPS with slight modifications.



Rules.

202. Existing quantitative eligibility tests relating to profit, revenue and cashflow would continue to apply to Non-WVR secondary listing applicants, as would management continuity and ownership continuity requirements<sup>129</sup>. Secondary listing applicants with WVR structures would be unaffected by our proposed Criteria A and Criteria B eligibility requirements and would be required to meet the existing quantitative eligibility requirements for such companies.

Secondary Listing without a Listing Compliance Record

203. Currently, the JPS provides that the five-year listing compliance record requirement for the JPS route does not apply if the applicant seeking a secondary listing is well-established and has a market capitalisation that is significantly larger than US\$400 million. This exception was included in the JPS taking into account a secondary listing conducted before the publication of the JPS. Glencore International plc, simultaneously primary listed on the LSE and secondary listed on the Exchange in May 2011 without a track record of listing on a Recognised Stock Exchange. It had a market capitalisation at the time of its listing of approximately HK\$468 billion.
204. Taking into account the policy objective of the above exemption and our past experience, we propose to introduce a similar exemption and not apply the listing compliance record requirement of either Criteria A or Criteria B (as set out in subparagraph (a) of paragraph 199 above under either criteria) to secondary listing applicants without a WVR structure, on a case-by-case basis, if the applicant is well-established and has a market capitalisation at listing that is significantly larger than HK\$10 billion (the minimum market capitalisation required to secondary list under Criteria B).

<p><b>Question 12</b> 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.</p>
<p><b>Question 13</b> 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.</p>

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<sup>129</sup> Listing Rule 8.05.

## **B. Less Restrictive Requirements for Overseas Issuers with a Centre of Gravity in Greater China**

### Lower Minimum Market Capitalisation Thresholds

205. The proposed Criteria A set out in paragraph 199 would, for the first time, enable issuers with a centre of gravity in Greater China to secondary list on the Exchange with a minimum market capitalisation at listing of at least HK\$3 billion. These issuers would also have to demonstrate a five full financial years of track record of good regulatory compliance on a Qualifying Exchange. For issuers with a centre of gravity in Greater China that can demonstrate a track record of good regulatory compliance on a Qualifying Exchange of only two years, they could secondary list under Criteria B if they can meet a minimum market capitalisation at listing of at least HK\$10 billion<sup>130</sup>. For reasons set out in paragraph 176, an application for the secondary listing of an issuer with a centre of gravity in Greater China primary-listed on other Recognised Stock Exchanges will be considered only in exceptional circumstances on the basis of the issuer's individual circumstances and the merits of the case.
206. These proposals would enable a greater number of issuers with a centre of gravity in Greater China to secondary list to provide Hong Kong investors with the convenience of trading the shares of issuers that have cultural and economic ties to Greater China within local market hours and under the protections offered by the Hong Kong regulatory regime.

### Dis-applying "Innovative Company" Requirement for Issuers without a WVR structure

207. For the reasons set out in paragraphs 186 and 187, we propose that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) not have to demonstrate to the Exchange that they are an "Innovative Company".

<p><b>Question 14</b> 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.</p>
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### Proposal to Address Regulatory Arbitrage Risk

208. We describe above (see paragraphs 173 to 175) the risk that an issuer may apply for a secondary listing on the Exchange (after first obtaining a primary listing status overseas through a reverse takeover or other transactions) in an attempt to circumvent the Listing Rules that apply to primary listing.
209. To deter attempts at such regulatory arbitrage, we propose to introduce a Listing

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<sup>130</sup> Currently issuers with a centre of gravity in Greater China must meet the comparatively higher minimum market capitalisation requirements of Chapter 19C route to secondary listing (see Table 6).

Rule stating that the Exchange retains the discretion to reject an application for secondary listing if, in its opinion, the listing constitutes an attempt to avoid the Rules that apply to a primary listing.

210. For the purpose of this new Rule, we may apply the test set out in Chapter 14 of our Listing Rules to determine whether, in the opinion of the Exchange, a transaction and/or arrangement or series of transactions and/or arrangements that the secondary listing applicant, conducted before the proposed secondary listing, constituted a reverse takeover of the applicant. If a material part of an applicant's business was primary-listed on the overseas exchange by way of a reverse takeover, the Exchange will normally consider its application to be an attempt to avoid the Rules that apply to a primary listing.
211. This approach would provide a higher level of assurance that the primary listing of the principal business of a secondary listing applicant on the overseas exchange has been subject to the full gatekeeping scrutiny of the relevant overseas exchange and/ or securities regulator. On this basis in combination with the other investor protections (as amended by the proposals in this paper) described above (see paragraphs 165 to 171), we believe that it is appropriate to enable issuers with a centre of gravity in Greater China to secondary list if they can meet the proposed eligibility criteria (set out in paragraph 199).

<p><b>Question 15</b> 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.</p>
<p><b>Question 16</b> 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.</p>

*Effect of our Proposals on Number of Secondary Listings of Issuers with a Centre of Gravity in Greater China*

212. We estimate that, as at 29 March 2021, approximately 18 issuers that have a centre of gravity in Greater China and are listed on a Qualifying Stock Exchange could meet the lower market capitalisation criteria described in paragraph 205 and would become eligible to apply to secondary list in Hong Kong under our proposals<sup>131</sup>.
213. There may be a concern that our proposals (set out in this section B) will lead to a proliferation of secondary listings on the Exchange from issuers with a centre of gravity in Greater China, or elsewhere, and that our market will be dominated by the listings of such issuers as a result. We believe that this risk is strongly mitigated by the following requirements. All secondary listed applicants would:

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<sup>131</sup> Source: S&P Capital IQ.

- (a) need to demonstrate a market capitalisation at listing of at least HK\$3 billion (Criteria A) or HK\$10 billion (Criteria B) – this is six times or twenty times higher, respectively, than the HK\$500 million market capitalisation that they would be required to demonstrate if they applied for primary listing or dual-primary listing;
- (b) be required to demonstrate a good listing compliance record of at least five years (Criteria A) or two years (Criteria B) – no listing compliance record is required for primary listing or dual-primary listing<sup>132</sup>; and
- (c) cease to enjoy Automatic Waivers if the majority of trading in their securities migrated to the Exchange’s markets or they were de-listed from their exchange of primary listing – this is likely to deter issuers from first seeking a primary listing overseas and then a secondary listing in Hong Kong with a view to achieving regulatory arbitrage if the business nature of such issuers is such that they are more likely to attract significant investor following in Hong Kong than in the overseas markets, with a high risk of the majority of trading in their securities ultimately moving to Hong Kong as a result.

Applying Trading Migration Requirement to All Secondary Listed Issuers

214. We propose to extend the Trading Migration Requirement to all issuers with a secondary listing to reduce the complexity of our requirements and ensure consistency of the principles on which Automatic Waivers are granted (see also paragraph 215).

<p><b>Question 17</b></p> <p><b>Question 18</b></p>	<p>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.</p> <p>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.</p>
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**C. Waivers**

Codification of the Principles for Granting Exemptions/ Waivers to Secondary Listed Issuers

215. We propose to codify the following principles on which the Exchange will waive, modify or not require compliance with the Listing Rules for issuers with, or seeking, a secondary listing:
- (a) reliance can be placed upon: (i) the nature and extent of the regulatory standards and controls to which the Overseas Issuer is subject overseas (including those of its jurisdiction of incorporation and the Recognised Stock Exchange on which it is primary listed); and (ii) the enforcement of those

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<sup>132</sup> This is with the exception of issuers with Non-compliant WVR and/ or VIE Structures (see paragraph 161).

standards by the relevant regulatory authorities;

- (b) regulatory co-operation arrangements are in place between the SFC and both the issuer's jurisdiction of incorporation and its jurisdiction of primary listing (if different);
- (c) the majority of trading in the issuer's listed shares does not take place on the Exchange's markets on a permanent basis; and
- (d) strict compliance with the Listing Rules would be unduly burdensome.

216. The Exchange reserves the right to revoke the specific waivers/Automatic Waivers granted (as the case may be) to secondary listed issuers if any factors set out in paragraph 215 ceases to apply.

**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.

*Codification of the Automatic Waivers and Common Waivers for Secondary Listed Issuers*

217. We propose to codify, in the Listing Rules, the Automatic Waivers and conditional Common Waivers (except for those set out in paragraph 158) that are available to Overseas Issuers seeking a secondary listing. This would give the market greater clarity and certainty as to the requirements applicable to such issuers.

**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.

*Absence of Pre-emptive Rights Condition*

218. The Listing Rules currently set a condition for the waiver of the shareholders' consent requirement for any new issue, allotment or grant of securities by a secondary listed issuer. The requirements in Rule 13.36 can be waived for a secondary listed issuer where the issuer is not subject to any other statutory or other requirement giving pre-emptive rights to shareholders over further issues of share capital<sup>133</sup>. This condition has been in place since the introduction of the December 1989 edition of the Main Board Listing Rules.

219. We propose to remove this condition for the following reasons:

- (a) the Exchange's waiver of pre-emptive rights for a secondary listed issuer has no effect on non-Listing Rule requirements that the issuer may be subject to. If a non-Listing Rules requirement already gives shareholders of a secondary listed issuer pre-emptive rights over future issues of share capital, a waiver of Rule 13.36 will not have a material adverse effect on the

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<sup>133</sup> Note 2 to Listing Rule 13.36(2)(b).

shareholder rights in this regard. This is because the issuer is required to offer the securities to each shareholder first (therefore complying in substance with the condition in Rule 13.36(2)(a)) and the relevant shareholders are entitled to exercise their pre-emptive rights to counter-act any dilution. Also, if such an issuer continues to be required to obtain a general mandate under Rule 13.36 (2)(b), it will be subject to an additional set of consent requirements in relation to future issues of share capital; and

- (b) imposing the condition further widens the gap, in terms of consent required for further issues of share capital, between secondary listed issuers that are subject to pre-emptive right requirements outside the Listing Rules and those secondary listed issuers that are not. This is inconsistent with our aim to simplify and standardise the Listing Rules for all Overseas 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? Please give reasons for your views.

### Diversity Policy

- 220. The Listing Rules state that: “the nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report”<sup>134</sup>.
- 221. At the time our Listing Regime Reforms were implemented in April 2018, this requirement formed part of our Corporate Governance Code and Corporate Governance Report requirements<sup>135</sup>. Following public consultation, the Listing Regime Reforms exempted secondary listed issuers from compliance with the Corporate Governance Code, including the diversity policy requirement.
- 222. On 1 January 2019, the diversity policy requirement (set out in paragraph 220) was upgraded to a Listing Rule<sup>136</sup> (which is not covered by any Automatic Waiver). We have subsequently received enquiries as to whether secondary listed issuers are still exempted from this requirement.
- 223. We strongly support diversity on boards as numerous studies indicate that board diversity promotes effective decision-making, enhances corporate governance and is associated with better financial performance<sup>137</sup>. Board diversity is also a factor that investors increasingly regard as of importance when making investment decisions.
- 224. We therefore propose that secondary listed issuers should comply with the

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<sup>134</sup> Listing Rule 13.92.

<sup>135</sup> Code Provision A.5.6 of Appendix 14 to the Listing Rules (repealed).

<sup>136</sup> Listing Rule 13.92.

<sup>137</sup> MSCI ESG Research's report "[Women on Boards: Global Trends in Gender Diversity on Corporate Boards](#), November 2015. Catalyst's report, "[The Bottom Line: Corporate Performance and Women's Representation on Boards](#)" (2007).

diversity policy disclosure requirements (set out in paragraph 220) in their annual reports.

**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.

#### **D. De-listing from an Overseas Exchange of Primary Listing**

##### *Dis-application of Waivers*

225. The Listing Rules are currently silent on the effect on the application of Automatic Waivers and other waivers granted to a secondary listed issuer if the issuer is de-listed from the overseas exchange on which it is primary listed. The draft Guidance Letter that is included in Schedule E to this paper sets out, among other things, the Exchange's intended approach to secondary listed issuers in the event of a trading migration or a de-listing. Subject to the responses to this consultation paper, we will amend and publish this Guidance Letter.
226. As de-listing will result in an issuer ceasing to be subject to the listing rules of its overseas exchange of primary listing, we will no longer be able to rely on the regulation and enforcement of those overseas listing rules (see paragraph 170) upon the de-listing taking place.
227. Therefore, in this circumstance, the Exchange will regard the issuer as having a primary listing on the Exchange and the Automatic Waivers and specific waivers granted to the issuer based on or conditional upon its secondary listing status will no longer apply to the issuer. Accordingly, the issuer would be required to comply with all Listing Rules applicable to a primary listed issuer on the Exchange immediately (except for the proposed grace period in relation to financial reporting standards as discussed in paragraph 259 below) upon its de-listing from its overseas exchange of primary listing, unless the Exchange grants waivers and/or grace periods based on the specific circumstances as mentioned in paragraphs 230 to 235 below.

##### *Notification to the Exchange of the possibility of de-listing*

228. A secondary listed issuer that starts to plan to de-list voluntarily, or that forms a reasonable expectation that it may be de-listed involuntarily, from its overseas exchange of primary listing should notify the Exchange of this possibility in writing as soon as practicable to give the Exchange early notice prior to its de-listing from its overseas exchange of primary listing.
229. The Exchange will consider the information in the notification and may require additional information. Following the review of the information, the Exchange will issue a written notice to remind the issuer that, upon the de-listing occurring, we will regard the issuer as having a primary (rather than secondary) listing status on the Exchange.

### Requests for waivers from Listing Rules

230. If a secondary listed issuer wishes to retain, following its de-listing from its overseas exchange of primary listing, any exemption or waiver that was previously granted or available to it or wishes to apply for a new waiver from strict compliance with any Listing Rules, it should submit a waiver application to the Exchange together with its de-listing notification to the Exchange described in paragraph 228 above. The waiver application(s) should contain sufficient information to demonstrate the basis for the Exchange to grant such waiver(s).
231. Upon receipt of the waiver application(s), the Exchange will make the assessment on a case-by-case basis and exercise our discretion as to whether to grant the relevant waiver(s) to the issuer. Any waiver decision (including any grace period and any other conditions for granting the waiver) will be issued to such issuer together with the notice from the Exchange described in paragraph 229.
232. Any grace period granted under a time-relief waiver will commence from the time the issuer is de-listed from its overseas exchange of primary listing. The length of the grace period for each Listing Rule so relieved will be assessed with reference to the individual facts and circumstances of the issuer, including but not limited to (a) the expected date on which the issuer will be de-listed from the overseas exchange; and (b) the amount of time reasonably needed for the issuer to be able to fully comply with the applicable Listing Rule.
233. As a general principle, an issuer that has become primary listed in Hong Kong upon de-listing from the overseas exchange is expected to use its best endeavours to comply with all the Listing Rules as applicable to other primary listed issuers. Except for the financial reporting standards requirement as discussed in paragraph 259 below, the Exchange believes that a grace period will be justified only in limited circumstances. In any event, the Exchange will not normally grant any grace period for compliance with the Listing Rules that are rarely waived for issuers having a sole primary listing on the Exchange. These rules generally concern key requirements that, the Exchange considers, must be fully complied with for the purpose of primary listing, such as a majority of the requirements on notifiable transactions and connected transactions<sup>138</sup>.
234. In the event an issuer is unable to fully comply with a Listing Rule upon the end of a grace period granted under a time-relief waiver, the Exchange may, on a case by case basis, exercise our discretion to either extend the grace period,

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<sup>138</sup> Under exceptional circumstances (e.g. a transaction entered into but not yet completed prior to the overseas de-listing occurring), the Exchange may exercise our discretion to waive the shareholders' approval requirement but the issuer will be expected to comply with the other requirements imposed on such transaction, including, where applicable, circular, independent financial advisor, accountants' report and annual reporting requirements. In the event that no waiver is requested by or granted to the issuer in respect of a transaction which was entered into prior to the de-listing from the overseas exchange but is expected to be completed on or after the de-listing and would have been required to be disclosed under the Listing Rules (e.g. by virtue of Listing Rule 14.34 or 14.38A), the issuer is encouraged to make an announcement of the transaction on a timely basis, providing details of the transaction, the expected timetable and how the issuer will comply with the applicable Listing Rules.



suspend trading of the issuer's shares or impose other measures as we consider necessary for the protection of investors and the maintenance of an orderly market.

*Non-compliant WVR and/ or VIE Structures*

235. The Exchange proposes that Grandfathered Greater China Issuers and Non-Greater China Issuers are permitted to retain their Non-compliant WVR and/ or VIE Structures which are pre-existing at the time of their secondary listing in Hong Kong even if they are de-listed from the Qualifying Exchange after their secondary listing in Hong Kong. Please refer to paragraphs 163 and 164 for further details.

**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.

**E. Effect of our Proposals on Protections for Investors in Secondary Listed Issuers**

236. At the start of this Chapter we described our regulatory philosophy with regards to secondary listing and the current investor protections in place for investors in the shares of issuers with a secondary listing on the Exchange. We believe that the combination of the existing safeguards and our proposed safeguards, summarised below, will continue to provide sufficient protection for the interests of investors whilst facilitating the secondary listing of large, good quality issuers that are primary listed overseas:
- (a) the proposed codification of the JPS shareholder protection standards as Core Standards (see Chapter 2), including those that negate some of the concessions granted to Foreign Private Issuers (see paragraph 178);
  - (b) the proposed requirement to require issuers to demonstrate a market capitalisation at listing of at least HK\$3 billion (Criteria A) or HK\$10 billion (Criteria B) - six times or twenty times higher, respectively, than the HK\$500 million normally expected of an applicant for primary listing;
  - (c) a proposed requirement for issuers to have been primary listed on a Recognised Stock Exchange with a good regulatory compliance record of at least five full financial years (Criteria A) or two full financial years (Criteria B);
  - (d) the proposed deterrent against applications for secondary listing that, in the Exchange's opinion, constitute an attempt to avoid the Rules that apply to a primary listing (see paragraph 209); and
  - (e) that the Automatic Waivers and specific waivers granted to the issuer on the basis of its secondary listing status will cease to have effect (after any applicable grace period) if the majority of trading in their securities migrates to the Exchange's markets or the issuers are de-listed from the exchange of primary listing.

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## CHAPTER 5      CODIFICATION      OF      OTHER REQUIREMENTS

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### Issues

#### Status as Guidance

237. The JPS requirements on the matters described in this chapter have the status of guidance and are not Listing Rules even though these requirements have not changed significantly since they were first published as part of a revised JPS in 2013. The Exchange believes codifying these requirements is consistent with their well-established nature and will give Overseas Issuers and their representatives greater certainty as to their obligations.

#### Amendments to the FRCO

238. On 1 October 2019 amendments to the FRCO took effect, establishing the FRC as Hong Kong's independent regulator of auditors of listed entities and putting in place a PIE Engagements regime. It is necessary for us to make consequential changes to the Listing Rules to implement these changes.

### Proposals

#### Regulatory Co-operation Requirement

239. The JPS<sup>139</sup> states that the statutory securities regulator of an Overseas Issuer's jurisdiction of incorporation and place of central management and control (if different) must:

- (a) be a full signatory of the IOSCO MMOU<sup>140</sup>; or
- (b) have entered into an appropriate bi-lateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong<sup>141</sup>.

240. The Exchange may make an exception from the Regulatory Co-operation Requirement in an individual case but will not do so without the SFC's explicit consent<sup>142</sup>.

241. The Regulatory Co-operation Requirement currently does not apply to Hong

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<sup>139</sup> Paragraph 47 under Section 2 of the JPS.

<sup>140</sup> This refers to signatories to Appendix A to the IOSCO MMOU. Current signatories to the IOSCO MMOU can be viewed here:  
<https://www.iosco.org/about/?subSection=mmou&subSection1=signatories>

<sup>141</sup> Details of the SFC's cooperative arrangements with overseas regulators can be viewed here:  
<http://www.sfc.hk/web/EN/about-the-sfc/collaboration/overseas/>

<sup>142</sup> Paragraph 49 under Section 2 of the JPS.

Kong issuers, PRC issuers and Overseas Issuers that are incorporated in a Recognised Jurisdiction<sup>143</sup>. The Regulatory Co-operation Requirement is intended to enable the SFC to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the SFC's investigations and enforcement actions where an Overseas Issuer has its records, business operations, assets and management outside Hong Kong. Accordingly, this requirement should equally apply to all issuers having core assets and operations in an overseas jurisdiction.

242. No companies incorporated in an Acceptable Jurisdiction have been regarded as acceptable to list on the basis of a bi-lateral agreement between the SFC and an overseas statutory securities regulator. Where the securities regulator in a jurisdiction is not a full signatory to the IOSCO MMOU, our assessment of compliance with the Regulatory Co-operation Requirement focuses not only on the terms of any bilateral agreement but also the features of the relevant legal system and regulatory provisions that might affect cross-border regulatory co-operation.
243. Therefore, the presence of a bi-lateral agreement is not a standalone condition and is only one of the factors to be considered in assessing compliance with the Regulatory Co-operation Requirement.
244. To provide greater clarity to the market, the Exchange proposes to modify the Regulatory Co-operation Requirement by removing the reference to bi-lateral agreements, and codify the current practice of considering any exception on a case by case basis. When considering exceptions, the Exchange will follow the guiding principle that adequate arrangements must exist for the SFC to be able to access financial and operational information (such as books and records) on an issuer's business in the relevant place of incorporation and central place of management and control for its investigation and enforcement purposes.
245. Currently the Regulatory Co-operation Requirement does not apply to issuers incorporated in Recognised Jurisdictions. Given the concept of Recognised Jurisdictions will be repealed and as the intent of the Regulatory Co-operation Requirement is to facilitate the SFC's investigations and enforcement actions, we propose that it should apply to all issuers. In practice, this proposal will not increase the compliance obligations for issuers incorporated in Hong Kong or other Recognised Jurisdictions as the statutory securities regulators in all of these jurisdictions are full signatories to the IOSCO MMOU.
246. We propose to codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242) into the Listing Rules for all issuers.

**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.

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<sup>143</sup> "Application of requirements" on page 4 of the JPS.

## Auditing Standards

247. The Listing Rules state that an accountants' report of an Overseas Issuer will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong<sup>144</sup>.
248. The Listing Rules also state that the annual accounts of Overseas Issuers must be audited to a standard comparable to that required by the HKICPA or the IAASB<sup>145</sup>.
249. To date, the Exchange is satisfied that seven sets of alternative standards are comparable to that required by HKICPA or the IAASB. As stated in the JPS<sup>146</sup>, the following alternative auditing standards can also be used in the auditing of Overseas Issuers' financial statements:
- (a) Australian Auditing Standards;
  - (b) the Generally Accepted Auditing Standards of Canada;
  - (c) professional auditing standards applicable in France in accordance with the French Commercial Code;
  - (d) Italian Auditing Standards;
  - (e) Singapore Standards on Auditing;
  - (f) International Standards on Auditing (UK); and
  - (g) the US Public Company Accounting Oversight Board auditing standards.
250. We propose to retain this list of alternative auditing standards (in paragraph 249) that can be used to audit the financial statements of Overseas Issuers. We propose that the list be published as guidance (see Schedule E) to provide more flexibility in terms of amendment, as necessary.

**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.

## Financial Reporting Standards

251. The Listing Rules state that the annual financial statements and the financial history of results and the statement of financial position included in the accountants' reports of all issuers must be prepared and drawn up in conformity with the financial reporting standards set out below:

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<sup>144</sup> Listing Rule 19.12 (for primary listing) and Listing Rule 19.38 (for secondary listing).

<sup>145</sup> Listing Rule 19.21 (for primary listing) and Listing Rule 19.48 (for secondary listing).

<sup>146</sup> Paragraph 55 under Section 3 of the JPS.

- (a) HKFRS;
- (b) IFRS;
- (c) CASBE in the case of a PRC issuer that has adopted CASBE for the preparation of its annual financial statements; or
- (d) US GAAP (an option available to issuers with, or seeking, a secondary listing only).

252. Any significant departure from the standards must be disclosed and explained, and to the extent practicable, the financial effects of such departure should be quantified<sup>147</sup>.

253. The JPS states that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between the foreign financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the foreign financial reporting standards with IFRS<sup>148</sup>.

254. On this basis, the Exchange has accepted that the financial statements and accountants' reports of Overseas Issuers can be prepared in conformity with the financial reporting standards set out in Table 7 below subject to the limitations stated therein.

STANDARD	LIMITATIONS
EU-IFRS	For issuers incorporated in an EU member state <sup>149</sup>
US GAAP	For issuers with, or seeking, a secondary listing or a dual-primary listing in the US and on the Exchange <sup>150</sup> (see paragraphs 260 to 266 below on our proposed changes to the use of US GAAP for dual-primary and secondary listings)
Australian Accounting Standards	Only issuers with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual primary listing or secondary listing on the Exchange <sup>151</sup>
Generally Accepted Accounting Principles of Canada	
Accounting principles generally accepted in Japan issued by the Accounting Standards Board of Japan	

<sup>147</sup> Listing Rules 4.11 and 4.12.

<sup>148</sup> Paragraph 63 under Section 3 of the JPS.

<sup>149</sup> Paragraph 64(a) under Section 3 of the JPS.

<sup>150</sup> Paragraph 64(b) under Section 3 of the JPS (dual-primary listings) and paragraph 2.4 of Appendix 16 to the Listing Rules (secondary listings).

<sup>151</sup> Paragraph 64(c) under Section 3 of the JPS.

STANDARD	LIMITATIONS
Singapore Financial Reporting Standards	
UK adopted international accounting standards	

**Table 7: List of Currently Acceptable Alternative Financial Reporting Standards and Limitations**

255. Annual financial statements and accountants' reports adopting a financial reporting standard other than HKFRS or IFRS or CASBE<sup>152</sup> must include a reconciliation statement showing the financial effect of any material differences between those financial statements and financial statements prepared using HKFRS or IFRS, except for US GAAP for secondary listing<sup>153</sup>.
256. As set out in Table 7, the Exchange accepts that the financial statements of an issuer incorporated in an EU member state can be prepared in conformity with EU-IFRS, and is also willing to accept the use of one of the other alternative reporting standards set out in Table 7 on the basis that it is the home standard of the jurisdiction of primary listing. However, the JPS states that an Overseas Issuer must adopt IFRS or HKFRS if the issuer de-lists from the jurisdiction of that alternative financial reporting standards<sup>154</sup>.
257. We propose to codify the following matters currently set out in the JPS in the Listing Rules:
- (a) the basis for determining the suitability of an alternative financial reporting standards (see paragraph 253); and
  - (b) the requirement that an issuer which has adopted one of the financial reporting standards set out in Table 7 (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 an alternative financial reporting standards (see paragraph 256).
258. We propose 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).

**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.

<sup>152</sup> In the case of a PRC issuer that has adopted CASBE for the preparation of its annual financial statements.

<sup>153</sup> Paragraph 65 under Section 3 of the JPS and Listing Rules 19.14 and 19.39 (accountants' reports) and paragraph 2.6 (annual report and accounts) of Appendix 16 to the Listing Rules.

<sup>154</sup> Paragraph 66 under Section 3 of the JPS.

**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.

**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.

259. We propose that an issuer be given an automatic grace period (i.e. an application to the Exchange is not required) to adopt IFRS or HKFRS if it de-lists from a jurisdiction of a body of alternative financial reporting standards. We propose that this grace period should end on the issuer's first anniversary of de-listing. This means that any interim and annual financial statements falling due, and published, after the first anniversary of the de-listing shall be prepared in accordance with either IFRS or HKFRS. We believe that this grace period is sufficient for the issuer to make the necessary amendments to its internal controls to facilitate the change considering (a) the issuer should already have relevant controls in place for compliance with the reconciliation statement disclosure requirement as set out in paragraph 255; and (b) there are at least 12 months for an issuer to adopt the new standards and for its auditor to complete the audit before the IFRS or HKFRS financial statements are due for publication under the Listing Rules.

**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.

#### *The use of US GAAP for Secondary Listing*

260. Issuers with, or seeking, a secondary listing can choose to adopt US GAAP for the preparation of their annual financial statements and for the financial history of results and the statement of financial position included in their accountants' reports<sup>155</sup>. Under the current Listing Rules, these issuers:

- (a) are not required to demonstrate the need to adopt this standard; and
- (b) do not need to include a reconciliation statement showing the financial

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<sup>155</sup> Listing Rule 19.39 and note 2.4 of Appendix 16 to the Listing Rules.

effect of any material differences between their financial statements and financial statements prepared using HKFRS or IFRS.

261. The Listing Rules that permit issuers with, or seeking, a secondary listing to adopt US GAAP for the preparation of their financial statements were implemented in April 2001. Since this date and up until the implementation of Chapter 19C in April 2018 (17 years in total), only five issuers have prepared financial statements using US GAAP.
262. Since Chapter 19C was implemented in April 2018 and up until the date of this paper, 13 US listed issuers have secondary listed on the Exchange under the Chapter 19C route with financial statements prepared using US GAAP. We expect that, in future, more US listed issuers will seek a secondary listing on the Exchange under Chapter 19C and will prepare financial statements using US GAAP for their listing and for the preparation of their annual financial statements after listing.
263. Due to the recent increase in the adoption of US GAAP by issuers listing under Chapter 19C and Hong Kong investors' general unfamiliarity with this standard, we propose to require that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS.
264. To ensure a more consistent approach on the Exchange's acceptance of the use of alternative financial reporting standards (see Table 7), we propose that an issuer must demonstrate a reason (e.g. maintain a primary listing on a US stock exchange or have a substantial existing US shareholder base) 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 that US exchange).
265. The above proposals would apply equally to issuers with, or seeking, a dual-primary listing as it would to those with, or seeking, a secondary listing. If the proposal is adopted, existing listed issuers that have been allowed to use US GAAP will continue to be able to do so, but will be required to include a reconciliation statement in their annual financial statements (for the first full financial year end immediately after the rule amendment effective date) showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS.
266. This revised approach to the adoption of US GAAP would be implemented through appropriate amendments to the Listing Rules (see Schedule D). US GAAP would be included on the list of alternative financial reporting standards in guidance (see Schedule E).

<p><b>Question 30</b> 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</p>
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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.

**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.

### Qualification Requirements for Auditors and Reporting Accountants

267. On 1 October 2019, amendments to the FRCO took effect that established the FRC as Hong Kong's independent regulator of listed entity auditors. Now, all audit firms intending to carry out a PIE Engagement are subject to a system of registration (for Hong Kong audit firms) or recognition (for non-Hong Kong audit firms) as PIE Auditors. On 6 September 2019, the Exchange published FAQs on these amendments<sup>156</sup>.
268. The audit engagements that are and are not categorised as PIE Engagements are summarised in Table 8 below:

Preparation of auditors' report or accountants' report	Is it a PIE Engagement?
Annual financial statements	√
Listing Document	√
Very substantial acquisition	√
Reverse takeover	√
Major transaction	x
Very substantial disposal	x
Extreme transaction	x

**Table 8: Categorisation of PIE Engagements**

269. A non-Hong Kong audit firm is required to be recognised by the FRC before the audit firm can: (a) "undertake" (i.e. accept an appointment to carry out) any PIE Engagement; and (b) carry out any PIE Engagement for a non-Hong Kong issuer.
270. An issuer is required to apply to the Exchange for, and the Exchange is required

<sup>156</sup> [https://en-rules.hkex.com.hk/sites/default/files/net\\_file\\_store/new\\_rulebooks/f/a/FAQ\\_059-067-2019.pdf](https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/f/a/FAQ_059-067-2019.pdf).

to issue, a Statement of No Objection before the FRC considers an application to recognise a non-Hong Kong audit firm. The Exchange grants SNOs on a case by case basis<sup>157</sup>.

271. Generally, with reference to the JPS, we may issue an SNO if the non-Hong Kong audit firm:
- (a) has an international name and reputation;
  - (b) is a member of a recognised body of accountants; and
  - (c) is subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU. It would be acceptable if the relevant audit oversight body is not a signatory to the IOSCO MMOU but the securities regulator in the same jurisdiction is a signatory to the IOSCO MMOU.
272. An issuer must provide specific reasons supporting its SNO application, for example:
- (a) that such firm has a geographical proximity and familiarity with the businesses of that issuer or the target;
  - (b) that such firm is the auditor of an issuer or a transaction target listed on a Recognised Stock Exchange; and
  - (c) the appointment of such firm is mandated by the terms of a statute (i.e. the firm is a “statutory auditor”).
273. The Exchange retains a discretion to accept or reject an application for the SNO, and reserves the right to withdraw the SNO<sup>158</sup>.
274. We propose to amend the Listing Rules to reflect the amendments to the FRCO described in paragraphs 267 to 273.
275. For engagements that are not PIE Engagements, such as accountants’ reports included in the circular for an extreme transaction or major transaction, the current Rules and practice continue to apply.

**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.

### **Qualification Requirements for Accountants’ Reports**

276. The CWUMPO requires that an accountants’ report included in a Prospectus must normally be prepared by certified public accountants who are qualified under the PAO for appointment as auditors of a company, but an issuer may apply for an exemption on any of the four statutory grounds (e.g. strict compliance would be unduly burdensome). In accordance with this statutory requirement, Listing Rule 4.03 currently states that all accountants’ reports must

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<sup>157</sup> The suitability of reporting accountants is governed by Listing Rule 4.03 and the suitability of auditors are governed by Listing Rule 19.20 (for primary issuers) and Listing Rule 19.47 (for secondary issuers).

<sup>158</sup> Section 20ZF(2)(a) of the FRCO.

normally be prepared by certified public accountants who meet this CWUMPO standard of qualification whereas in the case of a circular issued by a listed issuer in connection with the acquisition of an overseas company (which does not fall under the definition of a Prospectus in CWUMPO), the Exchange may be prepared to permit the accountants' report to be prepared by a firm of practising accountants which is not so qualified provided that the firm is acceptable to the Exchange. According to the JPS, such a firm must normally have an international name and reputation, be a member of a recognised body of accountants and be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU.

277. In accordance with the CWUMPO and our existing practice, we propose to retain the existing requirement that accountants' reports be prepared by certified public accountants who are qualified under the PAO for appointment as auditors of a company. Where the preparation of an accountants' report constitutes a PIE Engagement under the FRCO, we propose that the issuer must normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO.
278. In the case of PIE Engagements to prepare accountants' reports for a reverse takeover or a very substantial acquisition circular relating to an acquisition of an overseas company, the Exchange proposes to state in the Listing Rules that the Exchange may be prepared to accept the appointment of an overseas audit firm that is not qualified under the PAO but is a Recognized PIE Auditor of that issuer under the FRCO (also see paragraph 271 for the factors to be considered when the Exchange issues an SNO in connection with such recognition). As the FRCO only permits non-Hong Kong issuers to appoint a Recognized PIE Auditor for a PIE Engagement, we propose that this exception apply to these issuers only<sup>159</sup>.
279. To codify the JPS requirement<sup>160</sup> and our existing practice on the acceptance of overseas audit firms for the preparation of accountants' reports in relation to the PIE Engagements and notifiable transactions, we propose to state in the Listing Rules that these overseas audit firms must normally fulfil the characteristics described in paragraph 271 above.

**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.

**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

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<sup>159</sup> Only PRC issuers are permitted to appoint Mainland auditors or reporting accountants (see section 20ZT of FRCO, Rules 19A.08 and 19A.31).

<sup>160</sup> Paragraph 59 under Section 3 of the JPS.

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? Please give reasons for your views.

### Collection of FRC levies

280. As already published on the FRC's website<sup>161</sup>, the amendments to the FRCO provide for two new FRC levies that the Exchange will be responsible for collecting on the FRC's behalf: (a) a FRC transaction levy on securities transactions; and (b) an annual PIE levy. The provisions relating to the payment of FRC levies will take effect on 1 January 2022.

281. The levies are calculated as follows:

- (a) the FRC transaction levy is to be paid by sellers and purchasers on qualifying securities transactions and calculated by applying a percentage ratio prescribed by the amendments to the FRCO (currently 0.00015% by each of the seller and the purchaser) of the total consideration of the relevant transaction; and
- (b) the annual PIE levy is calculated by applying a percentage ratio prescribed by the amendments to the FRCO (currently 4.2%) of the prepaid annual listing fee payable by the relevant PIE under the Listing Rules.

282. We propose to make a housekeeping amendment to the Listing Rules to reflect the amendments to the FRCO described in paragraphs 280 and 281.

**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.

### Company Information Sheets

283. The JPS states<sup>162</sup> that an Overseas Issuer must clearly disclose in its Prospectus or Listing Document:

- (a) a summary of the waivers and exemptions that it has been granted;
- (b) a summary of the provisions in the laws and regulations in its home jurisdiction and primary market that are different to those required by Hong Kong law regarding:

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<sup>161</sup> Please refer to the FRC's website (<https://www.frc.org.hk/en-us/about-the-frc/funding>) for further details on the collection of FRC levies.

<sup>162</sup> Paragraph 68 under Section 3 of the JPS.

- (i) the rights of the holders of its securities and how they can exercise their rights;
  - (ii) directors' powers and investor protection; and
  - (iii) the circumstances under which its minority shareholders may be bought out or may be required to be bought out after a successful takeover or share repurchase;
- (c) details of withholding tax on distributable entitlements or any other tax that is payable (e.g. capital gains tax, inheritance or gift taxes) and whether Hong Kong investors have any tax reporting obligations; and
- (d) where an issuer is listing depository receipts (HDRs), a summary of the terms and conditions in the depository agreement and deed poll.

284. Applicable Overseas Issuers must also disclose this information separately from their Listing Documents as a Company Information Sheet (see paragraph 286). The Exchange posts Company Information Sheets on a dedicated section of the HKEX website<sup>163</sup>. This enables investors to more easily locate information on the differences between the overseas requirements to which an Overseas Issuer is subject and the Hong Kong requirements. This is particularly useful where the Overseas Issuer is subject to overseas laws and regulations that are unfamiliar to Hong Kong investors.

285. Whenever there is any material change to the information disclosed in its Company Information Sheet, an Overseas Issuer must update and revise its Company Information Sheet to reflect the changes.

286. The requirement to disclose a Company Information Sheet is currently applicable to primary listed issuers incorporated outside a Recognised Jurisdiction and all secondary listed issuers.

287. We propose to amend the Listing Rules to codify the requirement for Company Information Sheets.

288. As we intend to repeal the concept of Recognised Jurisdictions, we propose to require Company Information Sheets to be prepared by:

- (a) secondary listed issuers<sup>164</sup>; and
- (b) any other Overseas Issuer, at the Exchange's discretion<sup>165</sup>, where we believe the publication of a Company Information Sheet would be useful to Hong Kong investors (for example, to provide them with information on

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<sup>163</sup> [http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/co\\_inf.htm](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/co_inf.htm)

<sup>164</sup> As of the date of this paper, all secondary listed issuers but one have published the Company Information Sheet on the Exchange's website.

<sup>165</sup> The Exchange will consider, among other things, the extent of differences between the provisions in the overseas laws and regulations to which an Overseas Issuer is subject and those in Hong Kong, the number of waivers granted and their nature, and the form of securities listed (e.g. shares or HDRs).

unfamiliar overseas laws and regulations to which the issuer is subject).

**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.

**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.

### **Practical and Operational Matters**

289. The JPS contains guidance on practical and operational matters for Overseas Issuers on the following subjects:

- (a) compliance with Hong Kong's rules and regulations;
- (b) the eligibility of securities;
- (c) cross-border clearing and settlement;
- (d) HDRs;
- (e) taxation; and
- (f) stock codes and stock name markers<sup>166</sup>.

290. On 29 October 2019, the Exchange published guidance for Overseas Issuers seeking to list in Hong Kong on the following subjects:

- (a) alternative procedures for US "Domestic Issuers" (within the meaning of the US Securities Act) with an offering of a security subject to Regulation S, which is a regulation that provides an exclusion from the Section 5 registration requirements of the US Securities Act for offerings made outside the US by both US and foreign issuers;
- (b) a standardised template for first movers from jurisdictions new to listing in Hong Kong; and
- (c) simplified CCASS information materials<sup>167</sup>.

291. The guidance described in paragraphs 289 and 290 is published in separate places and there is overlap and duplication in certain topics covered. It provides general advice without specific requirements or else is particularly focused on a particular set of circumstances applicable only to issuers from certain jurisdictions. We therefore believe that this material is best preserved as guidance rather than codified in the Listing Rules.

292. We propose to amalgamate this guidance into a combined guidance letter for Overseas Issuers (see Schedule E). Subject to the responses to this

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<sup>166</sup> Section 4 of the JPS.

<sup>167</sup> HKEX news release dated 29 October 2019 ([link](#)).

consultation paper, we will amend and publish this guidance letter.

**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.

### **Country Guides**

293. The Exchange has published Country Guides that normally include guidance on the following subjects for Overseas Issuers incorporated in particular jurisdictions:
- (a) regulatory co-operation measures;
  - (b) JPS Key Shareholder Protection Standards;
  - (c) practical and operational matters;
  - (d) constitutional documents;
  - (e) accounting and auditing related requirements; and
  - (f) taxation<sup>168</sup>.
294. As we propose to repeal the Equivalence Requirement and concept of Acceptable Jurisdictions, no new Country Guides will be issued if our proposal is adopted. Existing Country Guides will be retained and guidance may be issued on a case-by-case basis if there are novel issues on companies incorporated in a jurisdiction new to listing in Hong Kong.

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<sup>168</sup> Country Guides published on “List of Acceptable Jurisdictions” page on HKEX website ([link](#)).

## DEFINITIONS

TERM	DEFINITION
<b>“Acceptable Jurisdiction”</b>	A jurisdiction (other than Hong Kong, the Cayman Islands, Bermuda and the PRC) that the Exchange has accepted as an issuer’s place of incorporation eligible for listing in Hong Kong
<b>“AIM”</b>	AIM operated by LSE
<b>“ASX”</b>	Australian Securities Exchange
<b>“Automatic Waiver”</b>	a waiver of general effect set out in the Appendix to the JPS that is granted by the Exchange pursuant to Listing Rule 2.04 with the prior consent of the SFC, or an exception set out in Listing Rule 19C.11 for issuers with, or seeking, a secondary listing on the Exchange, subject to certain criteria under the JPS or Chapter 19C of the Listing Rules, as the case may be
<b>“CASBE”</b>	China Accounting Standards for Business Enterprises
<b>“Catalist”</b>	Catalist operated by SGX
<b>“centre of gravity in Greater China”</b>	based on factors set out in both the JPS and Chapter 19C of the Listing Rules that the Exchange considers in determining whether an issuer has its centre of gravity in Greater China: (a) whether the issuer has a listing in Greater China; (b) where the issuer is incorporated; (c) the issuer’s history; (d) where the issuer is headquartered; (e) the issuer’s place of central management and control; (f) the location of the issuer’s main business operations and assets; (g) the location of the issuer’s corporate and tax registrations; and (h) the nationality or country of residence of the issuer’s management and controlling shareholder(s)
<b>“CCASS”</b>	the central clearing and settlement system established and operated by HKSCC
<b>“Chapter 19C route”</b>	the route to secondary listing on the Exchange in accordance with the requirements under Chapter 19C of the Listing Rules
<b>“Collective Investment Scheme”</b>	has the same meaning ascribed to it in Schedule 1 to the Securities and Futures Ordinance (Cap. 571)
<b>“Common Waiver”</b>	a waiver of general effect set out in the Appendix to the JPS that is granted by the Exchange pursuant to Listing Rule



TERM	DEFINITION
	2.04 with the prior consent of the SFC on a case by case basis, subject to prescribed conditions
“Company Information Sheet”	the information required under paragraph 68 of the JPS for issuers incorporated in Acceptable Jurisdictions, as prepared by the issuer and posted by the Exchange on a dedicated section of the HKEX website ( <a href="#">link</a> )
“CWUMPO”	the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)
“Core Standards”	the proposed set of shareholder protection standards that all issuers will be required to provide
“Country Guide”	guidance published on the Exchange’s website setting out, among other things, how issuers incorporated in an Acceptable Jurisdiction can meet the JPS Key Shareholder Protection Standards, as well as the Exchange’s expectations, practices, procedures and the criteria it considers when applying the Listing Rules to issuers incorporated in that jurisdiction
“Equivalence Requirement”	the Listing Rules requirement <sup>169</sup> that an Overseas Issuer must be incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong
“Exchange”	The Stock Exchange of Hong Kong Limited, a wholly owned subsidiary of HKEX
“EU”	European Union
“EU-IFRS	IFRS as adopted by the European Union
“FAQs”	“Frequently Asked Questions” publications of the Exchange
“Foreign Private Issuer”	<p>a term defined under Rule 405 of Regulation C of the US Securities Act, as amended from time to time, and Rule 3b-4 of the US Securities Exchange Act of 1934, as amended from time to time. The term refers to an issuer incorporated or organised under the laws of a foreign country, except an issuer meeting both of the following conditions:</p> <ul style="list-style-type: none"> <li>(a) more than 50% of the outstanding voting securities of the issuer are directly or indirectly held of record by residents of the US; and</li> <li>(b) any one of the following: (i) the majority of the executive officers or directors of the issuer are US citizens or residents; (ii) more than 50% of the assets of the issuer are located in the US; or (iii) the business of the issuer is administered principally in the US</li> </ul>

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<sup>169</sup> Listing Rule 19.05(1)(b) and note (for primary listings) and the note to Listing Rule 19.30(1)(b) (for secondary listings)

<b>TERM</b>	<b>DEFINITION</b>
<b>“FRC”</b>	the Financial Reporting Council established by section 6(1) of the FRCO
<b>“FRCO”</b>	the Financial Reporting Council Ordinance (Cap. 588)
<b>“GEM”</b>	GEM operated by the Exchange
<b>“GL94-18”</b>	Guidance Letter HKEX-GL94-18 (Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C of the Listing Rules)
<b>“Grandfathered Greater China Issuer”</b>	a Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017
<b>“Greater China Issuer”</b>	a Qualifying Issuer with its centre of gravity in Greater China
<b>“HDR”</b>	Hong Kong Depositary Receipt
<b>“HKCO”</b>	the Companies Ordinance (Cap. 622)
<b>“HKEX”</b>	Hong Kong Exchanges and Clearing Limited
<b>“HKFRS”</b>	Hong Kong Financial Reporting Standards issued by the HKICPA
<b>“HKICPA”</b>	Hong Kong Institute of Certified Public Accountants
<b>“HKSCC”</b>	Hong Kong Securities Clearing Company Limited
<b>“Hong Kong issuer”</b>	an issuer which is incorporated, or otherwise established, in Hong Kong
<b>“IAASB”</b>	International Auditing and Assurance Standards Board
<b>“IFRS”</b>	International Financial Reporting Standards
<b>“IOSCO”</b>	International Organization of Securities Commissions
<b>“IOSCO MMOU”</b>	IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ( <a href="#">link</a> )
<b>“Innovative Company”</b>	a company that the Exchange considers to have demonstrated the relevant characteristics set out in paragraphs 3.2 to 3.4 of GL94-18
<b>“IPO”</b>	Initial Public Offering
<b>“JPS”</b>	the “Joint policy statement regarding the listing of overseas companies” first published jointly by the Exchange and the SFC in 2007, updated on 27 September 2013, and last amended on 30 April 2018 ( <a href="#">link</a> )
<b>“JPS Key Shareholder Protection Standards”</b>	the shareholder protection standards set out in Section 1 of the JPS
<b>“JPS route”</b>	the route to secondary listing on the Exchange in accordance with the requirements set out in Section 5 of the JPS

TERM	DEFINITION
<b>“JPS Issuer”</b> <b>Secondary</b>	an issuer that is secondary listed, or is seeking a secondary listing, on the Main Board through the JPS route
<b>“LD43-3”</b>	Listing Decision HKEX-LD43-3 which sets out the Exchange’s approach in considering whether a new applicant which conducts its businesses using a VIE structure is suitable for listing
<b>“Listing Document”</b>	a Prospectus, a circular or any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing
<b>“Listing Rules”</b> <b>or</b> <b>“Rules”</b>	the Rules Governing the Listing of Securities on the Exchange (Main Board unless otherwise stated)
<b>“Listing Regime Reforms”</b>	the changes to the Main Board Listing Rules that were implemented in April 2018 following the Exchange’s publication of the conclusions on the “Concept Paper on New Board” and the “Consultation Paper on a Listing Regime for Companies From Emerging and Innovative Sectors”
<b>“LSE”</b>	The London Stock Exchange
<b>“Main Board”</b>	the main board of the Exchange
<b>“Main Market”</b>	The Main Market of the LSE
<b>“Mandatory Provisions”</b>	the Mandatory Provisions for Companies Listing Overseas set forth in Zheng Wei Fa (1994) No. 21 issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System
<b>“Non-compliant Structure”</b> <b>WVR</b>	a WVR structure that does not comply with the relevant requirements under Chapter 8A of the Listing Rules
<b>“Non-compliant Structure”</b> <b>VIE</b>	a VIE structure that does not comply with the relevant requirements under LD43-3
<b>“Non-Grandfathered Greater China Issuer”</b>	a Greater China Issuer that was primary listed on a Qualifying Exchange after 15 December 2017
<b>“Non-Greater China Issuer”</b>	a Qualifying Issuer that is not a Greater China Issuer
<b>“Non-WVR Issuer”</b>	an issuer without a WVR structure
<b>“Overseas Issuer”</b>	an issuer that is neither a Hong Kong issuer nor a PRC issuer <i>“Overseas Issuer” in this paper has the same meaning as “overseas company” in the JPS</i>
<b>“PAO”</b>	the Professional Accountants Ordinance (Cap. 50)

<b>TERM</b>	<b>DEFINITION</b>
<b>“Public Interest Entity” or “PIE”</b>	has the same meaning ascribed to it in section 3(1) of the FRCO, that is either a listed corporation whose equity securities are listed on a recognised stock market as defined in the FRCO, or a listed Collective Investment Scheme
<b>“PIE Auditor”</b>	has the same meaning ascribed to it in section 3A of the FRCO, that is: (a) a Registered PIE Auditor, that is a practice unit registered under Division 2 of Part 3 of the FRCO; or (b) a Recognized PIE Auditor, that is an overseas auditor recognised under Division 3 of Part 3 of the FRCO, including a Mainland auditor recognised under section 20ZT of the FRCO
<b>“PIE Engagement”</b>	has the same meaning as an engagement specified in Part 1 of Schedule 1A of the FRCO
<b>“place of central management and control”</b>	based on factors set out in the JPS and Chapter 19C of the Listing Rules that the Exchange considers in determining an issuer’s place of central management and control: (a) the location from where the issuer’s senior management directs, controls, and coordinates the company’s activities; (b) the location of the issuer’s principal books and records; and (c) the location of the issuer’s business operations or assets
<b>“PRC” or “Mainland”</b>	the People’s Republic of China
<b>“PRC issuer”</b>	an issuer which is duly incorporated in the PRC as a joint stock limited company (股份有限公司)
<b>“PRC Company Law”</b>	the Company Law (公司法) of the PRC adopted at the Fifth Session of the Standing Committee of the Eighth National People’s Congress on 29 December 1993 and effective from 1 July 1994, as amended, supplemented or otherwise modified from time to time
<b>“Prospectus”</b>	a prospectus as defined in Part 1, Division 2 of the CWUMPO
<b>“Qualifying Exchange”</b>	The New York Stock Exchange LLC, NASDAQ Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment)
<b>“Qualifying Issuer”</b>	an issuer primary listed on a Qualifying Exchange

<b>TERM</b>	<b>DEFINITION</b>
<b>“Regulatory operation Requirement”</b>	<b>Co-</b> the arrangements that the statutory securities regulator of an Overseas Issuer’s jurisdiction of incorporation and place of central management and control (if different) must have in place as set out in paragraph 47 under Section 2 of the JPS
<b>“Recognised Jurisdictions”</b>	Bermuda, the Cayman Islands and the PRC. For the purpose of this paper, Hong Kong is excluded from this definition
<b>“Recognised Stock Exchange”</b>	<b>Stock</b> the main market of a stock exchange the Exchange has recognised as being one where the shareholder protection standards are at least equivalent to those provided in Hong Kong as set out in paragraph 96 under Section 5 of the JPS. The Qualifying Exchanges are also Recognised Stock Exchanges
<b>“SFC”</b>	Securities and Futures Commission
<b>“SFO”</b>	Securities and Futures Ordinance (Cap. 571)
<b>“SGX”</b>	Singapore Exchange Limited
<b>“SGX Main Board”</b>	The Main Board of SGX
<b>“Statement of No Objection” or “SNO”</b>	a statement of no objection provided by the Exchange to an issuer appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO
<b>“Trading Migration Requirement”</b>	the requirement under Listing Rule 19C.13 that if the majority of trading in a Greater China Issuer’s listed shares migrates to the Exchange’s markets on a permanent basis, the Exchange will regard the issuer as having a dual primary listing and consequently the Automatic Waivers will no longer apply to such issuer
<b>“UK”</b>	the United Kingdom
<b>“US”</b>	the United States of America
<b>“US GAAP”</b>	the Generally Accepted Accounting Principles in the US
<b>“US Securities Act”</b>	the US Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder
<b>“VIE structure”</b>	a structure that allows a person or entity to control and receive the economic benefits of a variable interest entity despite not having a majority of, or any, voting rights or legal ownership
<b>“weighted voting right” or “WVR”</b>	the voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share, or other governance right or arrangement

TERM	DEFINITION
	disproportionate to the beneficiary's economic interest in the equity securities of the issuer
<b>“WVR structure”</b>	a structure of an issuer that results in any shareholder having WVR

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## **Schedule A    PRIVACY POLICY STATEMENT**

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### **Privacy Policy Statement**

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### **Purpose**

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures

Ordinance (Cap. 571)) ("Regulatory Functions");

3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

### **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

### **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

### **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

### **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;



2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

### **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

### **Compliance with laws and regulations**

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

### **Corporate reorganisation**

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link

<https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

## **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
8/F., Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

By Email:  
[DataPrivacy@HKEX.COM.HK](mailto:DataPrivacy@HKEX.COM.HK)

## SCHEDULE B JURISDICTIONAL COMPARISON

TABLE 1: OVERVIEW<sup>1</sup>

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
<b>Designation</b>	Either “Primary” or “Secondary” listed	Either “Standard” or “Premium” listed <sup>3</sup>	“Foreign Private Issuers”	“Foreign Exempt Listing”	Either “Primary” or “Secondary” listed <sup>4</sup>
<b>Overseas issuer test applied?</b>	<p>YES</p> <p>An “overseas issuer” means any issuer incorporated outside of Hong Kong.</p> <p>Secondary listed issuers must have a “centre of gravity” outside Greater China. This is except for Greater China companies that listed on a Qualifying Exchange<sup>5</sup> on or before 15 December 2017 that apply</p>	<p>NO</p> <p>A choice of either the “Standard” or “Premium” regime is equally available to overseas and domestic issuers<sup>6</sup>.</p>	<p>YES</p> <p>A “Foreign Private Issuer” means any issuer incorporated outside U.S, unless:</p> <p>(1) &gt;50% or of its shares are owned by U.S residents; <b>and</b></p> <p>(2) any of the following applies:</p> <p>(a) the majority of its</p>	<p>YES</p> <p>Must be a “foreign entity” incorporated or otherwise established outside Australia.</p> <p>Must maintain a listing on an exchange that is acceptable to ASX<sup>8</sup>. ASX would generally accept issuers with a primary listing on the main boards of the principal exchanges in</p>	<p>YES</p> <p>Must be a “foreign issuer” i.e. incorporated or otherwise established outside Singapore.</p> <p>“Secondary” listed issuers must maintain a primary listing on a foreign exchange and must be subject to its rules<sup>11</sup>.</p>

<sup>1</sup> The table provides a comparison of regulations of overseas issuers between the Main Board of HKEX and its comparable markets (i.e. LSE’s Main Market for the UK, SGX Main Board for Singapore, NYSE and NASDAQ Global Select for the US, and ASX for Australia). In respect of junior markets for the UK and Singapore (i.e. AIM and Catalist respectively), it is noted that the relevant rules generally do not distinguish between domestic issuers and overseas issuers. In respect of junior markets for the US (i.e. NYSE American, NASDAQ Global Market/ Capital Markets), the requirements for ‘Foreign Private Issuers’ are same as those applicable to ‘Foreign Private Issuers’ on NYSE and NASDAQ. Similar to GEM, SGX Catalist only accepts primary listing applications but not secondary listing application.

<sup>2</sup> Based on the requirement currently in force as at the date of this paper.

<sup>3</sup> LSE’s Main Market also operates High Growth Segment but only issuers incorporated in UK or European Economic Area may apply for admission.

<sup>4</sup> SGX Listing Rule 215

<sup>5</sup> NYSE, NASDAQ or the Main Market of the LSE (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment)

<sup>6</sup> LSE Listing Rules 1.5

<sup>8</sup> ASX Listing Rule 1.11 condition 1

<sup>11</sup> SGX Listing Rule 217

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
	for listing in Hong Kong under Chapter 19C.		<p>executive officers/ directors are US citizens or residents;</p> <p>(b) &gt;50% of its assets are located in the US</p> <p>(c) its business is principally administered in US<sup>7</sup>.</p>	developed markets <sup>9</sup> . It must be subject to, and ASX must be satisfied that it complies with, the rules of that exchange <sup>10</sup> .	
<b>Requirement for overseas issuers to be subject to shareholder protection standards equivalent to domestic companies?</b>	YES	If the law of their country of incorporation does not confer on shareholders at least equivalent pre-emption rights to the Listing Rules requirements, issuers applying from a “premium” listing must ensure such rights are provided for in their constitutional documents and that this is not inconsistent with the law of their jurisdiction of incorporation <sup>12</sup> .	NO	NO	NO

<sup>7</sup> Rule 405 of Regulation C under the Securities Act, Rule 3b-4 under the Exchange Act

<sup>9</sup> ASX Listing Rules Guidance Note 4, para 2.1

<sup>10</sup> ASX Listing Rule 1.11 condition 4

<sup>12</sup> LSE Listing Rules 6.9.2 and 9.3.11

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
<b>Financial Eligibility for Listing Requirements</b>	<p>Same as domestic issuers except overseas issuers seeking a secondary listing must meet higher market capitalisation thresholds at listing of at least:</p> <p>(a) under the JPS – US\$400m (HK\$3.1bn) with a five year track record<sup>13</sup> on a recognised stock exchange<sup>14</sup></p> <p>(b) under Chapter 19C:</p> <p>(i) non-Greater China issuers without WVR - HK\$10bn;</p> <p>(ii) other issuers:</p> <p>(1) HK\$40bn; or</p> <p>(2) HK\$10bn with revenue of at least HK\$1bn.</p> <p>with two full financial years of good regulatory compliance</p>	<p>Issuers applying from a “premium” listing must have:</p> <p>(a) a three year revenue earning record,</p> <p>(b) control of an independent business as its main activity;</p> <p>(c) unqualified working capital statement; and</p> <p>(d) a sponsor for the listing<sup>15</sup></p> <p>“Standard” listed issuers are exempted from these requirements<sup>16</sup>.</p>	<p><b>NYSE:</b></p> <p>Higher listing requirements (see Table 2) for issuers that already have a broad, liquid market in their securities worldwide (i.e. through a listing in their home jurisdiction).</p> <p>However, foreign private issuers can choose to meet US domestic eligibility for listing requirements if they can meet the share distribution requirements within North America requirement that apply to US domestic issuers (see Table 2).</p> <p><b>NASDAQ:</b></p> <p>Same financial eligibility listing requirements apply to US domestic and foreign private issuers (see Table 2).</p>	<p>Higher listing requirements (see Table 3).</p>	<p>Same as for domestic issuers except:</p> <p>(a) at least two independent directors, resident in Singapore<sup>17</sup></p> <p>(b) no need to comply with moratorium on promoters' shareholdings (secondary listings only)<sup>18</sup>.</p>

<sup>13</sup> These eligibility requirements only apply if a JPS Secondary Issuer wishes to be granted Automatic Waivers.

<sup>14</sup> A list of the largest international markets set out in paragraph 91 of the JPS.

<sup>15</sup> LSE Listing Rules 6 and 8

<sup>16</sup> LSE Listing Rules 6.15.1 and 14.2

<sup>17</sup> SGX Listing Rule 221

<sup>18</sup> SGX Listing Rule 217

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
	track record on a Qualifying Exchange.				
<b>Listing Document</b>	Same content requirements as for domestic issuers. For secondary listing, the listing document need not be accompanied by a Chinese translation, unless this is required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance <sup>19</sup> .	Same requirements for both “Standard” and “Premium” listed issuers.	Required to complete: (a) Form F-1 (Securities Act form for first time foreign private issuers); and (b) Form 20-F (Exchange Act form for securities of foreign private issuers to be listed).	Same prospectus requirements as domestic issuers except the relief from prospectus requirement for <sup>20</sup> : (a) rights issues where the securities are in the same class as those already held by Australian investors; (b) foreign scrip bids and schemes of arrangement; and (c) offers made to 20 or fewer retail investors in any 12-month period.	Same prospectus requirements as domestic issuers.
<b>Continuing Obligations</b>	Waivers of general effect granted that are either: (a) “automatic waivers” (where no waiver application required) for secondary listings that meet JPS eligibility criteria; or (b) “common waivers”	Lighter continuing obligations for “Standard” listing: No requirement for: pre-emption rights (only the company law of the relevant jurisdiction of incorporation applies), significant transactions, related party	Several exemptions available: (a) no quarterly reporting requirement <sup>22</sup> ; (b) confidential submission of first time registration	Most ASX Listing Rules requirements are not applicable except: (a) issuers must immediately provide to ASX all information it provides to its home exchange that is or is to be made	An issuer with a secondary listing needs not comply with SGX Listing Rules if it undertakes to: (a) release all information and documents in English to SGX at the same

<sup>19</sup> Main Board Listing Rules 11.14 and 19.36(5)

<sup>20</sup> ASIC Regulatory Guide 72: <https://download.asic.gov.au/media/3339809/rq72-published-2-september-2015.pdf>

<sup>22</sup> <https://www.sec.gov/divisions/corpfin/international/foreign-private-issuers-overview.shtml#/>

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
	<p>(waiver application required and considered based on its individual merits based on all facts and circumstances including compliance with the prescribed conditions).</p> <p>Public float requirement under Rules 8.08 and 13.35.</p> <p>Requirements on preemptive rights under Rule 13.36 for secondary listing.</p>	<p>transactions, share repurchase, UK CG Code and Model Code<sup>21</sup>.</p>	<p>statements<sup>23</sup>;</p> <p>(c) choice of local GAAP<sup>24</sup>;</p> <p>(d) exemption from proxy rules<sup>25</sup>;</p> <p>(e) exemption from regulation FD (i.e. requirement to publicly disclose material non-public information given to market professionals (e.g. analysts))<sup>26</sup>;</p> <p>(f) exemption from beneficial ownership reporting and short swing profit recapture rules for insiders<sup>27</sup>;</p> <p>(g) exemption from accelerated filing</p>	<p>public<sup>34</sup>;</p> <p>(b) certain ASX Listing Rules on transfer and register of securities<sup>35</sup>;</p> <p>(c) simultaneous trading halt and suspension on home exchange and ASX<sup>36</sup>;</p> <p>(d) certain administrative and procedural requirements in:</p> <ul style="list-style-type: none"> <li>- appointing a person responsible for communicating with ASX<sup>37</sup>;</li> <li>- remain registered as a foreign company carrying on business in</li> </ul>	<p>time as they are released to the home exchange;</p> <p>(b) inform SGX of any issue of additional securities in a class already listed on SGX and the decision of the home exchange; and</p> <p>(c) comply with such other listing rules as may be applied by SGX from time to time (whether before or after listing).</p>

<sup>21</sup> LSE Listing Rules 9, 10, 11, 12 and 13

<sup>23</sup> <https://www.sec.gov/divisions/corpfin/internatl/nonpublicsubmissions.htm>

<sup>24</sup> SEC 17 CFR Parts 210, 230, 239 and 249

<sup>25</sup> Rule 3a12-3(b) of the Exchange Act

<sup>26</sup> <https://www.sec.gov/divisions/corpfin/internatl/foreign-private-issuers-overview.shtml#>

<sup>27</sup> Rule 3a12-3 of the Exchange Act

<sup>34</sup> ASX Listing Rule 15.2A

<sup>35</sup> Including ASX Listing Rules 2.2, 2.7, 8.2, 8.10, 8.15 and 8.21; Appendices 3B and 8A

<sup>36</sup> ASX Listing Rules 1.15.5, 1.15.6, 17.1 and 17.2

<sup>37</sup> ASX Listing Rules 1.151 and 12.6

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
			<p>requirements<sup>28</sup>; and (h) more limited executive compensation disclosure<sup>29</sup>.</p> <p>Issuers can also follow home country practices instead of certain corporate governance requirements under NYSE Rules or NASDAQ Rules but must disclose the significant differences or describe home country practices in Form 20-F<sup>30</sup>. A NASDAQ issuer is further required to submit to NASDAQ a written statement from an independent counsel in its home country certifying that the issuer's practices are not</p>	<p>Australia<sup>38</sup>;</p> <ul style="list-style-type: none"> <li>- the way of lodging announcements, e.g. using the ASX online form<sup>39</sup>;</li> <li>- trading halts, suspension and removal<sup>40</sup>;</li> <li>- application of the listing rules (e.g. requirement to comply with rules, waiver and appeals process etc.), interpretation and definitions<sup>41</sup></li> </ul>	

<sup>28</sup> Form 20-F, General Instruction A(b)(2)

<sup>29</sup> <https://www.sec.gov/about/forms/form20-f.pdf>; <https://www.sec.gov/divisions/corpfin/international/foreign-private-issuers-overview.shtml#IIIC>

<sup>30</sup> NYSE requires foreign private issuers to describe significant differences in their home country practices compared with those required for domestic issuers in US. (NYSE Rules 303A.00 and 303A.11) while NASDAQ Rules do not expressly require disclosing the significant differences but require a description of their home country practices instead (NASDAQ Rule 5615(a)(3)).

<sup>38</sup> ASX Listing Rules 1.151B and 12.6A

<sup>39</sup> ASX Listing Rules 1.15.1, 15.2 to 15.6, 15.8 and 15.9

<sup>40</sup> ASX Listing Rules 1.15.1 and Chapter 17

<sup>41</sup> ASX Listing Rules 1.15.1, Chapters 18 and 19



REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
			<p>prohibited by such country's laws<sup>31</sup>, Exempted corporate governance requirements include:</p> <ul style="list-style-type: none"> <li>- Composition of the board and independence of directors;</li> <li>- Nomination, remuneration and corporate governance committees;</li> <li>- The requirement to hold general meetings held every year;</li> <li>- Shareholder approval of certain issuance of securities and equity compensation arrangements<sup>32</sup>;</li> <li>- Review of related party transactions<sup>33</sup></li> <li>- Adoption of Corporate Governance Guidelines (equivalent to our Corporate Governance Code) for NYSE issuers; and</li> <li>- Adoption of Code of</li> </ul>		

<sup>31</sup> NASDAQ Rule IM-5615-3

<sup>32</sup> In common with US domestic issuers, 'Foreign Private Issuers' are not subject to any requirement to obtain shareholder approval for other transactions.

<sup>33</sup> The term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F.

REQUIREMENT	HK <sup>2</sup> (HKEX)	UK (LSE)	US (NYSE & NASDAQ)	AUSTRALIA (ASX)	SINGAPORE (SGX)
			Business Conduct and Ethics and Code of Conduct for NYSE issuers and NASDAQ issuers, respectively.		
<b>Investor Awareness Requirements</b>	The stock name of overseas issuers with secondary listings must be labelled with an "S".	"Standard" and "Premium" listed issuers labeled for transparency purposes on FSA website.	None	None	None

**TABLE 2: COMPARISON OF NYSE AND NASDAQ FINANCIAL ELIGIBILITY REQUIREMENTS FOR US AND NON-US ISSUERS**

	US ISSUERS		NON-US ISSUERS	
	NYSE	NASDAQ (Global Select Market) <sup>42</sup>	NYSE	NASDAQ (Global Select Market)
<b>Quantitative Listing Requirements</b> (one of these tests/standards must be met)	<u><b>Earnings Test</b></u>	<u><b>Income Standard</b></u>	<u><b>Earnings Test</b></u>	<u><b>Income Standard</b></u>
	>= US\$10 million aggregate pre-tax earnings for last 3 years <b>AND</b> >= US\$2 million pre-tax earnings in each of 2 most recent years (pre-tax earnings for all 3 years must be positive) <sup>43</sup>	>= US \$11 million pre-tax earnings aggregate for last 3 years <b>AND</b> >=US \$2.2 million pre-tax earnings in each of 2 most recent years (pre-tax earnings for all 3 years must be positive) <sup>44</sup>	>= US\$100 million aggregate pre-tax earnings for last 3 years <b>AND</b> >= US\$25 million pre-tax earnings in each of 2 most recent years <sup>45</sup>	Same requirements as US Issuers
	<b>OR</b>			
>= US\$12 million aggregate pre-tax earnings for last 3 years <b>AND</b> >= US\$5 million pre-tax earnings in the most recent year and US\$2 million in the next most recent year <sup>46</sup>				

<sup>42</sup> The NASDAQ has three market tiers – the Global Select Market (for the largest issuers), the Global Market (for mid-sized issuers) and the Capital Market (for smaller issuers). The financial eligibility requirements are the same for US and non-US issuers in these markets. To aid comparison with NYSE, listing requirements of NASDAQ Global Select Market are set out above.

<sup>43</sup> NYSE Manual § 102.01C(I)

<sup>44</sup> NASDAQ Rule 5315(f)(3)(A)

<sup>45</sup> NYSE Manual § 103.01B(I)

<sup>46</sup> NYSE Manual § 102.01C(I)

	US ISSUERS		NON-US ISSUERS	
	NYSE	NASDAQ (Global Select Market) <sup>42</sup>	NYSE	NASDAQ (Global Select Market)
	<u>Valuation Test</u>	<u>Market Value or Total Assets / Revenue Standard</u>	<u>Valuation Test</u>	<u>Market Value or Total Assets / Revenue Standard</u>
	>= US\$200 million global market capitalisation	>= US\$850 million average market capitalisation over last 12 months <b>AND</b> >= \$90 million revenues in previous year <sup>47</sup>	>= US\$750 million global market capitalisation <b>AND</b> >= US\$75 million revenues in the most recent 12-month period <sup>48</sup>	Same requirements as US Issuers
		<b>OR</b>		
		>= US\$550 million average market capitalisation over last 12 months <b>AND</b> >= US\$110 million revenues in previous year <b>AND</b> >= US\$27.5 million aggregate cash flows for last 3 years (cash flows for last 3 years must be positive) <sup>49</sup>	>= US\$500 million global market capitalisation <b>AND</b> >= US\$100 million revenues in the most recent 12-month period <b>AND</b> >= US\$100 million aggregate cash flows for last 3 years and >= 25 million cash flow in each of the last 2 years <sup>50</sup>	
		<b>OR</b>		

<sup>47</sup> NASDAQ Rule 5315(f)(3)(C)

<sup>48</sup> NYSE Manual § 103.01B(II)(b)

<sup>49</sup> NASDAQ Rule 5315(f)(3)(B)

<sup>50</sup> NYSE Manual § 103.01B(II)(a)

	US ISSUERS		NON-US ISSUERS	
	NYSE	NASDAQ (Global Select Market) <sup>42</sup>	NYSE	NASDAQ (Global Select Market)
	--	<u>Equity Standard</u>	--	<u>Equity Standard</u>
	--	>= US\$160 million market capitalisation <b>AND</b> >= US\$80 million total assets <b>AND</b> >= \$55 million stockholders' equity <sup>51</sup>	--	Same requirement as US issuers
<b>Share distribution requirements</b>	400 round lot shareholders within North America, 1.1 million publicly held shares with a total market value of US\$40 million and a minimum share price of US\$4 <sup>52</sup>	450 round lot shareholders or 2,200 shareholders, 1.25 million publicly held shares with a total market value of US\$45 million and a minimum share price of US\$4 <sup>53</sup>	5,000 round lot shareholders worldwide, 2.5 million publicly held shares with a total market value of US\$100 million and a minimum share price of US\$4 <sup>54</sup>	Same requirement as US issuers

<sup>51</sup> NASDAQ Rule 5315(f)(3)(D)

<sup>52</sup> NYSE Manual §102.01A-B

<sup>53</sup> NASDAQ Rules 5315(e)(1), 5315(e)(2), 5315(f)(1) and 5315(f)(2)

<sup>54</sup> NYSE Manual §103.01

**TABLE 3: COMPARISON OF ASX FINANCIAL ELIGIBILITY REQUIREMENTS FOR DOMESTIC AND FOREIGN ISSUERS**

CRITERIA	DOMESTIC	FOREIGN
	<b><i>Profit Test</i></b>	
<b>Financial Eligibility for Listing Requirements</b> (one of these tests must be met)	>= A\$1 million aggregate profit (before tax) from continuing operations for the past 3 full financial years <sup>55</sup> <b>AND</b> >= A\$500,000 consolidated profit (before tax) from continuing operations for the 12 months to a date no more than 2 months before the listing application date <sup>56</sup>	>= A\$200 million operating profit before tax for each of the last 3 full financial years <sup>57</sup>
	<b><i>Assets Test</i></b>	
	>= A\$4 million net tangible assets after deducting listing costs <sup>58</sup>	>= A\$2 billion net tangible assets <sup>59</sup>
	<b><i>Valuation Test</i></b>	
	>=A\$15 million market capitalisation	>= A\$2 billion market capitalisation

<sup>55</sup> ASX Listing Rule 1.2

<sup>56</sup> ASX Listing Rule 1.2.5

<sup>57</sup> ASX Listing Rule 1.12

<sup>58</sup> ASX Listing Rule 1.3

<sup>59</sup> ASX Listing Rule 1.13

## SCHEDULE C    CURRENT    SHAREHOLDER    PROTECTION    STANDARDS PROPOSED TO BE REPEALED

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
	<b>Transfer and Registration</b>			
1.	Transfers and other documents of title shall be registered and fees shall not exceed the maximum prescribed by the Rules.	Appendix 3, paragraph 1(1)	Rules 13.58 to 13.60	Rule 13.58 requires an issuer to certify transfers against certificates or temporary documents. We propose to rely upon this Rule and repeal this requirement.  Also, we do not believe that placing a limitation on the fees charged for registration services is sufficiently fundamental to shareholder protection that it needs to be a Core Standard. We propose instead to rely upon Rules 13.59 and 13.60 which prescribe the monetary caps on the fees that can be charged for registration services.
2.	Fully-paid shares shall be free from transfer restriction and free from all lien.	Appendix 3, paragraph 1(2)	Rule 8.13	The provision is already required by Rule 8.13, which requires securities for which listing is sought to be freely transferable. We propose to rely upon the Rule and repeal this requirement.
3.	Where power is taken to limit number of shareholders in a joint account, limit shall not prevent registration of four persons.	Appendix 3, paragraph 1(3)	N/A	This requirement is not fundamental to shareholder protection and therefore we propose it should not be a Core Standard. Instead we propose it should be a matter determined by the company law to which the issuer is subject.
	<b>Definitive Certificates</b>			
4.	Certificates for capital must be under seal and affixed with the authority of the directors, or be executed under signature of appropriate officials with statutory authority	Appendix 3 paragraph 2(1)	Appendix 2B, paragraphs 4, 11, 28	The HKCO (section 126) states that a company may have an official seal for sealing documents creating or evidencing securities issued by a company. The company law of Bermuda and the Cayman Islands have similar provisions.  Appendix 2B, paragraphs 4, 11, 28 require documents of title for registered equity securities to be issued under seal, in the absence of statutory authority, for issues

<sup>1</sup> Overseas Issuers will be required to notify the Exchange of any provision in their constitutional documents that may be detrimental to the interests of shareholders as a whole. The Exchange reserves the right to consider an issuer unsuitable for listing in such cases.

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
				under the signature of appropriate officials. As the method of authenticating certificates is a mechanism well provided for in company law and the Rules, we believe that there is no need for the Listing Rules to require issuers to provide for it in their constitutional documents.
5.	Where power is taken to issue share warrants to bearer, no new share warrant shall be issued to replace one that has been lost, unless the issuer is satisfied beyond reasonable doubt that the original has been destroyed.	Appendix 3 paragraph 2(2)	N/A	<p>Since March 2014, under section 139 of the HKCO, companies no longer have power to issue a share warrant. We propose to repeal the requirement to be consistent with the change in the HKCO.</p> <p>The issuance of share warrants has also been abolished in an increasing number of other jurisdictions including UK, Singapore, Cayman Islands, Bermuda and BVI. As we can reasonably expect future issues of share warrant to be very rare, we do not believe that a fundamental shareholder protection standard is needed on this matter as a Core Standard in the Rules.</p>
<b>Dividends</b>				
6.	Any amounts paid up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof in a dividend subsequently declared.	Appendix 3 paragraph 3(1)	N/A	The provision is relevant to partly paid securities which have fallen out of use. Also, this provision restricts the rights of shareholders, including minority shareholders (to receive dividends) rather than providing a protection. On this basis we propose to repeal the requirement.
7.	Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of dividend.	Appendix 3 paragraph 3(2)	N/A	<p>The length of period within which unclaimed dividends can be forfeited is not a fundamental shareholder protection. The HKCO, based on which the Core Standards are formulated, also does not prescribe how unclaimed dividends are to be dealt with. We therefore propose it should not be a Core Standard. Instead we propose that it should be a matter determined by the company law to which the issuer is subject. Regarding claims made in Hong Kong courts, reliance will be placed on the Limitation Ordinance (Cap 347).</p> <p>An overseas issuer should notify the Exchange of any provisions in its constitutional documents that may be detrimental to the interests of shareholders as a whole. The Exchange reserves the right to consider an issuer unsuitable for listing in such cases.</p>
<b>Directors</b>				



	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
8.	<p>Subject to such exceptions* specified in the articles of association as the Exchange may approve, a director shall not vote on any board resolutions approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest nor shall he be counted in the quorum present at the meeting.</p> <p>*The exceptions are set out in Note 1 paragraphs (1)-(5) to Appendix 3.</p> <p>Paragraph (3) of Note 1 states that an exception can be provided from the above requirement in respect of any proposal concerning a company in which the director or his close associate(s) are interested if they are interested, in aggregate, in less than 5% of the issued shares of any class of that company.</p>	Appendix 3 paragraph 4(1)	Rule 13.44	<p>Rule 13.44<sup>2</sup> contains the same requirement and exceptions other than the percentage-based exception set out in paragraph (3) of Note 1 to Appendix 3. This difference was the result of a review conducted in 2012, which determined that the 5% test in paragraph (3) was not appropriate because a director of an issuer may still have a material interest in a transaction between the issuer and a counter-party even if he is interested in less than 5% of the counter-party's issued shares or voting rights. We believe Rule 13.44 is the optimal approach and propose repealing Appendix 3 paragraph 4(1) to rely on Rule 13.44 only and remove the current inconsistency. Although secondary listed issuers are exempted from compliance with Rule 13.44, they are also exempted from compliance with this provision of Appendix 3 paragraph 4(1). Consequently, the proposed repeal of this provision will not change the current position with regards to secondary listed issuers.</p>
9.	<p>The minimum length of the period, during which notice to the issuer of the intention to propose for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least 7 days.</p>	Appendix 3 paragraph 4(4)	N/A	<p>The length of period referred to in paragraph 4(4) is not a fundamental shareholder protection and therefore we propose that it should not be a Core Standard. Also, the requirement places a restriction on shareholders (rather than protecting them) by imposing a minimum notice period for shareholders' notification.</p> <p>We propose that this notice period should instead be a matter determined by the company law to which the issuer is subject rather than the Listing Rules.</p>
10.	<p>The period for lodgment of the notices referred to in Appendix 3 paragraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election and end no later than 7 days prior to the date of such meeting.</p>	Appendix 3 paragraph 4(5)	Note to Rule 13.70	<p>The note to Rule 13.70 states that issuers should consider whether it is appropriate to give shareholders at least <u>10 business days</u> to consider any shareholders' nomination of a director, if notice of the nomination is received after the notice of annual general meeting. Appendix 3, paragraph 4(5) states that the period within which shareholders can lodge a nomination notice can be up to <u>7 calendar days</u> prior to the annual general meeting. This would not give</p>

<sup>2</sup> The exception in paragraph 3 to Appendix 3 was excluded from Rule 13.44 in the updates in 2012. This was because the Exchange considered that a director might have a material interest in a transaction with a company even if he was interested in less than 5% of that company's issued shares or voting rights. Given that any change to Appendix 3 might require an issuer to revise its memoranda and articles of association which was subject to shareholders' approval, the Exchange considered at that time that it would be more appropriate to revise Rule 13.44 to exclude this particular exception instead of amending Appendix 3.

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
				<p>shareholders at least 10 business days to consider the nomination.</p> <p>Both requirements are in relation to shareholders' nomination of a director. We have amended Rule 13.70 to convey the requirements more clearly.</p>
11.	The bye-laws/articles of association shall stipulate that the issuer in general meeting must approve the payment to any director or past director of any sum by way of compensation for loss of office or as consideration for or in connection with his retirement from office (not being a payment to which the director is contractually entitled). <sup>#</sup>	Appendix 13 Part A, Section 1, paragraph 5/ Appendix 13, Part B Section 1, paragraph 5(4)	Chapter 14A	<p>The connected transaction rules under Chapter 14A of the Listing Rules apply to transactions with the issuer's directors and past directors. Connected transactions, unless exempted, are subject to independent shareholders' approval. We therefore propose to repeal the requirement and rely upon Chapter 14A of the Rules to regulate primary listed issuers.</p> <p>Secondary listed issuers are exempt from compliance with Chapter 14A and reliance is placed on the laws and regulations applicable to the issuer in its jurisdiction of primary listing to regulate connected transactions. We believe that reliance on overseas regulation of the payments referenced by the Listing Rule is sufficient and we propose that it should not be a Core Standard.</p>
12.	The articles of association shall restrict the making of loans to directors and their close associates and shall import provisions at least equivalent to the provisions of Hong Kong law prevailing at the time of the adoption of the articles of association. <sup>##</sup>	Appendix 13, Part B Section 1, paragraph 5(2)	Chapter 14A	<p>The connected transaction rules under Chapter 14A of the Listing Rules apply to transactions with the issuer's directors and past directors. Connected transactions, unless exempted, are subject to independent shareholders' approval. We therefore propose to repeal the requirement and rely upon Chapter 14A of the Rules to regulate primary listed issuers.</p> <p>Secondary listed issuers are exempt from compliance with Chapter 14A and reliance is placed on the laws and regulations applicable to the issuer in its jurisdiction of primary listing to regulate connected transactions. We believe that reliance on overseas regulation of the loans referenced by the Listing Rule is sufficient and we propose that it should not be a Core Standard.</p>
13.	The articles of association shall contain provisions requiring the directors to declare their material interests in any contracts with the issuer at the earliest meeting of the board of directors of the issuer at which it is practicable for them to do so either specifically or by way of a general notice stating that, by reason of facts specified in the notice, they are to be regarded as interested in any contracts of a specified description which may subsequently be made	Appendix 13, Part B Section 1, paragraph 5(3)	Rule 13.44	<p>Rule 13.44 requires a director not to vote or be counted in the quorum on a matter considered at a board meeting if he or his close associate has a material interest in a board resolution approving any contract or arrangement or any other proposal.</p> <p>We propose to repeal the requirement and rely upon Rule 13.44.</p> <p>Secondary listed issuers are exempt from compliance with Rule 13.44. They are also exempt from compliance with a similar provision in Appendix 3 paragraph 4(1) regarding directors' votes on contracts in which they have a material interest. The repeal of this provision in Appendix 13 would be consistent with our approach on these matters with regards to secondary listed issuers.</p>

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
	by the issuer. ##			
	<b>Shareholders and proceedings at general meetings</b>			
14.	The articles of association shall require an annual general meeting to be held in each year and shall provide that the audited accounts shall be sent to members at the same time as the notice of annual general meeting. ##	Appendix 13 Part B, Section 1, paragraph 3(3)	Rule 13.46(1)(a) and (2)(a), Appendix 13 Part B, paragraph 3(1)	<p>We propose the requirements that (a) a general meeting be held each year; and (b) a notice of an annual general meeting be sent at least 21 days prior to that meeting are both Core Standards.</p> <p>Also, Rules 13.46(1)(a) and (2)(a) requires the distribution of annual accounts 21 days before an annual general meeting. Sections 405 and 430 of the HKCO similarly require the distribution of reporting documents including auditor's report at least 21 days before an annual general meeting.</p> <p>We propose to repeal the requirement to distribute the annual accounts with the notice of annual general meeting as it is unnecessary given the abovementioned requirements.</p>
	<b>Accounts</b>			
15.	A copy of either (i) the directors' report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account, or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.	Appendix 3 paragraph 5	Rule 13.46(1), (2)	<p>In 1986, when the provision was first introduced, the Companies Ordinance at that time did not stipulate that these documents must be dispatched 21 days prior to a general meeting. Section 430(1) of the HKCO now stipulates this as does Rule 13.46(1) and (2).</p> <p>We propose to repeal the requirement given the abovementioned requirements.</p>
16.	The bye-laws/ articles of association shall require the issuer to keep proper books of account necessary to give a true and fair view of the issuer's affairs. #	Appendix 13 Part A, Section 1, paragraph 4(1)/ Appendix 13, Part B, Section 1, paragraph 4(1)	Appendix 16(2), Rules 19.22, 19.24, 19.49 and 19.51	The provision is required by Appendix 16 paragraph 2 and Rules 19.22, 19.24, 19.49 and 19.51. We therefore propose to repeal this requirement and rely upon these Rules.
17.	The bye-laws/ articles of association shall provide that accounts shall be laid before	Appendix 13 Part A, Section	Rule 13.46(1)(b)	The provision is required by the HKCO (sections 429 and 431) and by Rules 13.46(1)(b) Note 2 and (2)(b). We therefore propose to repeal this requirement

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
	members at the annual general meeting which must be held in each year. #	1, paragraph 4(2)/ Appendix 13, Part B Section 1, paragraph 4(2)	Note 2 and (2)(b)	given the abovementioned requirements.
<b>Rights</b>				
18.	Adequate voting rights will, in appropriate circumstances, be secured to preference shareholders.	Appendix 3 paragraph 6(1)	N/A	This requirement was introduced in 1986. Today, the market practice is that preference shares usually do not carry voting rights and we are not aware of a concern in this regard. The requirement in this paragraph therefore does not appear to reflect the market norm.  We therefore propose to repeal the requirement.
<b>Notices</b>				
19.	Where power is taken to give notice by advertisement such advertisement may be published in the newspapers.	Appendix 3 paragraph 7(1)	N/A	The Exchange no longer requires the use of newspapers for making announcements or providing notices. Also, this provision allows newspapers to be used on a voluntary basis and so an issuer would continue to be able to do so even if the provision was absent. We therefore propose to repeal the requirement.
20.	An overseas issuer whose primary listing is or is to be on the Exchange shall give notice sufficient to enable members, whose registered addresses are in Hong Kong, to exercise their rights or comply with the terms of the notice. If the overseas issuer's primary listing is on another stock exchange, the Exchange will normally be satisfied with an undertaking by the issuer to do so and will not normally request the issuer to change its articles to comply with this paragraph where it would be unreasonable to do so.	Appendix 3 paragraph 7(2)	Rule 13.71	Rule 13.71 requires notice to all shareholders whether or not their registered address is in Hong Kong.  We propose to repeal the requirement to remove the inconsistency and instead rely upon the timing of notices set out in Core Standards and the Rules to ensure sufficient time is provided to enable members to exercise their rights or comply with the terms of the notice.  Rule 13.71 is subject to a Common Waiver for secondary listings. However, the condition for granting waiver is that the issuer is subject to overseas laws or regulations that have a similar effect (i.e. that notices are provided to Hong Kong shareholders) and any differences are not material to shareholder protection. The Exchange therefore has the option not to grant this waiver if it believes shareholders' interests will not be sufficiently protected.
21.	There is no prohibition on the giving of notice to members whose registered address is outside	Appendix 3	Rule 13.71	We propose to repeal the requirement and rely upon Rule 13.71, which similarly requires an issuer to send notices to all holders of its listed securities whether or

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
	Hong Kong.	paragraph 7(3)		not their registered address is in Hong Kong.  Rule 13.71 is subject to a Common Waiver for secondary listings. However, the condition for granting a waiver is that the issuer is subject to overseas laws or regulations that have a similar effect (i.e. that notices are provided to Hong Kong shareholders) and any differences are not material to shareholder protection. The Exchange therefore has the option not to grant this waiver if it believes shareholders' interests will not be sufficiently protected.
<b>Redeemable Shares</b>				
22.	Where the issuer has the power to purchase for redemption a redeemable share:  (1) purchases not made through the market or by tender shall be limited to a maximum price; and  (2) if purchases are by tender, tenders shall be available to all shareholders alike.	Appendix paragraph 8(1),(2)	3 N/A	Protection for redeemable shareholders would be provided by the Code on Share Buy-backs.
<b>Capital Structure</b>				
23.	The structure of the share capital of the issuer be stated and where such capital consists of more than one class of share it must also be stated how the various classes shall rank for any distribution by way of dividend or otherwise.	Appendix paragraph 9	3 N/A	The following Rules require disclosure of information on the issuer's capital in listing documents (Appendix 1A paragraph 25(2), Appendix 1B, paragraph 17(1), Appendix 1E paragraph 25(2), Appendix 1F, paragraph 44). Appendix 2A, paragraph 3 also states that how the securities rank for dividend or interest must appear on the issuer's document of title. We therefore propose to repeal this requirement.
<b>Non-voting or Restricted Voting Shares</b>				
24.	Where the capital of the issuer includes shares which do not carry voting rights, the words "non-voting" must appear in the designation of such shares.	Appendix paragraph 10(1)	3, Appendix 2, Part B, paragraph 5(2) and Rule 8A.42	The markers that are required to be included on stock short names with weighted voting rights are now set out in Rule 8A.42.  Also, Appendix 2, Part B paragraph 5(2) requires definitive documents of title to carry the words "non-voting" if applicable. We therefore propose to repeal this requirement and rely upon these Rules.

	<b>Requirement</b>	<b>Source of requirement</b>	<b>Overlapping requirement</b>	<b>Reason for Repeal<sup>1</sup></b>
25.	Where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting right, must include the words “restricted voting” or “limited voting”.	Appendix 3, paragraph 10(2)	Rule 8A.38	The warnings that are required to be included on the share certificates of issuers with weighted voting rights are set out in Rule 8A.38. These issuers must give force to the requirement of this Rule by incorporating it into their constitutional document. We therefore propose to rely on this Rule and repeal the requirement.
<b>Proxies and corporate representatives</b>				
26.	Where provision is made in the articles as to the form of proxy, this must be so worded as not to preclude the use of the two-way form.	Appendix 3, paragraph 11(1)	Rule 13.38	<p>In 1986, when this provision was introduced, the Companies Ordinance at that time did not contain this provision. HKCO (section 601(2)) now requires a two-way form (i.e. it allows voting in favour of and against) as does Rule 13.38 (requiring issuers to send notice convening shareholders’ meeting to all persons entitled to vote at the meeting proxy forms, with provision for two-way voting on all resolutions intended to be proposed thereat).</p> <p>We propose to repeal the requirement and rely upon Rule 13.38.</p> <p>Although secondary listed issuers are exempt from compliance with Rule 13.38, they are also exempt from compliance with this provision of Appendix 3 paragraph 11(1). Consequently, the proposed repeal of this provision will not change the current position with regards to secondary listed issuers.</p>
<b>Disclosure of interests</b>				
27.	No powers shall be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person or persons who are interested directly or indirectly therein have failed to disclose their interests to the company	Appendix 3, paragraph 12	N/A	<p>HKCO (section 180(3)) requires the written consent of holders representing at least 75% of the total voting rights of holders of shares in the class to vary the rights of that class.</p> <p>This protection from variation to the rights attached to any class of securities is proposed as a Core Standard. We therefore propose to repeal this requirement and rely on the Core Standard.</p>
<b>Untraceable members</b>				
28.	Where power is taken to cease sending dividend warrant by post, if such warrants have been left uncashed, it will not be exercised until such warrants have been so left uncashed on two consecutive occasions. However, such	Appendix 3, paragraph 13(1)	N/A	This requirement is not fundamental to shareholder protection and therefore we propose that it should not be a Core Standard. We propose to repeal this requirement and believe it should be a matter determined by the company law to which the issuer is subject.

	Requirement	Source of requirement	Overlapping requirement	Reason for Repeal <sup>1</sup>
	power may be exercised after the first occasion on which such a warrant is returned undelivered.			Also references to postal methods and uncashed dividend warrants (i.e. cheques) are likely to become increasingly obsolete because of the increasing use of electronic dividend payment methods.
29.	Where power is taken to sell the shares of a member who is untraceable it will not be exercised unless:  (a) during a period of 12 years at least three dividends in respect of the shares in question have become payable and no dividend during that period has been claimed; and  (b) on expiry of the 12 years the issuers gives notice of its intention to sell the shares by way of any advertisement published in the newspaper and notifies the Exchange of such intention.	Appendix 3, paragraph 13(2)	N/A	This requirement is not fundamental to shareholder protection and therefore we propose that it should not be a Core Standard. Instead we propose this should be a matter regulated by the company law to which the issuer is subject.  Also, the reference to newspapers in (b) is inconsistent with the Exchange's position that newspapers are no longer required to be used to meet disclosure requirements under the Rules.
<b>Memorandum and bye-laws/ articles of association</b>				
30.	Any alteration in an issuer's constitutional document to increase an existing member's liability to the company must be agreed by such a member in writing. ###	JPS Key Shareholder Protection paragraph 39/ Rule 19C.07(2)	N/A	For a company limited by shares, shareholders can only be liable for any amount unpaid on the share registered in their names. We therefore believe it is not necessary to codify the requirement in the Rules as a Core Standard for all issuers.  An overseas issuer should notify the Exchange of any provisions in its constitutional documents that may be detrimental to the interests of shareholders as a whole. The Exchange reserves the right to consider an issuer unsuitable for listing in such cases.
#	<i>applicable to issuers incorporated in Bermuda and the Cayman Islands only</i>			
##	<i>applicable to issuers incorporated in the Cayman Islands only</i>			
###	<i>applicable to issuers incorporated in Acceptable Jurisdictions and certain Qualifying Issuers only</i>			

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# Schedule D PROPOSED AMENDMENTS TO THE LISTING RULES

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## Chapter 1

### GENERAL

#### INTERPRETATION

...

- 1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

...

**“Financial Reporting Council” or “FRC”** the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance

**“Financial Reporting Council Ordinance” or “FRCO”** the Financial Reporting Council Ordinance (Cap. 588) as amended from time to time

...

**“IOSCO”** International Organization of Securities Commissions

**“IOSCO MMOU”** IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

...

**“overseas issuer”** an issuer ~~that is neither a Hong Kong issuer nor a PRC issuer incorporated or otherwise established outside Hong Kong~~

...

**“Mandatory Provisions”** the Mandatory Provisions for Companies Listing Overseas set forth in Zheng Wei Fa (1994) No. 21 issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System

...

**“PIE Auditor”** has the same meaning as in section 3A of the FRCO, that is:

(a) a registered PIE auditor, that is a practice unit



registered under Division 2 of Part 3 of the FRCO;  
or

- (b) a recognized PIE auditor, that is an overseas auditor recognized under Division 3 of Part 3 of the FRCO, including a Mainland auditor recognized under section 20ZT of the FRCO

*Note: Under the FRCO, only an issuer incorporated outside Hong Kong is permitted to appoint a Recognized PIE Auditor for a PIE Engagement. A Mainland auditor recognized under section 20ZT of the FRCO can only carry out a PIE engagement for a PRC issuer.*

**“PIE Engagement”**

has the same meaning as an engagement specified in Part 1 of Schedule 1A of the FRCO, that is any of the following types of engagement carried out by an auditor or a reporting accountant:

- (a) an auditors’ report on a PIE’s annual financial statements required by the Companies Ordinance, the Listing Rules or any relevant code issued by the Securities and Futures Commission;
- (b) a specified report required to be included in (i) a listing document for the listing of the shares or stocks of a corporation seeking to be listed or a listed corporation; or (ii) a listing document of a Collective Investment Scheme seeking to be listed or a listed Collective Investment Scheme; and
- (c) an accountants’ report required under the Listing Rules to be included in a circular issued by a PIE for a reverse takeover or a very substantial acquisition

...

**“place of central management and control”**

the Exchange will consider the following factors to determine an overseas issuer’s place of central management and control:

- (a) the location from where the issuer’s senior management direct, control, and coordinate the issuer’s activities;
- (b) the location of the issuer’s principal books and records; and
- (c) the location of the issuer’s business operations or assets.

**“Professional Accountants Ordinance” or “PAO”**

the Professional Accountants Ordinance (Cap. 50) as amended from time to time

...

**“Public Interest Entity” or “PIE”**

has the same meaning as in section 3(1) of the FRCO, that is a listed corporation with listed shares or stocks or a listed Collective Investment Scheme in Hong Kong

*Note: A listed corporation with listed debt securities but no listed shares or stocks is not a PIE.*

...

**“Qualifying Exchange”**

The New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment)

...

**“Recognised Stock Exchange”**

the main market of a stock exchange that the Exchange has recognised as one where the standards of shareholder protection are at least equivalent to those provided in Hong Kong and that is included on a list of Recognised Stock Exchanges published on the Exchange’s website as amended from time to time

...

## Chapter 4

### GENERAL

#### ACCOUNTANTS’ REPORTS AND PRO FORMA FINANCIAL INFORMATION

...

##### Reporting Accountants

- 4.03 ~~All accountants’ reports must normally be prepared by certified public accountants who are qualified under the Professional Accountants Ordinance for appointment as auditors of a company and who are~~Reporting accountants must be independent both of the issuer and of any other company concerned to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the Hong Kong Institute of Certified Public Accountants, provided that, or the International Federation of Accountants.

Subject to rules 4.03(1) and 4.03(2), accountants' reports must normally be prepared by certified public accountants who are qualified under the PAO for appointment as auditors of a company.

(1) Where the preparation of an accountants' report constitutes a PIE Engagement under the FRCO, the issuer must normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO. In the case of such a PIE Engagement that is a reverse takeover or a very substantial acquisition circular issued by a listed issuer incorporated outside Hong Kong relating to the acquisition of an overseas company, the Exchange may be prepared to accept the appointment of an overseas firm of practising accountants that is not qualified under the PAO but is a Recognized PIE Auditor of that issuer under the FRCO.

Notes:

1. The preparation of an accountants' report included in (a) a listing document for the listing of the shares or stocks of a corporation seeking to be listed or a listed corporation; or (b) a circular issued by a PIE for a reverse takeover or a very substantial acquisition are PIE Engagements under the FRCO.

2. In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an issuer incorporated outside Hong Kong, the Exchange may provide a statement of no objection to that issuer appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO. Such firm must normally:

(a) have an international name and reputation;

(b) be a member of a recognised body of accountants; and

(c) be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU. It would be acceptable if the relevant audit oversight body is not a

signatory to the IOSCO MMOU but the securities regulator in the same jurisdiction is a full signatory to the IOSCO MMOU.

That issuer must provide the specific reasons supporting its request for a statement of no objection, for example:

— such firm has a geographical proximity and familiarity with the businesses of that issuer or the target;

— that issuer or the target is listed on a Recognised Stock Exchange, and such firm is the auditor of that issuer or the target; and

— such firm is the statutory auditor of that issuer or the target.

The Exchange retains a discretion to accept or reject an application for a statement of no objection, and reserves the right to withdraw the statement of no objection pursuant to section 20ZF(2)(a) of the FRCO.

(2) in the case of an extreme transaction or a major transaction circular issued by a listed issuer in connection with the acquisition of an overseas company, the Exchange may be prepared to permit the accountants' report to be prepared by a firm of practising accountants which that is not so-qualified under the PAO but which is acceptable to the Exchange. Such a firm must normally: have an international name and reputation and be a member of a recognised body of accountants.

(a) have an international name and reputation;

(b) be a member of a recognised body of accountants; and

(c) be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU. It would be acceptable if the relevant audit oversight body is not a signatory to the IOSCO MMOU but the securities regulator in the same jurisdiction is a full signatory to the IOSCO MMOU.

...

## Overseas Issuers

- 4.20 ~~Special requirements apply in the case of~~ Overseas issuers and PRC issuers must comply with the requirements ~~which are~~ set out in Chapters 19, 19A, 19C and 36.

...

## Chapter 8

### EQUITY SECURITIES

#### QUALIFICATIONS FOR LISTING

##### Preliminary

- 8.01 This Chapter sets out the basic conditions which have to be met as a pre-requisite to the listing of equity securities. They apply to every method of listing and to both new applicants and listed issuers (including listed issuers that are treated as new applicants under other applicable provisions of the Exchange Listing Rules) except where otherwise stated.

Further conditions are set out in Chapters 8A, 18, 18A, 19, 19A, 19B and 19C for issuers seeking a listing of equity securities under those chapters. For a transfer of listing from GEM, the requirements of this Chapter are applied with modifications as set out in the rules and regulations under Chapter 9A for that purpose. Issuers are reminded:—

- (1) that these requirements are not exhaustive and that the Exchange may impose additional requirements in a particular case; and
- (2) the Exchange retains an absolute discretion to accept or reject applications for listing (including application for transfer of listing from GEM to the Main Board) and that compliance with the relevant conditions may not of itself ensure an applicant's suitability for listing.

Prospective issuers, and in particular new applicants, are therefore encouraged to contact the Exchange to seek informal and confidential

guidance as to the eligibility of a proposed issue for listing at the earliest possible opportunity.

### **Basic Conditions**

8.02 The issuer must be duly incorporated or otherwise established under the laws of the place where it is incorporated or otherwise established and must be in conformity with those laws and its memorandum and articles of association or equivalent documents.

8.02A The statutory securities regulator of an issuer's jurisdiction of incorporation and place of central management and control (if different) must be a full signatory of the IOSCO MMOU. This is to enable the SFC to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the SFC's investigations and enforcement actions where an overseas issuer has its records, business operations, assets and management outside Hong Kong.

8.02B The Exchange may waive rule 8.02A in an individual case only with the SFC's explicit consent having regard to whether there are adequate arrangements to enable the SFC to access financial and operational information (such as books and records) on an issuer's business in the relevant place of incorporation and place of central management and control for its investigation and enforcement purposes.

...

## **Chapter 8A**

### **EQUITY SECURITIES**

### **WEIGHTED VOTING RIGHTS**

### **INTRODUCTION**

...

### **CORPORATE GOVERNANCE**

...

## Resolutions Requiring Voting on a One Vote per Share Basis

8A.24 Any weighted voting rights attached to any class of shares in a listed issuer must be disregarded and must not entitle the beneficiary to more than one vote per share on any resolution to approve the following matters:

(1) ...

...

*Note: The purpose of rule 8A.24 is to protect non-WVR shareholders from resolutions being passed by WVR beneficiaries without their consent and not to enable non-WVR shareholders to remove or further constrain weighted voting rights. The weighted voting rights attached to a class of issued shares may be varied only with the consent of the holders of that class of shares as stipulated by the regulations and/or laws to which the issuer is subject. Where the regulations and/or laws do not require such approval, the Exchange will require such approval to be included in its constitutional documents to the extent it is not prohibited under the laws of its incorporation (~~for issuers incorporated in Bermuda or the Cayman Islands see Appendix 13a, paragraph 2(1) and Appendix 13b, paragraph 2(1)~~).*

...

## Chapter 10

### EQUITY SECURITIES

#### RESTRICTIONS ON PURCHASE AND SUBSCRIPTION

...

#### Restrictions and Notification Requirements on Issuers Purchasing their own Shares on a Stock Exchange

...

10.06 (1) (a) ...

...

(6) General

- ...
- (c) for the purposes of rules 10.05, 10.06, and 19.16 ~~and 19.43~~ “shares” shall mean shares of all classes and securities which carry a right to subscribe or purchase shares, of the issuer provided that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.
- ...

## **Chapter 13**

### **EQUITY SECURITIES**

#### **CONTINUING OBLIGATIONS**

...

##### **Purchase of securities**

- 13.31 (1) An issuer shall inform the Exchange as soon as possible after any purchase, sale, drawing or redemption by the issuer, or any member of the group, of its listed securities (whether on the Exchange or otherwise) and the issuer hereby authorises the Exchange to disseminate such information to such persons and in such manner as the Exchange may think fit.
- (2) A PRC issuer shall not issue any redeemable shares unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected.

*Notes: 1. Purchases by the issuer of its own securities (whether on the Exchange or otherwise) must be notified to the Exchange by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-*



*opening session on the business day following dealing. The information given should include the number of securities purchased and the purchase price per security or the highest and lowest prices paid, where relevant.*

*2. Issuers may only purchase their own securities on the Exchange in accordance with the provisions of rule 10.06 (which is, in the case of an overseas issuer, subject to rule 19C.11 if the issuer's primary listing is or is to be on another stock exchange; and in the case of a PRC issuer, amended by the provisions of Chapter 19A).*

...

### **Pre-emptive rights**

13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—

...

(2) No such consent as is referred to in rule 13.36(1)(a) shall be required:—

(a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings; or

...

- (b) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

Notes: 1. *Other than where independent shareholders' approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 13.36(2)(b) is only permitted in the circumstances set out in rule 14A.92.*

2. ~~*[Repealed ]]An overseas issuer does not have to comply with rule 13.36 if its primary listing is or is to be on another stock exchange and it is not subject to any other statutory or other*~~

~~requirement giving pre-emptive rights to shareholders over further issues of share capital~~

...

### **Voting of directors at board meetings**

13.44 ~~Subject to the exceptions set out in paragraphs (1), (2), (4) and (5) of Note 4 to Appendix 3, a~~ director of the issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest nor shall he be counted in the quorum present at the meeting subject to the following exceptions:

(1) the giving of any security or indemnity either:—

(a) to the director or his close associate(s) in respect of money lent or obligations incurred or undertaken by him or any of them at the request of or for the benefit of the issuer or any of its subsidiaries;  
or

(b) to a third party in respect of a debt or obligation of the issuer or any of its subsidiaries for which the director or his close associate(s) has himself/ themselves assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;

(2) any proposal concerning an offer of shares or debentures or other securities of or by the issuer or any other company which the issuer may promote or be interested in for subscription or purchase where the director or his close associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;

- (3) any proposal or arrangement concerning the benefit of employees of the issuer or its subsidiaries including:—
- (a) the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which the director or his close associate(s) may benefit; or
  - (b) the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme which relates both to directors, his close associates and employees of the issuer or any of its subsidiaries and does not provide in respect of any director, or his close associate(s), as such any privilege or advantage not generally accorded to the class of persons to which such scheme or fund relates; and
- (4) any contract or arrangement in which the director or his close associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the issuer by virtue only of his/their interest in shares or debentures or other securities of the issuer.

...

13.51 An issuer must publish an announcement as soon as practicable in regard to: —

- (1) ...

*Notes: ...*

2. *An issuer shall not at any time permit or cause any amendment to be made to its memorandum or articles of association or bye-laws which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part A or Part B (where appropriate) of Appendix 13....*

...

13.70 An issuer must give its shareholders the opportunity to lodge a notice with it proposing a person for election as a director at a general meeting. The issuer shall publish an announcement in accordance with rule 2.07C or issue a supplementary circular upon receipt of ~~a~~ any such notice from a shareholder ~~to propose a person for election as a director at the general meeting~~ where such notice is received by the issuer after publication of the notice of meeting. The issuer shall include particulars of the proposed director in the announcement or supplementary circular. The issuer must give shareholders at least seven days to consider the relevant information disclosed in such an announcement or supplementary circular prior to the date of the meeting of the election.

*Note: The issuer must assess whether or not it is necessary to adjourn the meeting of the election to give shareholders a longer period of at least 10 business days to consider the relevant information disclosed in the announcement or supplementary circular.*

...

## Chapter 19

### EQUITY SECURITIES

#### PRIMARY LISTINGS OF OVERSEAS ISSUERS

##### Preliminary

...

19.02 ~~The Exchange Listing Rules for overseas issuers are different, depending on whether their primary listing is or is to be on the Exchange or on another stock exchange. The first section deals with rules for primary listings, and the second section deals with secondary listings.~~ [Repealed [\*]]

...

##### PRIMARY LISTINGS SCOPE

19.04 This Chapter section sets out the additional requirements, modifications or exceptions which apply to an overseas issuer whose primary listing is or is to be on the Exchange. This includes an overseas issuer that already has a primary listing on another stock exchange or is applying to list simultaneously on the Exchange and on one or more overseas exchanges (a “dual primary

listing”).

### Qualifications for Listing

19.05 The following additional requirements apply:—

(1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if it believes that it is not in the public interest to list them;—

(a) ~~it believes that it is not in the public interest to list them; or~~  
[Repealed []]

(b) ~~the Exchange is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong;~~[Repealed []]

~~*Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.*~~

...

(6) where an overseas issuer wishes to obtain its primary listing on the Exchange by way of an introduction in the circumstances set out in rule 7.14(3);—

(a) it must comply with the following additional requirements:-

(i) provide the Exchange with details of the relevant regulatory provisions (statutory or otherwise) in its place of incorporation or other establishment and demonstrate that the standards of shareholder protection provided by that jurisdiction are not lower than those pertaining in Hong Kong;

- (ii) ~~offer for inspection include in the listing document a summary of the above-mentioned regulatory provisions in a form to be decided or agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion, provided that, in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13, the summary need only be included in the documents offered for inspection (see Appendix 13) (see rule 19.10(5)); and~~
- (iii) ~~with the exception of those overseas issuers which are incorporated or otherwise established in any jurisdiction in respect of which additional requirements are set out in Appendix 13, if requested to do so by the Exchange, appoint an independent financial adviser acceptable to the Exchange to confirm that the proposals are in the interests of the holders of the securities of the existing listed company or companies;~~
- (b) ~~in addition the overseas issuer must comply with such other requirements as the Exchange may on a case by case basis impose, in order to ensure that Hong Kong investors will be afforded the same level of protection as exists in Hong Kong in relation to the holding of securities in a Hong Kong issuer. The additional requirement currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 13. The Exchange may add to or waive, modify or not require compliance with these requirements on a case by case basis; Repealed []~~
- (c) ~~attention is particularly drawn to the requirement in rule 7.14(3) that any reorganisation by way of scheme of arrangement or by any other means whereby securities are issued by an overseas issuer in exchange for the securities of one or more listed Hong Kong issuers and the listing of the latter issuer or issuers is withdrawn at the same time as the securities of the overseas issuer are listed, must first be approved by a special resolution of the shareholders of the listed Hong Kong issuer or issuers.~~

...

## Listing Documents

19.08 ~~[Repealed ]~~Attention is particularly drawn to:—

- ~~(1) the requirement to include a statement of responsibility (see rule 11.12);~~
- ~~(2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11);~~
- ~~(3) the requirement to include a summary of the provisions of the constitutive documents of the overseas issuer and the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, in the listing document (see rules 19.10(2) and (3) and 19.10A); and~~
- ~~(4) the modifications and additional requirements which apply in the case of an introduction in the circumstances set out in rule 7.14(3), where the overseas issuer is incorporated or otherwise established in certain named jurisdictions, and which are set out in Appendix 13.~~

...

19.10 The following modifications and additional requirements apply:—

...

- ~~(2) the listing document must contain a summary of all provisions of the constitutive documents of the overseas issuer in so far as they may affect shareholders' rights and protections and directors' powers (using the same subject headings as is required by Section 2 of Appendix 13 in respect of certain named jurisdictions). This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);~~

Note: An overseas issuer can refer to Section 2 of Appendix 13 Part D The People's Republic of China for guidance on the subject headings that



should be used to provide this summary.

- (3) the listing document must contain a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion. ~~This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);~~

...

- (5) for an introduction in the circumstances in rule 7.14(3), the following modifications, exceptions and additional requirements apply:—
- (a) ~~the listing document must contain~~ the following must be offered for inspection and do not need to be set out in the listing document: —
- (i) ~~(but without in any way limiting the scope of the summary required by rule 19.10(2)), a comparison between the provisions of the listed Hong Kong issuer's existing articles of association and the proposed content of the constitutive documents of the overseas issuer (in the same format as is set out in Section 2 of Appendix 13 in respect of certain named jurisdictions). This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 (see Appendix 13).~~

Notes:

1. In such cases the details of the articles of association or equivalent document required to be set out in the listing document by paragraph 7 of Part A of Appendix 1 may be limited to a summary of the changes, if any, between the Hong Kong issuer's articles of association and the overseas issuer's proposed constitutive documents, in respect of each of the areas set out in

that paragraph, provided that the summary also includes details of any differences or additional provisions in the proposed new constitutive documents which confer on directors of the overseas issuer any special powers, the exercise of which would affect the rights or interests of the shareholders.

2. An overseas issuer can refer to Section 2 of Appendix 13 Part D (The People's Republic of China) for guidance on the format that should be used to provide this comparison.

(ii) a summary of the provisions of the constitutive documents of the overseas issuer, which is required by rule 19.10(2);

(iii) a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established which is required by rule 19.10(3) together with a copy of all relevant statutes and/or regulations; and

...

### **Accountants' Reports**

19.11 ~~[Repealed ]]~~Attention is particularly drawn to the requirement for the reporting accountant to be independent both of the overseas issuer and of any other company concerned (see rule 4.03).

19.12 An accountants' report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

Note: A list of alternative overseas auditing standards that are considered comparable to the standards set out in this rule, is published on the Exchange's website, as amended from time to time.

19.13 Accountants' Reports are required to conform with financial reporting standards acceptable to the Exchange, which will normally be HKFRS or IFRSthe requirements as to accounting standards set out in rules 4.11 to 4.13.

19.14 Where the Exchange allows a report to be drawn up otherwise than in conformity with ~~Hong Kong Financial Reporting Standards~~HKFRS or ~~International Financial Reporting Standards~~IFRS, the report will be required to conform with ~~accounting~~financial reporting standards acceptable to the Exchange. In such cases the Exchange will normally require the report to contain a reconciliation statement of the financial effect of the material differences (if any) from either of ~~the above accounting standards~~HKFRS or IFRS.

*Note 1: The suitability of an alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.*

*Note 2: A list of alternative overseas financial reporting standards that are considered comparable to HKFRS or IFRS, is published on the Exchange's website, as amended from time to time.*

*Note 3: An overseas issuer with a dual-primary listing that adopts one of the alternative standards referred to in Note 2 above for the preparation of its accountants' reports must adopt HKFRS or IFRS if it de-lists from the jurisdiction of that alternative standard.*

...

### **Continuing Obligations**

...

19.18 Conversely, the Exchange may impose additional requirements in a particular case. ~~In particular, the Exchange may impose such additional requirements as it considers necessary to ensure that investors have the same protection as that afforded to them in Hong Kong. The additional requirements currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 13. The Exchange may add to or waive, modify or not require compliance with, these requirements on a case by case basis in its absolute discretion.~~

...

### **Annual report and accounts and auditors' report**

...

19.20 The annual accounts must be audited by a person, firm or company who

must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements requirements on independence issued by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—

- (1) qualified under the ~~Professional Accountants Ordinance~~ PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or
- (2) ~~a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants~~ an overseas firm of practising accountants that is a Recognized PIE Auditor of that issuer under the FRCO.

*Note: In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an overseas issuer, the Exchange may provide a statement of no objection to that issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 4.03(1)).*

19.21 The annual accounts must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

*Note: A list of alternative overseas auditing standards, that are considered comparable to the standards set out in this rule, is published on the Exchange's website, as amended from time to time.*

...

19.25A Annual accounts are required to conform with financial reporting standards acceptable to the Exchange, which will normally be HKFRS or IFRS. Where the Exchange allows annual accounts to be drawn up otherwise than in conformity with HKFRS or IFRS, the annual accounts will be required to conform with financial reporting standards acceptable to the Exchange. In such cases the Exchange will normally require the annual accounts to contain a reconciliation statement of the financial effect of the material differences (if any) from either HKFRS or IFRS.

*Note 1: The suitability of an alternative overseas financial reporting standards depends on whether there is any significant difference*

between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.

Note 2: A list of alternative overseas financial reporting standards that are considered comparable to HKFRS or IFRS, is published on the Exchange's website, as amended from time to time.

Note 3: An overseas issuer with a dual-primary listing that adopts one of the alternative standards referred to in Note 2 above (other than issuers incorporated in an EU member state which adopted EU-IFRS) for the preparation of its annual accounts must adopt HKFRS or IFRS if it de-lists from the jurisdiction of that alternative standard and must do so for its second full financial year following the date of its de-listing and thereafter.

### **Listing Fees**

~~19.26 Details of the initial listing fee, annual listing fee, subsequent issue fee and other charges together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in Appendix 8.~~

...

### **SECONDARY LISTINGS**

~~19.29 This section sets out the additional requirements, modifications or exceptions which apply to an overseas issuer whose primary listing is or is to be on another stock exchange.~~

### **Qualifications for Listing**

~~19.30 The following additional requirements apply:—~~

~~(1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if:—~~

~~(a) it believes that it is not in the public interest to list them; or~~

~~(b) it is not satisfied that the overseas issuer's primary listing is or is to be on an exchange where the standards of shareholder~~

protection are at least equivalent to those provided in Hong Kong;

*Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.*

~~(2) the overseas issuer must normally appoint, and maintain throughout the period the overseas issuer's securities are listed on the Exchange the appointment of, a person authorised to accept service of process and notices on its behalf in Hong Kong, and must notify the Exchange of his appointment and any termination of his appointment and details of:—~~

- ~~(a) his address for service of process and notices;~~
- ~~(b) if different, his place of business or, if he does not maintain a place of business, his residential address;~~
- ~~(c) his business or residential telephone number, as the case may be;~~
- ~~(d) his email address and facsimile number (if available); and~~
- ~~(e) any change in the above particulars;~~

*Note: The person appointed under this rule may also be the person authorised to accept service required to be appointed under Part 16 of the Companies Ordinance, if applicable.*

~~(3) listing on the overseas issuer's primary exchange must have been granted before listing on the Exchange can be granted;~~

~~(4) (a) in the case of registered securities (other than those transferable by endorsement and delivery), provision must be made for a register of holders to be maintained in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally. The Exchange may, however, consider an alternative proposal for~~

~~registering transfers for Hong Kong holders in exceptional circumstances provided that adequate arrangements are made to have a share transfer agent in Hong Kong; and~~

~~(b) in the case of bearer securities, provision must be made for the payment of dividends or interest and repayment of capital in Hong Kong, or such other place as the Exchange may agree;~~

~~(5) unless the Exchange otherwise agrees only securities registered on the Hong Kong register may be traded on the Exchange; and~~

~~(6) where two or more share registers are maintained it will not be necessary for the Hong Kong register to contain particulars of the shares registered on any other register.~~

~~19.31 The requirement in rule 8.08 that a prescribed percentage of any class of listed securities must at all times be held by the public does not apply.~~

### **Application Procedures and Requirements**

~~19.32 [Repealed 1 October 2013]~~

~~19.33 The following modifications apply:—~~

~~(1) in rules 9.09, 9.11(3a), 9.11(3b), 9.11(17b), 9.11(28), 9.11(38) and 9.20(1) the references to “directors” should be read as references to members of the overseas issuer’s governing body;~~

~~(2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 9.11(29)(a) may be signed by two members of the overseas issuer’s governing body or by their agents authorised in writing rather than by or on behalf of every director or proposed director; and~~

~~(3) the declaration and undertaking to be lodged under rule 9.11(38) may require adjustment by virtue of the laws to which the overseas issuer is subject.~~

### **Listing Documents**

~~19.34 Attention is particularly drawn to:—~~

~~(1) the requirement to include a statement of responsibility (see rule 11.12);  
and~~

~~(2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11). In particular, the Exchange may require the listing document to contain a summary of the relevant regulatory provisions (statutory or otherwise) which apply to companies with a primary listing on the overseas issuer's primary stock exchange, in a form to be agreed upon by the Exchange on a case by case basis.~~

~~19.35 The Exchange may be prepared to permit the omission of information where it considers it appropriate. In considering requests for any such omissions, the Exchange will have regard to:—~~

~~(1) whether the overseas issuer has its primary listing on a regulated, regularly operating, open stock market recognised for this purpose by the Exchange and conducts its business and makes disclosure according to the accepted standards in Hong Kong; and~~

~~(2) the nature and extent of the regulatory standards and controls to which the overseas issuer is subject on its primary exchange.~~

~~Overseas issuers who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.~~

~~19.36 The following modifications and additional requirements apply:—~~

~~(1) some of the items of information specified in Parts A and B of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given;~~

~~(2) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately;~~

~~(3) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the~~



~~Companies (Winding Up and Miscellaneous Provisions) Ordinance, where any of such documents are not in the English language, certified English translations thereof must be available for inspection. In particular cases, the Exchange may require additional documents to be offered for inspection;~~

~~(4) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or primary listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be in English, or accompanied by a certified English translation. For example, overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents. The Exchange should be consulted in such cases;~~

~~(5) the listing document need not be accompanied by a Chinese translation, unless required to do so by section 342(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, but must be in the English language or be accompanied by a certified English translation except that, in the case of a new applicant, the English language version of the listing document may be distributed separately from its Chinese translation (and vice versa) provided that both are available at each place where, and for so long as, the distribution of such documents takes place; and~~

~~(6) for the purposes of rule 2.11, the overseas issuer need only appoint one authorised representative who need not be a director or secretary but must be a person acceptable to the Exchange. The authorised representative may also be the person authorised to accept service required to be appointed under the provisions of rule 19.30(2). The authorised representative should act as the principal channel of communication between the overseas issuer and the Exchange.~~

### **Accountants' Reports**

~~19.37 Attention is particularly drawn to the requirement for the reporting accountant to be independent both of the overseas issuer and of any other company concerned (see rule 4.03).~~

~~19.38 A report will not normally be regarded as acceptable unless the relevant~~

accounts have been audited to a standard comparable to that required in Hong Kong.

~~19.39~~ Reports are required to conform with accounting standards acceptable to the Exchange which will normally be:—

~~(a)~~ Hong Kong Financial Reporting Standards; or

~~(b)~~ International Financial Reporting Standards; or

~~(c)~~ generally accepted accounting principles in the United States of America (“US GAAP”).

~~Where the Exchange allows reports to be drawn up otherwise than in conformity with the accounting standards set out in this rule, the Exchange may, having regard to the exchange on which the overseas issuer has its primary listing, require the report to contain a statement of the financial effect of the material differences (if any) from either of the accounting standards referred to in rule 4.11.~~

~~19.40~~ As indicated in rules 4.14 to 4.16, where the figures in the report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

### **Options, Warrants and Similar Rights**

~~19.41~~ The Exchange may be prepared to vary the limit in rule 15.02(1) for an overseas issuer if the issuer’s primary listing is or is to be on another stock exchange where such a limit does not apply.

### **Share Schemes**

~~19.42~~ The Exchange may be prepared to vary the requirements applicable to schemes involving the issue of or grant of options over shares or other securities by listed issuers to, or for the benefit of, executives and/or employees set out in Chapter 17 for an overseas issuer if its primary listing is or is to be on another stock exchange where different (or no such) requirements apply.—

~~**Restrictions and Notification**~~  
~~**Requirements on Overseas Issuers**~~  
~~**Purchasing their own Shares on a Stock**~~  
~~**Exchange**~~

~~19.43 (1) An overseas issuer may purchase its own shares on the Exchange in accordance with the relevant provisions of rule 10.06, provided that the Exchange will be prepared to waive some or all of the applicable dealing restrictions set out in rule 10.06(2) if the overseas issuer's primary exchange already imposes equivalent dealing restrictions on the overseas issuer in respect of purchases of shares on the Exchange.~~

~~(2) The Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares in the case of an overseas issuer whose primary exchange permits treasury stock, provided that the overseas issuer must apply for the relisting of any such shares which are reissued as if it were a new issue of those shares.~~

~~**Continuing Obligations**~~

~~19.44 Whilst Chapter 13 and Appendix 16 apply equally to overseas issuers, the Exchange will be prepared to agree to such modifications as it considers appropriate in a particular case. In particular, in the case of an overseas issuer whose primary listing is on another regulated, regularly operating, open stock market recognised for this purpose by the Exchange, the Exchange may accept such modifications which provide for equivalent continuing obligations to those imposed by that other stock market.~~

~~19.45 Conversely, the Exchange may impose additional requirements in a particular case. In particular, if the overseas issuer's primary listing is or is to be on an exchange with regulatory requirements which the Exchange is not satisfied provide equivalent shareholder protection to that provided in Hong Kong, the Exchange may impose such additional requirements as it considers necessary to ensure that the overseas issuer will provide equivalent standards of shareholder protection.~~

~~***Annual report and accounts and auditors' report***~~

~~19.46 The following modifications and additional requirements apply to Appendix 16 insofar as an issuer is an overseas issuer. To the extent such~~

~~modifications and additional requirements conflict with the provisions of Appendix 16, the following provisions shall apply.~~

~~19.47 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—~~

~~(1) qualified under the Professional Accountants Ordinance for appointment as an auditor of a company; or~~

~~(2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.~~

~~19.48 The accounts must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.~~

~~19.49 The report of the auditors must be annexed to all copies of the annual accounts and indicate whether in the opinion of the auditors the accounts give a true and fair view:—~~

~~(1) in the case of the overseas issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the overseas issuer's profit and loss account, of the profit or loss and cash flows for the financial year; and~~

~~(2) in the case where consolidated accounts are prepared, of the state of affairs and profit or loss of the overseas issuer and cash flows of the group.~~

~~19.50 The report of the auditors must indicate the act, ordinance or other legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.~~

~~19.51—If the overseas issuer is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, the Exchange may allow its accounts to be drawn up to that standard. Reference must, however, be made to the Exchange. If an overseas issuer is in doubt as to what more detailed and/or additional information should be provided, it should contact the Exchange for guidance.~~

~~19.52—An auditors' report which conforms to the requirements of the International Standards on Auditing issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants is acceptable.~~

~~19.53—An auditors' report in a different form may be applicable in the case of banking and insurance companies. The wording of such an auditors' report should make it clear whether or not profits have been stated before transfers to or from undisclosed reserves.~~

#### **Listing Fees**

~~19.54—Details of the initial listing fee, annual listing fee, subsequent issue fee and other charges together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in paragraph 11 of Appendix 8.~~

#### **General**

~~19.55—All documents furnished by an overseas issuer, including accounts, which are in a language other than English must be accompanied by a certified English translation. If the Exchange so requires, an additional translation must be prepared in Hong Kong at the overseas issuer's expense by such person or persons as the Exchange shall specify.~~

~~19.56—Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the Exchange Listing Rules, the Statutory Rules or any obligation imposed by the laws of Hong Kong shall not be less than that required to be supplied by the overseas issuer in its place of incorporation or other establishment.~~

~~19.57—If, in the sole opinion of the Exchange, the majority of trading in the overseas~~

issuer's securities is likely to be on the Exchange, then:—

- ~~(1) the overseas issuer's primary listing must be on a regulated, regularly operating, open stock market which is recognised for this purpose by the Exchange;~~
- ~~(2) the overseas issuer must have an adequate nexus with that market; and~~
- ~~(3) the primary regulator in that market must have entered into a written agreement with the Exchange governing the parties' respective roles in the regulation of the overseas issuer, in a form acceptable to the Exchange, after prior consultation with the Commission.~~

~~Note 1: London Stock Exchange plc and the Irish Stock Exchange Limited are recognised for this purpose by the Exchange. If an overseas issuer's primary listing will be on a different stock market, in these circumstances, then the overseas issuer must satisfy the Exchange that the proposed stock market should be recognised by the Exchange for this purpose.~~

~~Note 2: Overseas issuers should note that in these circumstances the Exchange reserves the right to charge the same amounts in listing fees as are payable in the case of a primary listing (see paragraph 11 of Appendix 8).~~

~~Note 3: An adequate nexus will be shown where the Exchange is satisfied that there is an established trading market in the overseas issuer's securities in the primary market. In determining whether there is an established trading market the Exchange will normally expect, inter alia, at least 10 per cent. of worldwide trading volume or HK\$1 billion of trading by value in the overseas issuer's securities to have taken place on the overseas issuer's primary exchange during the 12 month period preceding the application for a secondary listing.~~

Rules 19.29 to 19.57 repealed [ ]

### **Basis for Waivers, Modifications and Exceptions**

19.58 The Exchange may exercise its power under rule 2.04 to waive, modify or not require compliance with a Listing Rule for issuers with, or seeking, a dual primary listing under this chapter, on the basis that the issuer can demonstrate

that strict compliance with both the relevant Listing Rule and the regulations of the overseas exchange would be unduly burdensome or unnecessary.

### **Common Waivers**

19.59 The Exchange will consider, under rule 2.04, applications for waivers of the following rules from overseas issuers with, or seeking, a listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances including compliance with the prescribed conditions:

(1) rule 2.07C(4)(a) for dual primary listings, subject to the conditions that:

(a) there is a minimal overlap between Hong Kong market hours and that of the overseas exchange(s) on which the issuer's securities are also traded; and

(b) the issuer notifies the Exchange of a pending announcement and the expected time of release (of both English and Chinese versions) at least ten minutes before the release.

(2) rule 4.03 for primary and dual primary listings, subject to the conditions that:

(a) the SFC grants a certificate of exemption from strict compliance with the relevant Companies Ordinance requirements; and

(b) the reporting accountants is a firm that has an international name and reputation, is a member of a recognised body of accountants and is subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU.

(3) rule 9.09 for dual primary listings, subject to the conditions that:

(a) the core connected persons have no influence over the listing process and are not in possession of non-public inside information;

(b) the issuer promptly releases any inside information to the public

in its overseas jurisdiction(s) in accordance with the relevant laws and regulations;

(c) it is beyond the issuer's control that the core connected person(s) conduct dealings in the issuer's securities on markets outside the Exchange (e.g. a public investor who may become a substantial shareholder before the issuer lists on the Exchange); and

(d) the issuer notifies the Exchange of breaches of the dealing restriction by any of its core connected persons during the restricted period.

(4) rule 11.06, paragraph 15(2)(c) of Appendix 1A and paragraph 49(2)(c) of Appendix 1E (as applicable) for dual primary listings, subject to the conditions that:

(a) the SFC grants a certificate of exemption from strict compliance with the relevant Companies (Winding Up and Miscellaneous Provisions) Ordinance requirements;

(b) the listing document discloses (i) when the final offer price will be determined and how it will be published; and (ii) the issuer's historical share prices, trading liquidity and the determinants of the final offer price;

(c) investors will be able to access the latest market price of the issuer's shares; and

(d) the maximum offer price is disclosed in the listing document and the application forms.

(5) rule 19.10(6) for dual primary listings, subject to the conditions that the website addresses of the relevant statutes and regulations applicable to the issuer are disclosed in the listing document; and these websites are easily accessible to the public free of charge.

19.60 An overseas issuer may apply for waivers from the requirements of other rules which the Exchange will consider on a case by case basis, based on the general principles set out in rule 19.58.



**Additional Exceptions to the Rules for Certain Overseas Issuers with a WVR structure**

19.61 Rules 8A.07 to 8A.36, 8A.43 and 8A.44 do not apply to a Grandfathered Greater China Issuer or Non-Greater China Issuer (as defined in rule 19C.01) with a WVR structure (as defined by rule 8A.02) that has, or is seeking, a dual primary listing on the Exchange under this chapter, on the condition that:

- (1) the issuer has a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year; and
- (2) the issuer has a track record of good regulatory compliance of at least two full financial years on its Qualifying Exchange of primary listing.

**Company Information Sheet**

19.62 At the Exchange's discretion, an overseas issuer with, or seeking, a primary listing or dual-primary listing must disclose the information required by rule 19C.10C(7) in its listing document and comply with rules 19C.24 and 19C.25 regarding the publication of a Company Information Sheet.

...

**Chapter 19A**

**EQUITY SECURITIES**

**ISSUERS INCORPORATED  
IN THE PEOPLE'S REPUBLIC OF CHINA**

...

19A.02 This Chapter sets out the additional requirements, modifications and exceptions which apply to PRC issuers seeking or maintaining a primary listing on the Exchange. Rules 19.01 to 19.2863 (inclusive) do not apply in the case of such PRC issuers.

19A.02A The Exchange may exercise its power under rule 2.04 to waive, modify or not require compliance with a Listing Rule for issuers with, or seeking, a dual primary listing under this chapter, on the basis that the issuer can demonstrate that strict compliance with both the relevant Listing Rule and the regulations of the other exchange of primary listing would be unduly burdensome or unnecessary.

...

#### **Chapter 4 — Accountants' Reports and Pro Forma Financial Information**

19A.08 The reporting accountants for a PRC issuer must normally be qualified and be independent to the same extent as required under rule 4.03 for the reporting accountants of any other issuer. The Exchange also accepts, under the mutual recognition agreement, a PRC firm of practising accountants which has been approved by the China Ministry of Finance and the China Securities Regulatory Commission as being suitable to act as an auditor or a reporting accountant for a PRC incorporated company listed in Hong Kong on the condition that the PRC issuer has adopted CASBE for the preparation of its annual financial statements. Such a PRC firm of practising accountants must be independent to the same extent as required under rule 4.03 for the reporting accountants of any other issuer.

Notes:

1. The mutual recognition agreement means the agreement between the Mainland of China and Hong Kong in 2009 for mutual recognition of qualified auditors from either jurisdiction (home jurisdiction) to act as auditors of corporations incorporated in the home jurisdiction and listed in the other jurisdiction.

2. Where the preparation of an accountants' report constitutes a PIE Engagement under the FRCO, that PRC firm of practising accountants must also be regulated under the FRCO and a Recognized PIE Auditor under section 20ZT of the FRCO.

...

#### **Chapter 10 — Restrictions on Purchase and Subscription**

19A.24 A PRC issuer may purchase its own shares on the Exchange in accordance with the provisions of this rule and rules 10.05 and 10.06. Although the share repurchase provisions of rules 10.05 and 10.06 normally apply to a PRC issuer's equity securities which are listed on the Exchange and which are or are proposed to be purchased on the Exchange, when seeking shareholders' approval to make purchases of such securities on the Exchange or when reporting such purchases, a PRC issuer should provide information on the proposed or actual purchases of any or all of its equity securities, whether or not listed or traded on the Exchange. Therefore, in the case of a PRC issuer, rule 10.06(6)(c) is amended and restated in its entirety to read as follows:

- (c) for the purposes of rules 10.05, 10.06, 19A.24 and 19A.46, "shares" shall mean shares of all classes listed on the Exchange and securities listed on the Exchange which carry a right to subscribe or purchase shares of the PRC issuer, provided that references to "shares" in rules 10.06(1)(b) and 10.06(4) shall also include shares of all classes listed on any stock exchange and securities that are listed on any stock exchange which carry a right to subscribe or purchase shares of such PRC issuer, and provided further that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the PRC issuer or subsidiary of the PRC issuer, as the case may be.

...

### **Chapter 13 — Continuing Obligations**

...

19A.29A The reference to "every member" in rule 13.46(2) shall mean and refer to only registered holders of the PRC issuer's H shares.

...

### ***Annual report and accounts and auditors' report***

...

19A.31 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the PRC issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the ~~statements~~requirements on independence issued by the International Federation of Accountants and, if the PRC issuer's primary listing is or is to be on the Exchange, must be:

- (1) qualified under the ~~Professional Accountants Ordinance~~PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or
- (2) ~~a firm of practising accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants~~an overseas firm of practising accountants that is a Recognized PIE Auditor of that issuer under the FRCO; or
- ~~(3) a firm of practising accountants acceptable to the Exchange which is a joint venture approved or otherwise permitted by the China Securities Regulatory Commission or other competent authority in the PRC to act as an auditor of a listed company in the PRC and at least one of whose principal joint venture partners is either qualified under (1) or acceptable under (2); or~~
- (43) under the mutual recognition agreement, a PRC firm of practising accountants which has been approved by the China Ministry of Finance and the China Securities Regulatory Commission as being suitable to act as an auditor or a reporting accountant for a PRC incorporated company listed in Hong Kong and is a Recognized PIE Auditor under section 20ZT of the FRCO on the condition that the PRC issuer has adopted CASBE for the preparation of its annual financial statements.

Notes:

1. In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by a PRC issuer, the Exchange may provide a statement of no objection to that

issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 4.03(1)).

2. The mutual recognition agreement referred to in (3) above means the agreement between the Mainland of China and Hong Kong in 2009 for mutual recognition of qualified auditors from either jurisdiction (home jurisdiction) to act as auditors of corporations incorporated in the home jurisdiction and listed in the other jurisdiction.

...

### **Appendix 3 — Articles of Association or equivalent constitutional documents**

19A.45 A PRC issuer shall not at any time permit or cause any amendment to be made to its articles of association which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part D of Appendix 13.

19A.46 ~~[Repealed [ ]]~~References to “shares” in paragraphs 1(1) and 1(2) of Appendix 3 shall mean and refer to H shares only, and shall not include the domestic shares of a PRC issuer.

19A.47 ~~[Repealed [ ]]~~Paragraph 3(2) of Appendix 3 shall, in the case of a PRC issuer, be amended and restated to read as follows: “Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until after the expiration of the applicable limitations period.”

19A.48 ~~[Repealed [ ]]~~The reference to “every member” in paragraph 5 of Appendix 3 shall mean and refer to only registered holders of the PRC issuer’s H shares.

19A.49 ~~[Repealed [ ]]~~Paragraphs 6(2), 7(2), 11(1) and 11(2) of Appendix 3, which are covered by the additional required provisions set out in Section 1 of Part D of Appendix 13, shall not apply to a PRC issuer.

...

### **General**

....

19A.59 The Exchange will consider, under rule 2.04, applications for waiver of rule 9.09 from PRC issuers with, or seeking, a dual primary listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances, subject to the conditions that:

- (1) the core connected persons have no influence over the listing process and are not in possession of non-public inside information;
- (2) the issuer promptly releases any inside information to the public in the PRC in accordance with the relevant laws and regulations;
- (3) it is beyond the issuer's control that the core connected person(s) conduct dealings in the issuer's securities on markets outside the Exchange (e.g. a public investor who may become a substantial shareholder before the issuer lists on the Exchange); and
- (4) the issuer notifies the Exchange of breaches of the dealing restriction by any of its core connected persons during the restricted period.

...

## **Chapter 19C**

### **EQUITY SECURITIES**

#### **SECONDARY LISTINGS OF QUALIFYING ISSUERS OVERSEAS ISSUERS**

##### **Scope**

The Exchange Listing Rules apply as much to overseas issuers with, or seeking, a secondary listing as they do to other issuers, subject to the additional requirements, modifications or exceptions set out or referred to in this chapter.

~~This Chapter sets out the additional requirements, modifications or exceptions to the Exchange Listing Rules for Qualifying Issuers that have, or are seeking, a secondary listing on the Exchange.~~

~~Qualifying Issuers that are overseas issuers must also comply with Chapter 19, subject to the additional requirements, modifications and exceptions set out in this Chapter.~~

Overseas Issuers~~Qualifying Issuers~~ are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the applicable requirements set out in

this chapter.

## Definitions

19C.01 In this Chapter, the following definitions apply:

**“centre of gravity in Greater China”** The following are some of the non-exhaustive factors that the Exchange will consider in determining whether an overseas issuer has its centre of gravity in Greater China:

- (a) whether the issuer has a listing in Greater China;
- (b) where the issuer is incorporated;
- (c) the issuer’s history;
- (d) where the issuer is headquartered;
- (e) the issuer’s place of central management and control;
- (f) the location of the issuer’s main business operations and assets;
- (g) the location of the issuer’s corporate and tax registration;  
and
- (h) the nationality or country of residence of the issuer’s management and controlling shareholder.

**“Foreign Private Issuer”**

as defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time-to-time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time-to-time

**“Grandfathered Greater China Issuer”** a Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017

**“Greater China Issuer”** a Qualifying Issuer with its centre of gravity in Greater China

*~~Note: The following are some of the factors that the Exchange will consider in determining whether a Qualifying Issuer has its centre of gravity in Greater China:~~*

*~~(a) whether the issuer has a listing in Greater China;~~*

*~~(b) where the issuer is incorporated;~~*

*~~(c) the issuer’s history;~~*

*~~(d) where the issuer is headquartered;~~*

*~~(e) the issuer’s place of central management and control;~~*

*~~(f) the location of the issuer’s main business operations and assets;~~*

*~~(g) the location of the issuer’s corporate and tax registration; and~~*

*~~(h) the nationality or country of residence of the issuer’s management and controlling shareholder.~~*

*~~These factors are not exhaustive. The Exchange may take other factors into consideration in determining whether a Qualifying Issuer has its centre of gravity in Greater China.~~*



<b>“Non-Grandfathered Greater China Issuer”</b>	a Greater China Issuer that was primary listed on a Qualifying Exchange after 15 December 2017
<b>“Non-Greater China Issuer”</b>	a Qualifying Issuer that is not a Greater China Issuer
<b><del>“place of central management and control”</del></b>	<p><del>the Exchange will consider the following factors to determine a Qualifying Issuer’s <u>an overseas issuer’s</u> place of central management and control:</del></p> <ul style="list-style-type: none"> <li data-bbox="718 795 1246 985"><del>(a) the location from where the issuer’s senior management direct, control, and coordinate the issuer’s activities;</del></li> <li data-bbox="718 1019 1246 1108"><del>(b) the location of the issuer’s principal books and records; and</del></li> <li data-bbox="718 1142 1246 1232"><del>(c) the location of the issuer’s business operations or assets</del></li> </ul>
<b><del>“Qualifying Exchange”</del></b>	<del>The New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment)</del>
<b>“Qualifying Issuer”</b>	An <u>overseas</u> issuer primary listed on a Qualifying Exchange
<b>“WVR structure”</b>	has the meaning given to it in rule 8A.02

## Basic Conditions

19C.02 ~~A Qualifying Issuer~~ An overseas issuer seeking a secondary listing under this chapter must demonstrate to the Exchange that it is both eligible and suitable for listing.

19C.02A The following additional requirements apply:—

- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if:
  - (a) it believes that it is not in the public interest to list them.
  - (b) it is not satisfied that the overseas issuer's primary listing is or is to be on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong.
  - (c) the overseas issuer has received waivers from or is exempt from rules, regulations or legislation that result in it being subject to regulatory requirements that are materially less stringent than those that generally apply to entities of its nature listed on its primary market.
- (2) an overseas issuer must comply with rule 19.05(2) on the appointment and maintenance of a person authorised to accept service of process and notices on its behalf in Hong Kong.
- (3) listing on the overseas issuer's primary exchange must have been granted before listing on the Exchange can be granted.
- (4) an overseas issuer must comply with the securities registration requirements of rules 19.05(3), 19.05(4) and 19.05(5).
- (5) the Exchange retains the discretion to reject an application for secondary listing if, in the opinion of the Exchange, it constitutes an attempt to avoid rules that apply to primary listing.

Note: For the purpose of rule 19C.02A(5), the Exchange may apply the test set out in rule 14.06B to determine whether, in the opinion of the Exchange, a transaction and/or arrangement or series of transactions and/or arrangements an applicant for secondary

listing conducted on its primary exchange constituted a reverse takeover. If a material part of the applicant's business is listed on its primary exchange by way of a reverse takeover, the Exchange will normally consider its application for secondary listing on the Exchange to be an attempt to avoid rules that apply to primary listing.

### **Weighted Voting Rights**

19C.03 Rules 8A.04 to 8A.06 do not apply to a Qualifying Issuer with a WVR structure seeking a secondary listing under this chapter and rules 8A.07 to 8A.36, 8A.43 and 8A.44 do not apply to a Non-Greater China Issuer or a Grandfathered Greater China Issuer with a WVR structure seeking a secondary listing under this chapter.

### **Qualifications for Secondary Listing**

19C.04 An overseas issuer with a WVR structure ~~Qualifying Issuer~~ must have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.

19C.05 An overseas issuer with ~~Non-Greater China Issuer without~~ a WVR structure ~~must have an expected market capitalisation at the time of its secondary listing of at least HK\$10,000,000,000. All other Qualifying Issuers~~ must satisfy one of the following criteria:

- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
- (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

19C.05A An overseas issuer without a WVR structure must satisfy either paragraphs (1) and (2) ("Criteria A") or paragraphs (3) and (4) ("Criteria B") below:

#### Criteria A

- (1) A track record of good regulatory compliance of at least five full financial years on a Qualifying Exchange (for any overseas issuer without a WVR structure) or on any Recognised Stock Exchange (only for overseas issuers without a WVR structure and without a centre of gravity in Greater China); and

*Note: Applications for secondary listing from issuers with a centre of gravity in Greater China and without a WVR structure that are primary listed on a Recognised Stock Exchange other than a Qualifying Exchange will be considered only in exceptional circumstances on the basis of the issuer's individual circumstances and the merits of the case.*

- (2) a market capitalisation of at least HK\$3,000,000,000 at the time of listing.

#### Criteria B

- (3) A track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and

- (4) a market capitalisation of at least HK\$10,000,000,000 at the time of listing.

*Note: A waiver of the listing track record criteria of paragraphs (1) and (3) above may be granted if the applicant seeking a secondary listing is well-established and has a market capitalisation at listing that is significantly larger than HK\$10,000,000,000.*

#### **Equivalent Standards of Shareholder Protection**

~~19C.06-[Repealed [ ]]Appendix 3 and Appendix 13 of these rules do not apply to an overseas issuer that is a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking to secondary list under this Chapter.~~

~~*Note 1: A Non-Grandfathered Greater China Issuer seeking a secondary listing under this Chapter must comply with Appendix 3 of these rules and must also comply with Appendix 13 if it is incorporated in a jurisdiction to which Appendix 13 applies.*~~

*Note 2: If an overseas issuer that is a Non-Grandfathered Greater China Issuer seeks a secondary listing under this Chapter and is not incorporated in a jurisdiction covered by Appendix 13 of these rules, the Exchange will require that these companies must vary their constitutional documents to meet the standards set out in rule 19C.07 (unless these standards are already provided for in their constitutional documents and/or the laws to which they are subject).*

19C.07-~~[Repealed [ ]]~~The Exchange will consider that a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking a secondary listing has met the requirements of rule 19.30(1)(b) if it has met the following shareholder protection standards:

(1) ~~a super-majority vote of the Qualifying Issuer's members in general meeting is required to approve:~~

(a) ~~changes to the rights attached to any class of shares of the Qualifying Issuer;~~

*Note: A super-majority vote of the Qualifying Issuer's members of the class to which the rights are attached is required to approve a change to those rights.*

(b) ~~changes to the Qualifying Issuer's constitutional documents, however framed; and~~

(c) ~~a voluntary winding-up of the Qualifying Issuer;~~

*Note: For the purpose of rule 19C.07(1), a "super-majority vote" means at least a two-thirds majority of the members present and voting where the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer have a low quorum requirement (e.g. two members). If the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer requires only the approval of simple majority only (50% plus one vote) for deciding the matters set out in 19C.07(1) these matters must be decided by a significantly higher quorum.*

- (2) any alteration to the Qualifying Issuer's constitutional document to increase an existing member's liability to the company must be agreed by such a member in writing;
- (3) the appointment, removal and remuneration of auditors must be approved by a majority of the Qualifying Issuer's members or other body that is independent of the issuer's board of directors;

*Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.*

- (4) the Qualifying Issuer must hold a general meeting each year as its annual general meeting;

*Note: Generally not more than 15 months should elapse between the date of one annual general meeting of the Qualifying Issuer and the next.*

- (5) the Qualifying Issuer must give its members reasonable written notice of its general meetings;
- (6) members must have the right to (1) speak at a general meeting; and (2) vote at a general meeting except where a member is required, by these rules, to abstain from voting to approve the matter under consideration;

*Note 1: An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.*

*Note 2: If a Qualifying Issuer is subject to a foreign law or regulation that prevents the restriction of a members' right to speak and vote at general meetings, the company can enter into an undertaking with the Exchange to put in place measures that achieve the same outcome as the rule 19C.07(6) restriction (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction must not be counted towards the resolution).*

- (7) members holding a minority stake in the Qualifying Issuer's total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the of the Qualifying Issuer; and

- (8) ~~HKSCC must be entitled to appoint proxies or corporate representatives to attend the Qualifying Issuer's general meetings and creditors meetings and those proxies/ corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote.~~

~~*Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/corporate representatives enjoying the rights described by rule 19C.07(8), the Qualifying Issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.*~~

~~19C.08 [Repealed [ ]] A Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange's satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in rule 19C.07. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them.~~

~~*Note: An issuer that is subject to rule 19C.08 can refer to the methods used to show equivalent shareholder protection standards specified in jurisdictional guidance published on the Exchange's website and amended from time to time.*~~

~~19C.09 [Repealed [ ]] A Non-Greater China Issuer or a Grandfathered Greater China Issuer must comply with the requirements set out in rule 19C.07 as an ongoing condition of their listing.~~

### **Directors**

19C.09A Rule 3.16 is modified to require that, if an issuer does not have a board of directors, all members of the issuer's equivalent governing body must accept full responsibility, collectively and individually, for the listed issuer's compliance with the Exchange Listing Rules. If the issuer's board of directors or equivalent governing body is not empowered to take collective responsibility, this responsibility must be accepted by all the individuals empowered to do so.

*Note: The governing body of an overseas issuer, in accordance with the laws and regulations of its jurisdiction of incorporation, may have a form other*

than that of a board of directors. In these circumstances, this rule aims to ensure that individual and collective responsibility by relevant persons continues to be taken for compliance with the Exchange Listing Rules.

### **Application Procedures and Requirements**

19C.09B The following modifications apply:—

- (1) for rules 9.09, 9.11(3a), 9.11(3b), 9.11(17b), 9.11(28), 9.11(38) and 9.20(1) the references to “directors” should be read as references to members of the overseas issuer’s governing body;
- (2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 9.11(29)(a) may be signed by two members of the overseas issuer’s governing body or by their agents authorised in writing rather than by or on behalf of every director or proposed director; and
- (3) the declaration and undertaking to be lodged under rule 9.11(38) may require adjustment by virtue of the laws to which the overseas issuer is subject.

### **Listing Documents**

19C.10 ~~An overseas issuer~~Qualifying Issuer must prominently disclose in its listing documents any provisions in its constitutional documents concerning the issuer’s governance that are unusual compared with normal practices in Hong Kong and are specific to the issuer rather than a consequence of the laws and regulations to which the issuer is subject. ~~An overseas issuer~~Qualifying Issuer must also prominently disclose in its listing documents how such provisions affect its members’ rights.

*Note: Examples of such provisions include, but are not limited to, “poison pill” arrangements and provisions setting restrictions on the quorum for board meetings.*

19C.10B Overseas issuers that wish to omit any of the information prescribed for listing documents should consult the Exchange at the earliest possible opportunity. The Exchange may be prepared to permit the omission of information from a listing document with regard to the principles set out in rule 19C.11A.



19C.10C The following modifications and additional requirements apply:—

- (1) where items of information specified in Parts A and B of Appendix 1 are inappropriate or not fully applicable, the item should be adapted so that equivalent information is given;
  - (2) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately. If the issuer's board of directors or equivalent governing body is not empowered to take collective responsibility, the responsibility statement must be signed by all the individuals empowered to do so. The statement of responsibility must be modified according to the appropriate circumstances;
  - (3) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies (Winding Up and Miscellaneous Provisions) Ordinance, where any of such documents are not in the English language, certified English translations thereof must be available for inspection. In particular cases, the Exchange may require additional documents to be offered for inspection. In lieu of offering these documents for inspection, an overseas issuer can instead disclose the website addresses of the relevant statutes and regulations in the listing document on condition that the websites are easily accessible to the public free of charge;
  - (4) overseas issuers that are subject to public reporting and filing obligations in their jurisdictions of incorporation or other establishment (or primary listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be in English, or accompanied by a certified English translation;
- Note: An example is where overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents.*
- (5) the listing document need not be accompanied by a Chinese translation, unless required to do so by section 342(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.; and

- (6) for the purposes of rule 2.11, the overseas issuer must appoint at least one authorised representative who need not be a director or secretary but must be a person acceptable to the Exchange. The authorised representative may also be the person authorised to accept service that is required to be appointed under the provisions of rule 19C.02A(2). The authorised representative should act as the principal channel of communication between the overseas issuer and the Exchange; and
- (7) An overseas issuer must clearly disclose in its listing document:
- (a) a summary of the waivers and exemptions that it has been granted;
  - (b) a summary of the provisions in the laws and regulations in its home jurisdiction and primary market that are different to those required by Hong Kong law regarding:
    - (i) the rights of its holders of its securities and how they can exercise their rights;
    - (ii) directors' powers and investor protection; and
    - (iii) the circumstances under which its minority shareholders may be bought out or may be required to be bought out after a successful takeover or share repurchase;
  - (c) details of withholding tax on distributable entitlements or any other tax that is payable (e.g. capital gains tax, inheritance or gift taxes) and whether Hong Kong investors have any tax reporting obligations; and
  - (d) where an issuer is listing depository receipts, a summary of the terms and conditions in the depository agreement and deed poll.
- (8) An overseas issuer that is a Foreign Private Issuer must prominently disclose in all its listing documents the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer.

### **Accountants' Reports**

19C.10D An accountants' report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard required by the Hong Kong

Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

Note: A list of alternative overseas auditing standards, that are considered comparable to the standards set out in this rule, is published on the Exchange's website, as amended from time to time

19C.10E Accountants' reports are required to conform with financial reporting standards acceptable to the Exchange which will normally be HKFRS or IFRS. Where the Exchange allows a report to be drawn up otherwise than in conformity with HKFRS or IFRS, the Exchange may, having regard to the exchange on which the overseas issuer has its primary listing, require the report to contain a reconciliation statement of the financial effect of the material differences (if any) from either HKFRS or IFRS.

Note 1: The suitability of alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.

Note 2: A list of alternative overseas financial reporting standards, that are considered comparable to HKFRS or IFRS, is published on the Exchange's website, as amended from time to time.

Note 3: An overseas issuer that adopts any alternative standards referred to in Note 2 above for the preparation of its accountants' reports must adopt HKFRS or IFRS if it is no longer listed on the overseas Exchange.

19C.10F As indicated in rules 4.14 to 4.16, where the figures in the report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

### **Exceptions to the Rules for ~~All Qualifying Issuers~~**

19C.11 The following rules do not apply to a ~~Qualifying Issuer~~ an overseas issuer that has, or is seeking, a secondary listing on the Exchange: 3.17; 3.21 to 3.23; 3.25 to 3.27; 3.28; 3.29; 4.06; 4.07; Chapter 7; 8.08 (prescribed percentage of public float only); 8.09(4) (exception limited to issues outside the Exchange's markets); 8.18 (exception limited to issues outside the

Exchange's markets); 9.11(10)(b); 10.05; 10.06(2)(a) to (c); 10.06(2)(e); 10.06(4); 10.06(5); 10.07(1); 10.07(2) to (4); 10.08; 13.11 to 13.22; 13.23(1); 13.23(2); 13.25A; 13.27; 13.28; 13.29; 13.31(1); 13.35; 13.36; 13.37; 13.38; 13.39(1) to (5); 13.39(6) to (7) (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.40 to 13.42; 13.44 to 13.45; 13.47; 13.48(2); 13.49; 13.51(1); 13.51(2) (each new director or member of the ~~Qualifying Issuer's~~ overseas issuer's governing body must sign and lodge with the Exchange, as soon as practicable, a declaration and undertaking in the form set out in Form B of Appendix 5); 13.51B; 13.51C; 13.52(1)(b) to (d); 13.52(1)(e)(i) to (ii); 13.52(1)(e)(iv) (exception limited to issues outside the Exchange's markets); 13.52(2); 13.67; 13.68; 13.74; 13.80 to 13.87 (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.88; 13.89; 13.91; Chapter 14; Chapter 14A; Chapter 15 (exception limited to issues outside the Exchange's markets); Chapter 16 (exception limited to issues outside the Exchange's markets); Chapter 17; ~~49.57~~; Practice Note 4 (exception limited to issues outside the Exchange's markets); Practice Note 15 paragraphs 1 to 3(b) and 3(d) to 5 (exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Exchange's markets and the approval of shareholders of the parent is not required); ~~Appendix 3 paragraphs 1, 2(1), 3, 4(1), 4(2), 4(4), 4(5), 5, 6, 7(1), 7(3), 8, 9, 10, 11, 13(1)~~; Appendix 10; Appendix 14; ~~Appendix 15~~; Appendix 16; Appendix 21 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent); Appendix 22 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent) and Appendix 27.

### **Basis for Waivers, Modifications and Exceptions**

19C.11A The Exchange may exercise its power under rule 2.04 to waive, modify or not require compliance with the Exchange Listing Rules, in individual cases, for overseas issuers with, or seeking a secondary listing under this chapter, on the basis that:

- (1) the issuer is primary listed on a Recognised Stock Exchange and so reliance can be placed upon: (a) the standards of shareholder protection of the regulatory regime to which overseas issuers listed on

that exchange are subject; and (b) the enforcement of those standards by the regulatory authorities of that regime;

- (2) regulatory co-operation arrangements are in place with the SFC as required by rule 8.01A;
- (3) the majority of trading in the issuer's listed shares does not take place on the Exchange on a permanent basis; and

*Note: See note 1 to rule 19C.13 for when the Exchange will regard the majority of trading in an overseas issuer's listed shares as having migrated to the Exchange's markets on a permanent basis.*

- (4) strict compliance with the Exchange Listing Rules would be unduly burdensome.

### **Common Waivers**

19C.11B The Exchange will consider, under rule 2.04, applications for waivers of the following rules from overseas issuers with, or seeking, a listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances including compliance with the prescribed conditions:

- (1) rule 2.07C(4)(a), subject to the conditions that:
  - (a) there is a minimal overlap between Hong Kong market hours and that of the overseas exchange(s) on which the issuer's securities are also traded; and
  - (b) the issuer notifies the Exchange of a pending announcement and the expected time of release (of both English and Chinese versions) at least ten minutes before the release.
- (2) rule 9.09, subject to the conditions that:
  - (a) the core connected person(s) have no influence over the listing process and are not in possession of non-public inside information;

- (b) the issuer promptly releases any inside information to the public in its overseas jurisdiction(s) in accordance with the relevant laws and regulations;
  - (c) it is beyond the issuer's control that the core connected person(s) conduct dealings in the issuer's securities on markets outside the Exchange (e.g. a public investor who may become a substantial shareholder before the issuer lists on the Exchange); and
  - (d) the issuer notifies the Exchange of breaches of the dealing restriction by any of its core connected persons during the restricted period.
- (3) rule 11.06, paragraph 15(2)(c) of Appendix 1A and paragraph 49(2)(c) of Appendix 1E (where applicable), subject to the conditions that:
  - (a) the SFC grants a certificate of exemption from strict compliance with the relevant Companies (Winding Up and Miscellaneous Provisions) Ordinance requirements;
  - (b) the listing document discloses (i) when the final offer price will be determined and how it will be published; and (ii) the issuer's historical share prices, trading liquidity and the determinants of the final offer price;
  - (c) investors will be able to access the latest market price of the issuer's shares; and
  - (d) the maximum offer price is disclosed in the listing document and the application forms.
- (4) rule 13.25B, subject to the issuer meeting one of the following three conditions:
  - (a) it has received a relevant partial exemption from Part XV of the SFO;
  - (b) it publishes a "next day disclosure" in strict compliance with rule 13.25A; or
  - (c) it is subject to overseas laws or a regulations that have a similar effect to Rule 13.25B and any differences are not material to shareholder protection.
- (5) rule 13.55(1), subject to the condition that the issuer is subject to overseas laws and regulations that have a similar effect (i.e. that

circulars are provided to Hong Kong shareholders) and any differences are not material to shareholder protection.

(6) rules 13.71 to 13.73, subject to the condition that the issuer is subject to overseas laws and regulations that have a similar effect (i.e. that notices are provided to Hong Kong shareholders) and any differences are not material to shareholder protection in Hong Kong.

(7) Practice Note 5, paragraphs 41(4) and 45 of Appendix 1A and paragraphs 34 and 38 of Appendix 1B, and paragraphs 41(4) and 45 of Appendix 1E and paragraphs 30 and 34 of Appendix 1F (where applicable), on conditions that:

(a) the SFC grants a certificate of exemption from strict compliance with Part XV of the SFO;

(b) the issuer undertakes to file with the Exchange, as soon as practicable, any declaration of shareholding and securities transactions made to the overseas stock exchange by the directors, executive officers or substantial shareholders under relevant laws;

(c) the following is disclosed in present and future listing documents:

(i) in the same manner as required under the SFO, any such interests that were notified and published by the overseas exchange under the relevant law; and

(ii) the relationship between its directors, officers, members of committees and their relationship to any controlling shareholder.

19C.11C An overseas issuer may apply for waivers from the requirements of other rules that the Exchange will consider in individual cases, based on the general principles set out in rule 19C.11A.

#### **~~Additional Exceptions to the Rules for Certain Qualifying Issuers with a WVR structure~~**

~~19C.12 [Repealed []][Rules 8A.07 to 8A.36, 8A.43 and 8A.44 do not apply to a Non-Greater China Issuer or a Grandfathered Greater China Issuer that has, or is seeking, a secondary listing on the Exchange~~

## Migration of the ~~Bulk~~Majority of Trading to the Exchange's Markets

19C.13 If the majority of trading in a ~~Greater China Issuer's~~ an overseas issuer's listed shares migrates to the Exchange's markets on a permanent basis, the Exchange will regard the issuer as having a dual-primary listing and consequently ~~the exceptions set out in rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable)~~ will no longer apply to the issuer.

*Note 1: The Exchange will regard the majority of trading in a ~~Greater China Issuer's~~ an overseas issuer's listed shares to have migrated to the Exchange's markets on a permanent basis if 55% or more of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depositary receipts issued on those shares) over the issuer's most recent financial year, takes place on the Exchange's markets.*

*Note 2: A ~~Greater China Issuer~~ An overseas issuer to which rule 19C.13 applies will have a grace period of 12 months within which to comply with the applicable Exchange Listing Rules. This grace period will end at midnight on the first anniversary of the date of the Exchange's written notice of its decision that the majority of trading in listed shares has migrated permanently to the Exchange's markets.*

*Note 3: Any continuing transaction of a ~~Greater China Issuer~~ an overseas issuer in place as at the date of the Exchange notice referred to in Note 2 will continue to be exempted from the applicable rules set out in 19C.11 for a period of three years from the date of the Exchange notice referred to in Note 2. However if such transaction is subsequently amended or renewed before the expiry of the three year period, the ~~Greater China Issuer~~ overseas issuer must comply with the relevant requirements under the rules at such time.*

*Note 4: The Exchange may apply all disciplinary measures at its disposal, including a delisting of the issuer's listed shares, if a ~~Greater China Issuer~~ an overseas issuer fails to comply with the requirements of rule 19C.13 within the grace period allowed.*

### De-listing

19C.13A If an overseas issuer's shares or depositary receipts issued on its shares



(as the case may be) cease to be listed on the Recognised Stock Exchange on which it is primary listed, the Exchange will regard the issuer as having a primary listing in Hong Kong and consequently rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply to the issuer.

### **Foreign Private Issuers**

19C.14 ~~A Qualifying Issuer that is a Foreign Private Issuer must prominently disclose in its listing documents the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer. [Repealed [ ]]~~

### **Annual report and accounts and auditors' report**

19C.15 The following modifications and additional requirements apply to Appendix 16 insofar as an issuer is an overseas issuer. To the extent such modifications and additional requirements conflict with the provisions of Appendix 16, the following provisions shall apply.

19C.16 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the International Federation of Accountants and must be either:—

- (1) qualified under the PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or
- (2) an overseas firm of practising accountants that is a Recognized PIE Auditor of that issuer under the FRCO.

*Note: In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an overseas issuer, the Exchange may provide a statement of no objection to that issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 4.03(1)).*

19C.17 The annual accounts must be audited to a standard comparable to that

required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

*Note: A list of alternative overseas auditing standards, that are comparable to the standards set out in this rule, is published on the Exchange's website, as amended from time to time.*

19C.18 The report of the auditors must be annexed to all copies of the annual accounts and indicate whether in the opinion of the auditors the accounts give a true and fair view:—

(1) in the case of the overseas issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the overseas issuer's profit and loss account, of the profit or loss and cash flows for the financial year; and

(2) in the case where consolidated accounts are prepared, of the state of affairs and profit or loss of the overseas issuer and cash flows of the group.

19C.19 The report of the auditors must indicate the act, ordinance or other legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.

19C.20 If the overseas issuer is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, the Exchange may allow its accounts to be drawn up to that standard. Reference must, however, be made to the Exchange. If an overseas issuer is in doubt as to what more detailed and/or additional information should be provided, it should contact the Exchange for guidance.

19C.21 An auditors' report which conforms to the requirements of the International Standards on Auditing issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants is acceptable.

19C.22 An auditors' report in a different form may be applicable in the case of banking and insurance companies. The wording of such an auditors' report should make it clear whether or not profits have been stated before transfers to or from undisclosed reserves.

19C.23 The annual accounts will normally be required to conform with financial reporting standards acceptable to the Exchange, which will normally be

HKFRS or IFRS. Where the Exchange allows annual accounts to be drawn up otherwise than in conformity with HKFRS or IFRS, the annual accounts will be required to conform with financial reporting standards acceptable to the Exchange. In such cases the Exchange will normally require the annual accounts to contain a reconciliation statement of the financial effect of the material differences (if any) from either HKFRS or IFRS.

Note 1: The suitability of alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.

Note 2: A list of alternative overseas financial reporting standards, that are considered comparable to HKFRS or IFRS, is published on the Exchange's website, as amended from time to time.

Note 3: An overseas issuer with a secondary listing that adopts any alternative standards referred to in Note 2 above (other than issuers incorporated in an EU member state which adopted EU-IFRS) for the preparation of its annual accounts must adopt HKFRS or IFRS if it de-lists from the jurisdiction of that alternative standard and must do so for any financial statements that fall due under the Exchange Listing Rules, and are published, after the first anniversary of the date of its de-listing.

### **Company Information Sheet**

19C.24 An overseas issuer with, or seeking, a secondary listing must disclose the information required by rule 19C.10C(7) separately as a Company Information Sheet for publication on the Exchange's website.

Note: The purpose of the Company Information Sheet is to enable investors to easily locate information on the differences between the overseas requirements to which an issuer is subject and Hong Kong requirements.

19C.25 An overseas issuer that is required to publish a Company Information Sheet must update it from time to time to reflect any material change to the

information disclosed within it as soon as practicable after such a change occurs.

### **General**

19C.26 Rules 19.27 and 19.28 also apply to an overseas issuer with, or seeking, a secondary listing under this chapter.

...

## **Appendix 3**

### **Core Shareholder Protection Standards**

An issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in this appendix. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them. An issuer must further monitor its on-going compliance with these standards and notify the Exchange if it becomes unable to comply with any of these after listing. The articles of association or equivalent document must conform with the following provisions and, where necessary, a certified copy of a resolution of the board of directors or other governing body undertaking to comply with the appropriate provisions must be lodged with the Exchange. This appendix does not apply to an issuer which has only debt securities listed.

An issuer must notify the Exchange of any laws or regulations to which it is subject or provisions in its constitutional documents, with regards to matters not covered by these standards or the Exchange Listing Rules, that may be materially detrimental to the interests of shareholders as a whole and the Exchange reserves the right to consider an issuer as unsuitable for listing in such cases.

#### **As regards Transfer and Registration**

1. (1) ~~That transfers and other documents relating to or affecting the title to any registered securities shall be registered and where any fee or fees is/are charged, such fee or fees shall not exceed the maximum fees prescribed by the Exchange from time to time in the Exchange Listing Rules.~~

~~(2) That fully paid shares shall be free from any restriction on the right of transfer (except when permitted by the Exchange) and shall also be free from all lien.~~

~~(3) That where power is taken to limit the number of shareholders in a joint account, such limit shall not prevent the registration of a maximum of four persons.~~

~~As regards Definitive Certificates~~

~~2. (1) That all certificates for capital must be under seal, which may only be affixed with the authority of the directors, or be executed under signature of appropriate officials with statutory authority.~~

~~(2) Where power is taken to issue share warrants to bearer, that no new share warrant shall be issued to replace one that has been lost, unless the issuer is satisfied beyond reasonable doubt that the original has been destroyed.~~

~~As regards Dividends~~

~~3. (1) That any amount paid up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof in a dividend subsequently declared.~~

~~(2) Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend.~~

**As regards Directors**

~~4.(1) That, subject to such exceptions specified in the articles of association as the Exchange may approve, a director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest nor shall he be counted in the quorum present at the meeting. (Note 1)~~

1.(21) That any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.

Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.

- (32) That where not otherwise provided by law, ~~the issuer~~members in general meeting shall have the power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office.

Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.

- ~~(4) That the minimum length of the period, during which notice to the issuer of the intention to propose a person for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least 7 days.~~

- ~~(5) That the period for lodgment of the notices referred to in sub-paragraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election and end no later than 7 days prior to the date of such meeting.~~

#### **As regards Accounts**

- ~~5. That a copy of either (i) the directors' report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account, or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.~~

#### **As regards Rights**

~~6. (1) That adequate voting rights will, in appropriate circumstances, be secured to preference shareholders.~~

~~(2) That the quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one third of the issued shares of the class.~~

#### **~~As regards Notices~~**

~~7. (1) That where power is taken to give notice by advertisement such advertisement may be published in the newspapers.~~

~~(2) That an overseas issuer whose primary listing is or is to be on the Exchange shall give notice sufficient to enable members, whose registered addresses are in Hong Kong, to exercise their rights or comply with the terms of the notice. If the overseas issuer's primary listing is on another stock exchange, the Exchange will normally be satisfied with an undertaking by the issuer to do so and will not normally request the issuer to change its articles to comply with this paragraph where it would be unreasonable to do so.~~

~~(3) That there is no prohibition on the giving of notice to members whose registered address is outside Hong Kong.~~

#### **~~As regards Redeemable Shares~~**

~~8. That, where the issuer has the power to purchase for redemption a redeemable share:—~~

~~(1) purchases not made through the market or by tender shall be limited to a maximum price; and~~

~~(2) if purchases are by tender, tenders shall be available to all shareholders alike.~~

#### **~~As regards Capital Structure~~**

~~9. That the structure of the share capital of the issuer be stated and where such capital consists of more than one class of share it must also be stated how the~~

~~various classes shall rank for any distribution by way of dividend or otherwise.~~

**~~As regards Non-Voting or Restricted Voting Shares~~**

~~10. (1) That where the capital of the issuer includes shares which do not carry voting rights, the words "non-voting" must appear in the designation of such shares.~~

~~(2) That, where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting".~~

**~~As regards Proxies~~**

~~11. (1) That where provision is made in the articles as to the form of proxy, this must be so worded as not to preclude the use of the two-way form.~~

~~(2) That a corporation may execute a form of proxy under the hand of a duly authorised officer.~~

**~~As regards disclosure of interests~~**

~~12. No powers shall be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person or persons who are interested directly or indirectly therein have failed to disclose their interests to the company.~~

**~~As regards untraceable members~~**

~~13. (1) That where power is taken to cease sending dividend warrants by post, if such warrants have been left uncashed, it will not be exercised until such warrants have been so left uncashed on two consecutive occasions. However, such power may be exercised after the first occasion on which such a warrant is returned undelivered.~~

~~(2) That where power is taken to sell the shares of a member who is untraceable~~



it will not be exercised unless:—

(a) ~~during a period of 12 years at least three dividends in respect of the shares in question have become payable and no dividend during that period has been claimed; and~~

(b) ~~on expiry of the 12 years the issuer gives notice of its intention to sell the shares by way of an advertisement published in the newspapers and notifies the Exchange of such intention.~~

**As regards voting As regards Proceedings at General Meetings**

142.(1) That an issuer must hold a general meeting for each financial year as its annual general meeting.

Note: Generally, an issuer must hold its annual general meeting within six months after the end of its financial year.

(2) That an issuer must give its members reasonable written notice of its general meetings.

Note: “Reasonable written notice” normally means at least 21 days for an annual general meeting and at least 14 days for other general meetings. This is unless it can be demonstrated that reasonable written notice can be given in less time.

(3) That members must have the right to (a) speak at a general meeting; and (b) vote at a general meeting except where a member is required, by these Exchange Listing Rules, to abstain from voting to approve the matter under consideration.

Notes 1. An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.

2. If an issuer is subject to a foreign law or regulation that prevents the restriction of a member’s right to speak and/or vote at general meetings, the issuer can enter into an

undertaking with the Exchange to put in place measures that achieve the same outcome as the restriction under this paragraph (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction must not be counted towards the resolution).

- (4) That, where any shareholder is, under these Exchange Listing Rules, required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.
- (5) That members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the issuer.

#### **As regards Variation of Rights**

3. That a super-majority vote of the issuer's members of the class to which the rights are attached shall be required to approve a change to those rights.

Notes 1. A "super-majority vote" means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a "super-majority vote" is deemed to be achieved.

2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the voting rights of the members who are present at the classified

members' meeting and have voting rights to amend class rights as satisfying the threshold of a "super-majority".

#### **As regards amendment of constitutional documents**

4. That a super-majority vote of the issuer's members in a general meeting shall be required to approve changes to an issuer's constitutional documents, however framed.

Notes

1. A "super-majority vote" means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a "super-majority vote" is deemed to be achieved.

2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a "super-majority".

#### **As regards appointment of auditors**

5. That the appointment, removal and remuneration of auditors must be approved by a majority of the issuer's members or other body that is independent of the board of directors.

Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.

#### **As regards proxies and corporate representatives**

6. That every member shall be entitled to appoint a proxy who need not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend and vote at any general meeting

of the issuer and, where a corporation is so represented, it shall be treated as being present at any meeting in person. A corporation may execute a form of proxy under the hand of a duly authorised officer.

#### **As regards HKSCC's right to appoint proxies or corporate representatives**

7. That HKSCC must be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors meetings and those proxies/corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote.

*Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/ corporate representatives enjoying the rights described by this paragraph, the issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the right to vote, attend (personally or by proxy) and speak at general meetings.*

#### **As regards inspection of branch register**

8. That the branch register of members in Hong Kong shall be open for inspection by members but the company may be permitted to close the register on terms comparable to section 632 of the Companies Ordinance.

#### **As regards voluntary winding up**

9. A super-majority vote of the issuer's members in a general meeting shall be required to approve a voluntary winding up of an issuer.

*Notes 1. A "super-majority vote" means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a "super-majority vote" is deemed to be achieved.*

2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a "super-majority".

~~Note 1 — Articles of Association will be acceptable to the Exchange if they provide exceptions from the requirements of paragraph 4(1) of this Appendix in respect of the following matters:—~~

~~(1) the giving of any security or indemnity either:—~~

~~(a) to the director or his close associate(s) in respect of money lent or obligations incurred or undertaken by him or any of them at the request of or for the benefit of the issuer or any of its subsidiaries;~~  
~~or~~

~~(c) to a third party in respect of a debt or obligation of the issuer or any of its subsidiaries for which the director or his close associate(s) has himself/ themselves assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;~~

~~(2) any proposal concerning an offer of shares or debentures or other securities of or by the issuer or any other company which the issuer may promote or be interested in for subscription or purchase where the director or his close associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;~~

~~(3) any proposal concerning any other company in which the director or his close associate(s) is/are interested only, whether directly or indirectly, as an officer or executive or shareholder or in which the director or his close associate(s) is/are beneficially interested in shares of that company, provided that the director and any of his close associates are not in aggregate beneficially interested in 5% or more of the issued shares of any class of such company (or of any third company through~~

~~which his interest or that of his close associates is derived) or of the voting rights;~~

~~(4) any proposal or arrangement concerning the benefit of employees of the issuer or its subsidiaries including:—~~

~~(a) the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which the director or his close associate(s) may benefit; or~~

~~(b) the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme which relates both to directors, his close associates and employees of the issuer or any of its subsidiaries and does not provide in respect of any director, or his close associate(s), as such any privilege or advantage not generally accorded to the class of persons to which such scheme or fund relates; and~~

~~(5) any contract or arrangement in which the director or his close associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the issuer by virtue only of his/their interest in shares or debentures or other securities of the issuer.~~

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## Appendix 8

### Listing Fees, Transaction Levies on New Issues and Brokerage

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#### 5. Commission's Transaction Levy on New Issues

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#### 8. Commission's Transaction Levy on Offers for Sale

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#### 11. Secondary Listings

In the case of an overseas issuer, whose primary listing is ~~or is to be~~ on another stock exchange, the fees payable shall be as follows:—

...

### **11A. Annual PIE levy**

- (1) With effect from 1 January 2022, an annual PIE levy shall be payable by a PIE to the Exchange.
- (2) The annual PIE levy so collected by the Exchange shall be paid to the FRC in accordance with section 50B of the Financial Reporting Council Ordinance.
- (3) The annual PIE levy shall be calculated by applying the percentage rate as specified from time to time in section 2 of Schedule 7 to the Financial Reporting Council Ordinance to:
  - (a) in case of a listed issuer of equity securities (other than warrants, units in a unit trust, redeemable shares in a mutual fund, or securities issued by an open-ended investment company or collective investment scheme), the annual listing fee payable under paragraph 2(1)(a) above for the relevant calendar year;
  - (b) in the case of an overseas issuer whose primary listing is on another stock exchange, the annual listing fee payable under paragraph 11(2) above for relevant calendar year; or
  - (c) in the case of unit trusts, mutual funds, open-ended investment companies and other collective investment schemes, the annual listing fee listed in paragraph 3 above for relevant calendar year.
- (4) The annual PIE levy shall be payable in advance in one instalment. The PIE levy shall be payable within 7 days of receiving a debit note or, in any event if earlier, before dealings in the relevant securities commence. Annual PIE levies shall not be refundable. Regardless of the day of the month on which the securities are listed, the annual PIE levy will be calculated from the first day of that month and pro rata payment in respect of that month is not permitted.
- (5) The annual PIE levy for a calendar year, as calculated in accordance with paragraph 11A(3) above, is not to be adjusted even if the annual listing fee payable by the PIE to the Exchange for the relevant year is subsequently adjusted under the Listing Rules.

### **11B. FRC Transaction Levy**

- (1) With effect from 1 January 2022, a FRC transaction levy shall be payable by an issuer to the Exchange on each:
  - (a) Qualifying Transaction (as defined in paragraph 5 above); and
  - (b) purchase and sale of listed securities made under an offer for sale as described in paragraph 8 above.

- (2) The FRC transaction levy so collected by the Exchange shall be paid to the FRC in accordance with section 50A of the Financial Reporting Council Ordinance.
- (3) The FRC transaction levy shall be calculated (rounded to the nearest cent) by applying the percentage rate as specified from time to time in section 1 of Schedule 7 to the Financial Reporting Council Ordinance to the total consideration payable to the issuer/substantial shareholder by a subscriber/purchaser for each security under the relevant transaction referred to in paragraph 11B(1) above.
- (4) The FRC transaction levy paid shall be paid to the Exchange by the issuer at the same time the transaction levy payable under paragraph 5 or paragraph 8 above (as the case may be) is paid to the Exchange, in the manner and within the time frame determined by the Exchange from time to time.
- (5) FRC transaction levies are not refundable.

## 12. General

All fees or charges payable to the Exchange under this Appendix shall be net of all taxes, levies and duties. The Exchange reserves the right to revise any of the fees or charges prescribed above at any time, subject to the approval of the Commission pursuant to section 76 and section 24 of the Securities and Futures Ordinance. The Exchange may also at its sole discretion in any specific case reduce or waive the fees or charges prescribed above, except for (a) the transaction levy on Qualifying Transactions in respect of which any reduction or waiver must be approved in writing by the Commission; or (b) the levies payable to the Exchange under paragraphs 11A and 11B above in respect of which any reduction must be approved in writing by the FRC.

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## Appendix 13

### ADDITIONAL REQUIREMENTS IN RESPECT OF CERTAIN JURISDICTIONS

#### PART A

#### BERMUDA

**THIS APPENDIX HAS BEEN REPEALED**

[Repealed on [\*]]

~~Section 1. Additional requirements for memorandum and bye-laws~~

~~Section 2. Modifications and additional requirement~~



## Section 1

### **~~ADDITIONAL REQUIREMENTS FOR THE MEMORANDUM AND BYE-LAWS OF ISSUERS INCORPORATED OR OTHERWISE ESTABLISHED IN BERMUDA~~**

~~In addition to the provisions of Appendix 3, the bye-laws of issuers incorporated or otherwise established in Bermuda whose primary listing is or is to be on the Exchange must conform with the following provisions:—~~

#### **~~1. As regards the memorandum and bye-laws~~**

~~The memorandum and bye-laws must stipulate that they may not be changed without a special resolution, and the bye-laws shall define “special resolution” to mean a resolution passed by members holding three-fourths of the voting rights of those present and voting in person or by proxy at a meeting of members.~~

#### **~~2. As regards share capital~~**

~~(1) The bye-laws shall stipulate that for the purposes of Section 47 of the Companies Act 1981 of Bermuda the specified proportion of the holders of shares of a particular class required to sanction a resolution passed at a separate meeting of those holders to approve a variation of class rights shall be members holding three-fourths of the voting rights of that class present and voting in person or by proxy at such meeting.~~

~~(2) Where the issuer is permitted by Bermudian law so to do, the bye-laws shall provide that a proxy need not be a member of the issuer.~~

#### **~~3. As regards shareholders~~**

~~The bye-laws shall stipulate that any annual general meeting must be called by notice of at least 21 days, and that any other general meeting (including an extraordinary general meeting) must be called by notice of at least 14 days.~~

~~*Note: The bye-laws may provide that issuers may convene a general meeting on shorter notice than required under this provision or the companies’ bye-laws if it is agreed:*~~

- ~~(a) *in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and*~~

- (b) ~~in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.~~

#### **~~4. As to accounts~~**

- ~~(1) The bye-laws shall require the issuer to keep proper books of account necessary to give a true and fair view of the issuer's affairs.~~
- ~~(2) The bye-laws shall provide that accounts shall be laid before members at the annual general meeting which must be held in each year; not more than 15 months (or such longer period as the Exchange may authorise) may elapse between the date of one annual general meeting and the next.~~

#### **~~5. As to directors~~**

~~The bye-laws shall stipulate that the issuer in general meeting must approve the payment to any director or past director of any sum by way of compensation for loss of office or as consideration for or in connection with his retirement from office (not being a payment to which the director is contractually entitled).~~

#### **~~6. As to corporate representatives~~**

~~The bye-laws shall provide that if a recognised clearing house within the meaning of Part 1 of Schedule 1 to the Securities and Futures Ordinance is a member of the company it may authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the company or at any meeting of any class of members of the company provided that, if more than one person is so authorised, the authorisation shall specify the number and class of shares in respect of which each such person is so authorised. A person authorised pursuant to this provision shall be entitled to exercise the same powers on behalf of the recognised clearing house (or its nominee) which he represents as that clearing house (or its nominee) could exercise if it were an individual shareholder of the company.~~

## Section 2

### MODIFICATIONS AND ADDITIONAL REQUIREMENTS

~~(see rules 19.05(6)(a)(ii), 19.08(4) and 19.10(2), (3) and (5)(a))~~

- ~~1. In the case of an introduction in the circumstances set out in rule 7.14(3):—~~
  - ~~(1) the summary of the provisions of the constitutive documents of the overseas issuer, which is required by rule 19.10(2);~~
  - ~~(2) the summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, which is required by rule 19.10(3); and~~
  - ~~(3) the comparison between those constitutive documents and the listed Hong Kong issuer's existing articles of association, which is required by rule 19.10(5)(a);~~
  - ~~(4) may be offered for inspection rather than set out in the listing document.~~
  
- ~~2. In such cases the details of the articles of association or equivalent document required to be set out in the listing document by paragraph 7 of Part A of Appendix 1 may be limited to a summary of the changes, if any, between the Hong Kong issuer's articles of association and the overseas issuer's proposed constitutive documents, in respect of each of the areas set out in that paragraph, provided that the summary also includes details of any differences or additional provisions in the proposed new constitutive documents which confer on directors of the overseas issuer any special powers, the exercise of which would affect the rights or interests of the shareholders.~~
  
- ~~3. The summary and, where relevant, comparison of the constitutive documents required by rules 19.10(2) and 19.10(5)(a), must be set out under the following headings and where any item is not applicable the words "not applicable" should be inserted under the relevant heading:—~~
  - ~~(1) directors~~
    - ~~(a) power to allot and issue shares~~
      - ~~(i) summary~~
      - ~~(ii) differences~~

~~(b) power to dispose of the overseas issuer's or any of its subsidiaries' assets~~

~~(i) summary~~

~~(ii) differences~~

~~(c) compensation or payments for loss of office~~

~~(i) summary~~

~~(ii) differences~~

~~(d) loans to directors~~

~~(i) summary~~

~~(ii) differences~~

~~(e) giving of financial assistance to purchase the overseas issuer's or any of its subsidiaries' shares~~

~~(i) summary~~

~~(ii) differences~~

~~(f) disclosure of interests in contracts with the overseas issuer or any of its subsidiaries~~

~~(i) summary~~

~~(ii) differences~~

~~(g) remuneration~~

~~(i) summary~~

~~(ii) differences~~

~~(h) retirement, appointment, removal~~

~~(i) summary~~

~~(ii) differences~~

~~(i) borrowing powers~~

~~(i) summary~~

~~(ii) differences~~

~~(2) alterations to constitutional documents~~

~~(i) summary~~

~~(ii) differences~~

- ~~(3) variation of rights of existing shares or classes of shares
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(4) special resolutions — majority required
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(5) voting rights (generally and on a poll)
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(6) requirements for annual general meetings
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(7) accounts and audit
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(8) notice of meetings and business to be conducted thereat
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(9) transfer of shares
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(10) power of overseas issuer to purchase its own shares
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(11) power for any subsidiary of the overseas issuer to own shares in its parent
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(12) dividends and other methods of distribution
  - ~~(i) summary~~
  - ~~(ii) differences~~~~
  
- ~~(13) proxies~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(14) calls on shares and forfeiture of shares~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(15) inspection of register of members~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(16) quorum for meetings and separate class meetings~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(17) rights of the minorities in relation to fraud or oppression thereof~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(18) procedures on liquidation~~

- ~~(i) summary~~
- ~~(ii) differences~~

~~(19) any other provisions material to the overseas issuer or the shareholders thereof.~~

~~4. [Repealed 2 November 2009]~~

**~~Additional Documents on Display~~**

~~5. The requirements of Chapter 19 and this Appendix mean that in the case of an introduction in the circumstances set out in rule 7.14(3) the following additional documents must be offered for inspection:—~~

- ~~(1) a summary of the relevant regulatory provisions (statutory or otherwise) of the country where the overseas issuer is incorporated or otherwise established together with a copy of all relevant statutes and/or regulations;~~

- ~~(2) a summary of the provisions of the proposed new constitutive documents of the overseas issuer and a comparison between the overseas issuer's constitutive documents and the constitutive documents of the listed Hong Kong issuer or issuers whose securities have been exchanged; and~~
- ~~(3) copies of the full valuation report in respect of any property valuations which are only summarised in the listing document (see rule 19.10(5)(e)).~~

...

## **Appendix 13**

### **PART B**

#### **THE CAYMAN ISLANDS**

#### **THIS APPENDIX HAS BEEN REPEALED**

[Repealed on [\*]]

~~Section 1. Additional requirements for memorandum and articles of association~~

~~Section 2. Modifications and additional requirements~~

## Section 1

### ~~ADDITIONAL REQUIREMENTS FOR THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF ISSUERS INCORPORATED OR OTHERWISE ESTABLISHED IN THE CAYMAN ISLANDS~~

~~In addition to the provisions of Appendix 3, the articles of association of issuers incorporated or otherwise established in the Cayman Islands whose primary listing is or is to be on the Exchange must conform with the following provisions:—~~

#### ~~1. As regards the memorandum and articles of association~~

~~To the extent that the same is permissible under Cayman Islands law, the memorandum and articles of association must stipulate that they may not be changed without a special resolution, and the articles of association shall define “special resolution” to mean a resolution passed by members holding three-fourths of the voting rights of those present and voting in person or by proxy at a meeting of members.~~

#### ~~2. As regards share capital~~

~~(1) The articles of association shall stipulate that if at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied only with the consent in writing of the holders of three-fourths in nominal value of the issued shares of the class in question or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of that class by members holding shares representing three-fourths in nominal value of the shares present in person or by proxy and voting at such meeting. The articles of association shall provide that to every such separate general meeting the provisions of the articles of association relating to general meetings shall mutatis mutandis apply, but the articles of association may vary the quorum provisions relevant to any such meeting.~~

~~(2) The articles of association shall provide that every member shall be entitled to appoint a proxy who need not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend any general meeting of the issuer and,~~



where a corporation is so represented, it shall be treated as being present at any meeting in person.

~~(3) [Repealed 1 January 2009]~~

### ~~3. As regards shareholders~~

~~(1) The articles of association shall stipulate that any annual general meeting must be called by notice of at least 21 days, and that any other general meeting (including an extraordinary general meeting) must be called by notice of at least 14 days. The articles of association shall stipulate that the notice convening a meeting shall contain particulars of the resolutions to be considered at that meeting.~~

~~*Note: The articles of association may provide that issuers may convene a general meeting on shorter notice than required under this provision or the companies' articles of association if it is agreed:*~~

~~(a) in the case of an annual general meeting, by all the members entitled to attend and vote at the meeting; and~~

~~(b) in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.~~

~~(2) The articles of association shall provide for the branch register of members in Hong Kong to be open for inspection by members but may permit the company to close the register in terms equivalent to section 632 of the Companies Ordinance.~~

~~(3) The articles of association shall require an annual general meeting to be held in each year and shall provide that the audited accounts shall be sent to members at the same time as the notice of annual general meeting.~~

### ~~4. As to accounts~~

~~(1) The articles of association shall require the issuer to keep proper books of account necessary to give a true and fair view of the issuer's affairs.~~

~~(2) The articles of association shall provide that accounts shall be audited and shall be laid before members at the annual general meeting which must be held in each year; not more than 15 months (or such longer period as the Exchange may authorise) may elapse between the date of one annual general meeting and the next.~~

#### **5. As to directors**

~~(1) The articles of association shall provide that directors may be removed at any time by ordinary resolution of the members.~~

~~(2) The articles of association shall restrict the making of loans to directors and their close associates and shall import provisions at least equivalent to the provisions of Hong Kong law prevailing at the time of the adoption of the articles of association.~~

~~(3) The articles of association shall contain provisions requiring the directors to declare their material interests in any contracts with the issuer at the earliest meeting of the board of directors of the issuer at which it is practicable for them to do so either specifically or by way of a general notice stating that, by reason of facts specified in the notice, they are to be regarded as interested in any contracts of a specified description which may subsequently be made by the issuer.~~

~~(4) The articles of association shall stipulate that the issuer in general meeting must approve the payment to any director or past director of any sum by way of compensation for loss of office or as consideration or in connection with his retirement from office (not being a payment to which the director is contractually entitled).~~

#### **6. As to corporate representatives**

~~The articles of association shall provide that if a recognised clearing house within the meaning of Part 1 of Schedule 1 to the Securities and Futures Ordinance is a member of the company it may authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the company or at any meeting of any class of members of the company provided that, if more than one person is so authorised, the authorisation shall specify the number and class of shares in respect of which each such person is so authorised. A person authorised pursuant to this provision shall be entitled to~~

~~exercise the same powers on behalf of the recognised clearing house (or its nominee) which he represents as that clearing house (or its nominee) could exercise if it were an individual shareholder of the company.~~

## **Section 2**

### **MODIFICATIONS AND ADDITIONAL REQUIREMENTS**

~~(see rules 19.05(6)(a)(ii), 19.08(4) and 19.10(2), (3) and (5)(a))~~

- ~~1. In the case of an introduction in the circumstances set out in rule 7.14(3):—
  - ~~(1) the summary of the provisions of the constitutive documents of the overseas issuer, which is required by rule 19.10(2);~~
  - ~~(2) the summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, which is required by rule 19.10(3); and~~
  - ~~(3) the comparison between those constitutive documents and the listed Hong Kong issuer's existing articles of association, which is required by rule 19.10(5)(a), may be offered for inspection rather than set out in the listing document.~~~~
- ~~2. In such cases the details of the articles of association or equivalent document required to be set out in the listing document by paragraph 7 of Part A of Appendix 1 may be limited to a summary of the changes, if any, between the Hong Kong issuer's articles of association and the overseas issuer's proposed constitutive documents, in respect of each of the areas set out in that paragraph, provided that the summary also includes details of any differences or additional provisions in the proposed new constitutive documents which confer on directors of the overseas issuer any special powers, the exercise of which would affect the rights or interests of the shareholders.~~
- ~~3. The summary and, where relevant, comparison of the constitutive documents required by rules 19.10(2) and 19.10(5)(a), must be set out under the following headings and where any item is not applicable the words "not applicable" should be inserted under the relevant heading:—
  - ~~(1) directors
    - ~~(a) power to allot and issue shares
      - ~~(i) summary~~~~~~~~

- ~~(ii) differences~~
  
- ~~(b) power to dispose of the overseas issuer's or any of its subsidiaries' assets~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(c) compensation or payments for loss of office~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(d) loans to directors~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(e) giving of financial assistance to purchase the overseas issuer's or any of its subsidiaries' shares~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(f) disclosure of interests in contracts with the overseas issuer or any of its subsidiaries~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(g) remuneration~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(h) retirement, appointment, removal~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(i) borrowing powers~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(2) alterations to constitutional documents~~
  - ~~(i) summary~~
  - ~~(ii) differences~~
  
- ~~(3) variation of rights of existing shares or classes of shares~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(4) — special resolutions — majority required~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(5) — voting rights (generally and on a poll)~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(6) — requirements for annual general meetings~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(7) — accounts and audit~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(8) — notice of meetings and business to be conducted thereat~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(9) — transfer of shares~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(10) — power of overseas issuer to purchase its own shares~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(11) — power for any subsidiary of the overseas issuer to own shares in its parent~~

- ~~(i) — summary~~
- ~~(ii) — differences~~

~~(12) — dividends and other methods of distribution~~

- ~~(i) — summary~~

~~(ii) — differences~~

~~(13) proxies~~

~~(i) — summary~~

~~(ii) differences~~

~~(14) calls on shares and forfeiture of shares~~

~~(i) — summary~~

~~(ii) — differences~~

~~(15) inspection of register of members~~

~~(i) — summary~~

~~(ii) — differences~~

~~(16) quorum for meetings and separate class meetings~~

~~(i) — summary~~

~~(ii) — differences~~

~~(17) rights of the minorities in relation to fraud or oppression thereof~~

~~(i) — summary~~

~~(ii) — differences~~

~~(18) procedures on liquidation~~

~~(i) — summary~~

~~(ii) — differences~~

~~(19) any other provisions material to the overseas issuer or the shareholders thereof.~~

4. — [Repealed 2 November 2009]

#### **Additional Documents on Display**

5. — The requirements of Chapter 19 and this Appendix mean that in the case of an introduction in the circumstances set out in rule 7.14(3) the following additional documents must be offered for inspection: —

- ~~(1) a summary of the relevant regulatory provisions (statutory or otherwise) of the country where the overseas issuer is incorporated or otherwise established together with a copy of all relevant statutes and/or regulations;~~
- ~~(2) a summary of the provisions of the proposed new constitutive documents of the overseas issuer and a comparison between the overseas issuer's constitutive documents and the constitutive documents of the listed Hong Kong issuer or issuers whose securities have been exchanged; and~~
- ~~(3) copies of the full valuation report in respect of any property valuations which are only summarised in the listing document (see rule 19.10(5)(e)).~~

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## Appendix 14

### CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT

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#### A.4 Appointments, re-election and removal

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##### Code Provisions

- A.4.2 ~~All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.~~

...

- E.1.3 ~~The issuer should arrange for the notice to shareholders to be sent for annual general meetings at least 20 clear business days before the meeting and to be sent at least 10 clear business days for all other general meetings.~~  
[Repealed [\*]]

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## Appendix 16

### DISCLOSURE OF FINANCIAL INFORMATION

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#### Requirement for all Financial Statements

2. Each set of financial statements presented in an annual report, listing document or circular shall provide a true and fair view of the state of affairs of the listed issuer and of the results of its operations and its cashflows.
  - 2.1 *Annual financial statements of a listed issuer are required, subject to Notes 2.4 and*  
*2.6, to conform with:—*
    - (a) *Hong Kong Financial Reporting Standards (HKFRS); or*
    - (b) *International Financial Reporting Standards (IFRS); or*
    - (c) *China Accounting Standards for Business Enterprises (CASBE) in the case of a PRC issuer that has adopted CASBE for the preparation of its annual financial statements.*
  - 2.2 *An issuer must apply one of the bodies of standards referred to in Note 2.1 consistently and shall not normally change from one body of standards to the other unless there are reasonable grounds to justify such a change. All reasons for any such change must be disclosed in the annual financial statements.*
  - 2.3 *[Repealed 15 December 2010]*
  - 2.4 ~~*An overseas issuer, which has a secondary listing on the Exchange, may prepare annual financial statements drawn up in conformity with Generally Accepted Accounting Principles in the United States of America (US GAAP).*~~  
[Repealed [ ]]



2.5 *If an accounting estimate reported in prior interim period of the current financial year is changed during the subsequent interim period of the same financial year and has a material effect in that subsequent interim period, the nature and amount of a change in an accounting estimate that has a material effect in the current financial year or which is expected to have a material effect in subsequent periods should be disclosed. If it is impracticable to quantify the amount, this fact should be disclosed.*

2.6 ~~*Where the Exchange, in exceptional circumstances, allows*~~ *The Exchange may allow the annual financial statements of an overseas issuer to be drawn up otherwise than in conformity with accounting standards referred to in Note 2.1, the Exchange will normally require the annual financial statements to contain a statement of the financial effect of the material differences (if any) from either HKFRS or IFRS referred to in Note 2.1 above. see the requirements set out in rules 19.14, 19.25A, 19C.10E and 19C.23.*

...

2A. Where the preparation of an auditors' report or accountants' report constitutes a PIE Engagement under the FRCO, the issuer must appoint a firm of practising accountants which is a PIE Auditor under the FRCO.

*Note: Qualification requirements for auditors and reporting accountants in the case of overseas issuers and PRC issuers are set out in rules 4.03, 19.20, 19C.16, 19A.08 and 19A.31.*

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# SCHEDULE E DRAFT GUIDANCE LETTERS FOR OVERSEAS ISSUERS

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## HKEX GUIDANCE LETTER

HKEX-GL[•]-[21] ([•] [2021])

<b>Subject</b>	<b>Guidance for Overseas Issuers</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Rule Chapters 19, 19B and 19C GEM Rule Chapter 24</b>
<b>Related Publications</b>	<ul style="list-style-type: none"><li>• <b>HKEX-GL39-12 - Hong Kong Depositary Receipts (“DR”) – Pre-Release and Pre-Cancellation</b></li><li>• <b>HKEX-GL53-13 - Liquidity arrangements for issuers seeking to list by introduction where the securities to be listed are already listed on another stock exchange</b></li><li>• <b>Country Guides</b></li></ul>
<b>Author</b>	<b>IPO Vetting Department</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules or this letter.*

### **I. Purpose**

1. This letter sets out guidance for Overseas Issuers<sup>1</sup> contemplating a listing on the Exchange.
2. Our guidance in this paper is divided into the following sections:
  - A. General
  - B. Core Shareholder Protection Standards
  - C. Eligibility of Securities and Admission of Securities into CCASS
  - D. Cross-border Clearing and Settlement

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<sup>1</sup> “Overseas Issuers” has the same meaning as defined in Chapter 1 of the Main Board Listing Rules and GEM Listing Rules.

- E. HDRs
  - F. Financial Reporting Standards and Auditing Standards
  - G. Taxation
  - H. “Domestic Issuers” under Regulation S, the United States Securities Act of 1933
  - I. Stock Name Identification
3. Overseas Issuers may also refer to the [“Listing of Overseas Companies”](#) webpage on the Exchange’s website for further information.

## II. Guidance

### A. General

4. Overseas Issuers may face practical or operational difficulties complying with the Listing Rules or The Codes on Takeovers and Mergers and Share Buy-backs (the “**Takeovers Code**”) where there is a potential conflict between the laws and regulations of its home jurisdiction and the Listing Rules or Takeovers Code.
5. Below are some examples of foreign laws and regulations that may cause compliance difficulties with the Listing Rules or Takeovers Code:
- (a) those that prohibit a company from restraining or restricting its shareholders from voting on any particular resolution, including shareholders with a material interest in the transaction or arrangement being voted upon;
  - (b) those that require a management or supervisory body of a company to approve matters that under the Listing Rules require shareholders’ approval;
  - (c) those that require a company to employ a board of statutory auditors, instead of establishing a board committee to oversee accountability and audit related matters. A board of statutory auditors may play a similar role to audit committees under the Listing Rules and may have broader oversight responsibilities and greater independence; and
  - (d) those that do not recognise a nominee company holding securities on behalf of third parties, such as the HKSCC Nominees Limited (“**HKSCCN**”) that holds listed securities on behalf of Central Clearing and Settlement System (“**CCASS**”) participants.
6. We allow an Overseas Issuer to use a variety of methods to comply with the Listing Rules and the Takeovers Code, including providing undertakings to the Exchange to put in place a shareholder protection

measure or by demonstrating it has adopted internal compliance measures that achieve the same outcome.

7. Companies are strongly encouraged to consult the Exchange and the Takeovers Executives<sup>2</sup> (where applicable) at the earliest opportunity.

## **B. Core Shareholder Protection Standards**

8. Appendices 3 to the Main Board Listing Rules and GEM Listing Rules require that an issuer demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination (“**Domestic Standards**”), provide the shareholder protection standards set out in those appendices (“**Core Shareholder Protection Standards**”). For this purpose, the Exchange may require an Overseas Issuer to amend its constitutional documents to provide the Core Shareholder Protection Standards. **Appendix II** is a list of jurisdictions other than Hong Kong and the PRC that have been accepted as the places of incorporation for issuers seeking to list in Hong Kong (subject to conditions set out in the relevant Country Guides, where applicable).
9. An Overseas Issuer incorporated in a jurisdiction that is new to listing on the Exchange should complete the form set out in the Exchange’s website (see **Appendix I** which will be replaced with a link to the Exchange’s website) and submit it to the Exchange.
10. An Overseas Issuer may only submit its listing application after the Exchange and the SFC have confirmed they have no further comment on the level of shareholder protection standards in its jurisdiction of incorporation, subject to measures to address any differences between the Domestic Standards and the Core Shareholder Protection Standards.
11. Prior to 2021, the Exchange had published Country Guides on various jurisdictions to provide specific guidance for Overseas Issuers incorporated in those jurisdictions on the relevant comparison between the Domestic Standards and the Core Shareholder Protection Standards, as well as the Exchange’s expectations, practices, procedures and the criteria it considers when applying the Listing Rules to Overseas Issuers incorporated in such jurisdictions. Since 2021, guidance may be issued on a case-by-case basis if there are novel issues relating to the listing of shares of companies incorporated in a new jurisdiction. Please refer to **Appendix II** for links to the respective Country Guides or guidance.
12. In the absence of any Core Shareholder Protection Standard or Listing Rule covering a particular matter, reliance will be placed on the combination of the overseas laws and regulations to which the Overseas Issuers are subject and their constitutional documents. Accordingly, a new applicant should notify the Exchange of any laws or regulations to

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<sup>2</sup> The Takeovers Executive refers to the Executive Director of the Corporate Finance Division or any delegate of the Executive Director of the Securities and Futures Commission (“**SFC**”).

which it is subject or provisions in its constitutional documents, with regards to matters not covered by the Core Shareholder Protection Standards or the Listing Rules that may be materially detrimental to the interests of shareholders as a whole. The Exchange reserves the right to consider an issuer to be unsuitable for listing in such cases.

13. Listed Overseas Issuers should monitor their on-going compliance with the Core Shareholder Protection Standards. They must, at the earliest opportunity, inform the Exchange of any material changes in the local laws, rules or regulations which may affect their compliance with the Core Shareholder Protection Standards and other Listing Rules. Where applicable, the Exchange will make necessary updates to the Country Guide or guidance on the relevant jurisdictions.
14. Each Overseas Issuer applying to list in Hong Kong, regardless of whether its jurisdiction of incorporation is new to listing on the Exchange, is also required to:
  - (a) provide relevant and adequate disclosure in its listing document on the major differences between Domestic Standards and the Core Shareholder Protection Standards and details of any measures that have been or will be put in place to address the differences;
  - (b) upon submission of its listing application, (i) confirm to the Exchange that the relevant laws, regulations and market practices contained in the Country Guide or relevant guidance (if any) are still applicable and if not, provide details of any relevant changes; and (ii) inform the Exchange of any other local laws, regulations and market practices that are relevant to their circumstances; and
  - (c) disclose in the listing document the risk that the extent to which Hong Kong courts may be used as an avenue for aggrieved shareholders of non-Hong Kong issuers is subject to certain limitations concerning, for example, enforcement of a Hong Kong judgment against the overseas assets, operations and/or directors of a non-Hong Kong issuer listed on the Exchange and enforcement of an overseas judgment in Hong Kong courts.

### **C. Eligibility of Securities and Admission of Securities into CCASS**

15. Hong Kong Securities Clearing Company Limited (“**HKSCC**”) is a recognised clearing house under the Securities and Futures Ordinance. It operates the CCASS which provides deposit, clearance and settlement services to participants of CCASS subject to the General Rules of CCASS and CCASS Operational Procedures in effect from time to time.
16. All listing applicants must make arrangements with HKSCC to ensure their securities are accepted as eligible for deposit, clearance and settlement in CCASS in accordance with the General Rules of CCASS.

17. An Overseas Issuer is encouraged to notify the Exchange at an early stage of the nature of the securities it plans to issue and list, particularly as to:
- (a) the form of its securities, whether:
    - (i) physical scrip; or
    - (ii) scripless/book entry;
  - (b) if physical scrip is issued, whether:
    - (i) it will be in definitive or global form; and
    - (ii) the certificate will be in registered or bearer form;
  - (c) if the securities are to be issued in scripless form, the applicant must inform the Exchange of the holding structure of the securities with details of:
    - (i) how Hong Kong investors (through HKSCCN) will hold the securities;
    - (ii) the financial intermediaries or depositories holding the securities on behalf of Hong Kong investors, in particular their roles and responsibilities under the relevant overseas jurisdiction's rules and regulations; and
    - (iii) who will be recognised as the legal owners of the securities in the applicant's place of incorporation<sup>3</sup>;
  - (d) how its branch register of members in Hong Kong is maintained and when the register is open to inspection by members. The overseas company must also inform members of the conditions for inspection;
  - (e) where physical scrip of the securities are issued, procedures to replace lost certificates and whether there are any restrictions on holding or transfer of the new certificates; and
  - (f) whether there are any restrictions on Hong Kong investors' right to attend the applicant's general meetings to vote and/or to appoint proxies.
18. Please refer to the Exchange website (see [link](#)) for further information in relation to admission of securities into CCASS.

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<sup>3</sup> The need for these notifications will be reviewed upon the implementation of an uncertificated securities market in Hong Kong. The consultation conclusions for this regime was published on 8 April 2020 (see [link](#)).

## **D. Cross-border Clearing and Settlement**

19. The Hong Kong securities market adopts a T+2 settlement period. This means that executed trades are settled in CCASS two business days after the trade day.
20. Dual-primary or secondary listed companies normally have their principal share registers in their home market and a branch register in Hong Kong (or vice versa). To ensure liquidity in the Hong Kong registered shares, dual-primary or secondary listed companies must ensure there are a sufficient number of registered shares on their Hong Kong share registers.
21. A dual-primary or secondary listed company is expected to transfer a sufficient number of shares to its Hong Kong share register from its overseas share register. The estimate of “sufficient number of shares” may be based on the historical trading statistics of an issuer’s securities in its overseas market and the expected increase in trading upon listing in Hong Kong. This can be arranged by the appointed share registrar(s) cancelling and re-issuing physical share certificates in the company’s respective markets.
22. An Overseas Issuer that has a listing on the Exchange and another overseas exchange must adopt precautionary measures to mitigate price volatility of its shares upon listing and the demand/supply imbalances between its overseas market and Hong Kong to ensure sufficient liquidity. The precautionary measures must take into account the company’s shareholding structure and availability of arbitrage opportunities between Hong Kong and the other market where it is listed. Listing applicants may refer to our Guidance Letters on precautionary measures for overseas companies listed in Hong Kong by way of introduction<sup>4</sup> and our guidance on HDRs<sup>5</sup>.

## **E. HDRs**

23. HDRs can be held by Hong Kong investors in substantially the same way as shares. They are issued by a financial institution acting as a depositary and represent a particular ratio of a company’s shares.
24. Overseas Issuers facing operational and legal difficulties in listing their shares in Hong Kong may wish to consider listing HDRs. For example where:
  - (a) regulations in a jurisdiction discourage the overseas listing of shares;
  - (b) foreign laws of registration and/or ownership are not compatible with those in Hong Kong; or

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<sup>4</sup> <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl53-13.pdf>

<sup>5</sup> <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl39-12.pdf>

- (c) shares are listed in Hong Kong and elsewhere and must be capable of being transferred between jurisdictions to facilitate a T+2 settlement period.
25. The Exchange has published (a) further information on the [HDR Framework](#) section of the HKEX website; and (b) Guidance Letter HKEX-GL39-12 on the benefits of HDRs<sup>6</sup>.

## F. Financial Reporting Standards and Auditing Standards

### Financial Reporting Standards

26. The Listing Rules state that the annual financial statements and the financial history of results and the statement of financial position included in the accountants' reports of all issuers must be prepared and drawn up in conformity with financial reporting standards acceptable to the Exchange, which will normally be Hong Kong Financial Reporting Standards or International Financial Reporting Standards ("IFRS")<sup>7</sup>.
27. The suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between the foreign financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the foreign financial reporting standards with IFRS.
28. On this basis, the Exchange has accepted that the financial statements and accountants' reports of Overseas Issuers can be prepared in conformity with the financial reporting standards set out in the table below subject to the limitations stated therein:

STANDARD	LIMITATIONS
EU-IFRS	For issuers incorporated in a member state of European Union
US GAAP	For issuers with, or seeking, a dual-primary or secondary listing in the US and on the Exchange
Australian Accounting Standards	Only issuers with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual primary listing or secondary listing on the Exchange
Generally Accepted Accounting Principles of Canada	
Accounting principles generally accepted in Japan issued by the Accounting Standards Board of	

<sup>6</sup> <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporg/Documents/gl39-12.pdf>

<sup>7</sup> Primary Listing: Listing Rules 19.14 (accountant's report) and 19.25A (annual accounts). Secondary Listing: Listing Rules 19C.10E (accountant's report) and 19C.23 (annual accounts).



STANDARD	LIMITATIONS
Japan	
Singapore Financial Reporting Standards	
UK adopted international accounting standards	

### **Auditing Standards**

29. The Listing Rules state that an accountants' report<sup>8</sup> and annual accounts<sup>9</sup> of an Overseas Issuer must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants ("HKICPA") or the International Auditing and Assurance Standards Board ("IAASB").
30. To date, the Exchange is satisfied that the following seven sets of alternative standards are comparable to those required by HKICPA or the IAASB, and allows them to be used in the auditing of Overseas Issuers' financial statements:
- (a) Australian Auditing Standards;
  - (b) the Generally Accepted Auditing Standards of Canada;
  - (c) professional auditing standards applicable in France in accordance with the French Commercial Code;
  - (d) Italian Auditing Standards;
  - (e) Singapore Standards on Auditing;
  - (f) International Standards on Auditing (UK); and
  - (g) the US Public Company Accounting Oversight Board auditing standards.
31. Overseas Issuers seeking to adopt a financial reporting standard or auditing standard that is not covered by this document should consult the Exchange at the earliest opportunity.

### **G. Taxation**

32. If withholding tax on distributable entitlements or any other tax is payable (e.g. capital gains tax, inheritance or gift taxes), an Overseas Issuer must bring this to the Exchange's attention at the earliest possible opportunity prior to listing. The Overseas Issuer must disclose in its prospectus or

<sup>8</sup> Listing Rule 19.12 (for primary listing) and Listing Rule 19C.10D (for secondary listing)

<sup>9</sup> Listing Rule 19.21 (for primary listing) and Listing Rule 19C.17 (for secondary listing)

listing document details of the tax payable, and whether Hong Kong investors have any tax reporting obligations and related procedures.

#### **H. Alternative Procedures for U.S “Domestic Issuers”**

33. “Domestic issuers” within the meaning of Regulation S (“**Regulation S**”) under the United States Securities Act of 1933 who wish to offer their equity securities (“**Regulation S Securities**”) in “offshore transactions” within the meaning of, and in reliance on the safe harbor provided by, Regulation S must fulfil the requirements set out therein (the “**Regulation S Category 3 Requirements**”).
34. Given the manner in which securities are traded and settled on the Exchange, it is not feasible for such “domestic issuers” and their underwriters to comply strictly with certain of the Regulation S Category 3 Requirements in connection with a listing of Regulation S Securities on the Exchange. Accordingly, the Exchange has formulated certain alternative procedures tailored to address the underlying policy concerns. Please refer to the Exchange website (see [link](#)) for further information.

#### **I. Stock Name Identification**

35. To enable investors to more easily identify and differentiate between listed overseas companies and Hong Kong companies, overseas companies that are listed on the Exchange are required to clearly label their stock short names. The stock codes for Overseas Issuers must carry the following suffixes in their stock short names:
  - (a) “S” if they have a secondary listing;
  - (b) “DR” and have a stock code between 6200-6399 if they have listed HDRs (see section E above); and
  - (c) “RS” and have a stock code between 6300-6399 if they are incorporated in the United States of America and have listed securities/ HDRs that are restricted securities under US federal securities laws (see section H above).

## Appendix I

### APPLICATIONS FROM OVERSEAS ISSUERS INCORPORATED IN A JURISDICTION NEW TO LISTING<sup>1</sup>

**Date of submission** : \_\_\_\_\_

**Name of applicant<sup>2</sup> (the “Applicant”)** : \_\_\_\_\_

**Subject jurisdiction of incorporation (the “New Jurisdiction”)** : \_\_\_\_\_

**Place of central management and control<sup>3</sup>  
(if applicable and different from the New Jurisdiction) (“PCMC”)** : \_\_\_\_\_

**Name of the legal adviser(s)** : (as to the laws of Hong Kong) \_\_\_\_\_  
(as to the laws of New Jurisdiction) \_\_\_\_\_

**Name and role of other adviser(s)  
(if any)** : \_\_\_\_\_

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<sup>1</sup> Unless otherwise defined, capitalised terms used herein have the same meanings as in the Main Board Listing Rules.

<sup>2</sup> An applicant can be (i) a company planning to apply for listing in Hong Kong; (ii) government authorities or stock exchanges of an overseas jurisdiction; or (iii) professional advisers.

<sup>3</sup> See paragraph 50 of the JPS for factors the Exchange considers in determining an overseas company’s place of central management and control.

**I. Regulatory Regime**

1. State the name(s) of the statutory securities regulator in:

- (a) New Jurisdiction : \_\_\_\_\_
- (b) PCMC : \_\_\_\_\_

2. State whether:

<b>Statutory securities regulator in the New Jurisdiction</b>	<b>Statutory securities regulator in the Applicant's PCMC</b>
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**(Yes or No)**

is a full signatory of the IOSCO Multilateral Memorandum of Understanding  
Concerning Consultation and Cooperation and the Exchange of Information

\_\_\_\_\_

**Note: If the answer is "No" to 2 above, please consult the Exchange before proceeding to complete this application form.**

3. Provide a brief description of the regulatory framework that governs the corporate and securities activities and rights of shareholders of the companies incorporated in the New Jurisdiction<sup>4</sup>.
4. Advise whether regulatory approvals are required for a company incorporated in New Jurisdiction to seek an overseas listing.
5. Advise if there are (a) any restrictions as to (i) the type of shares which may be issued; and (ii) the identity of holders of the shares, in each case by a company incorporated in the New Jurisdiction; (b) any limit on the percentage of shares in a company incorporated in the New Jurisdiction that can be held by national or foreign shareholders; and (c) any other special criteria or restrictions for overseas listing of companies incorporated in the New Jurisdiction.

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<sup>4</sup> The regulatory framework that is applicable to the type of company that will apply for listing in Hong Kong (for example, the regulatory framework that applies because the applicant is a private or a public company and/or because its shares are traded on a local or foreign stock exchange), if the regulatory frameworks are different.

## II. Core Shareholder Protection Standards

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
Directors			
<u>Casual vacancy appointments</u>			
1(1)	<p>Any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.</p> <p><i>Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of the Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.</i></p>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
<u>Removal of directors</u>			
1(2)	<p>Where not otherwise provided by law, members in general meeting shall have the power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office.</p> <p><i>Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of the Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.</i></p>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
<b>General Meetings</b>			
<u>Timing of annual general meeting</u>			
2(1)	<p>An issuer must hold a general meeting for each financial year as its annual general meeting.</p> <p><i>Note: Generally, an issuer must hold its annual general meeting within six months after the end of its financial year.</i></p>		
<u>Notice of annual general meeting</u>			
2(2)	<p>An issuer must give its members reasonable written notice of its general meetings.</p> <p><i>Note: "Reasonable written notice" normally means at least 21 days for an annual general meeting and at least 14 days for other general meetings. This is unless it can be</i></p>		



Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<i>demonstrated that reasonable written notice can be given in less time.</i>		
<u><i>Right to speak and vote at general meetings</i></u>			
2(3)	<p>Members must have the right to (1) speak at a general meeting; and (2) vote at a general meeting except where a member is required, by the Listing Rules, to abstain from voting to approve the matter under consideration.</p> <p><i>Notes</i></p> <p><i>1. An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.</i></p> <p><i>2. If an issuer is subject to a foreign law or regulation that prevents the restriction of a members' right to speak and/or vote at general meetings, the company can enter into an undertaking with the</i></p>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<i>Exchange to put in place measures that achieve the same outcome as the restriction under this paragraph (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction must not be counted towards the resolution).</i>		
<u>Restriction on shareholder voting</u>			
2(4)	Where any shareholder is required under the Listing Rules to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
<u>Right to convene an extraordinary general meeting</u>			
2(5)	Members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the issuer.		
Other Shareholder Rights			
<u>Variation of Class Rights</u>			
3	A super-majority vote of the issuer's members of the class to which the		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<p>rights are attached shall be required to approve a change to those rights.</p> <p><i>Notes</i></p> <p>1. A “super-majority vote” means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.</p> <p>2. For PRC issuers, the Exchange will consider a resolution passed by</p>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<i>members representing at least two-thirds of the voting rights of the members who are present at the classified members' meeting and have voting rights to amend class rights as satisfying the threshold of a "super-majority".</i>		
<u>Amendment of Constitutional Documents</u>			
4	<p>A super-majority vote of the issuer's members in a general meeting shall be required to approve changes to an issuer's constitutional documents, however framed.</p> <p><i>Notes</i></p> <p><i>1. A "super-majority vote" means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised</i></p>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<p><i>by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.</i></p> <p><i>2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.</i></p>		
<u>Appointment, removal and remuneration of auditors</u>			
5	The appointment, removal and remuneration of auditors must be approved by a majority of the issuer’s members or other body that is independent of the board of directors.		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<i>Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.</i>		
<u>Proxies and corporate representatives</u>			
6	Every member shall be entitled to appoint a proxy who need not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend and vote at any general meeting of the issuer and, where a corporation is so represented, it shall be treated as being present at any meeting in person. A corporation may execute a form of proxy under the hand of a duly authorised officer.		
<u>HKSCC's right to appoint proxies or corporate representatives</u>			

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
7	<p>HKSCC must be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors meetings and those proxies/ corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote.</p> <p><i>Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/ corporate representatives enjoying the rights described by this paragraph, the issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.</i></p>		



Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
<u>Inspection of Branch Register</u>			
8	The branch register of members in Hong Kong shall be open for inspection by members but the company may be permitted to close the register on terms comparable to section 632 of the Companies Ordinance.		
<u>Voluntary winding up</u>			
9	A super-majority vote of the issuer's members in a general meeting shall be required to approve a voluntary winding up of an issuer.  <i>Notes</i>		

Paragraph No. of Appendix 3 to Main Board Listing Rule and GEM Listing Rule	Core Shareholder Protection Standard	Comparable / equivalent requirements of the New Jurisdiction, and (i) how they provide Core Shareholder Protection Standard; or (ii) potential conflict or shortfall	Proposed actions that a potential applicant incorporated in the New Jurisdiction will take to address the potential conflict or shortfall (if applicable)
	<p><i>1. A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.</i></p> <p><i>2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.</i></p>		

### III. Compliance with The Codes on Takeovers and Mergers and Share Buy-backs (“Codes”)

The Codes apply to takeovers, mergers and share buy-backs affecting Hong Kong public companies and companies and Real Estate Investment Trusts with a primary or dual-primary listing on the Exchange. The Codes do not apply to a secondary listed company on the Exchange unless it is a “public company in Hong Kong” within the meaning of the Codes. The SFC will consider all the circumstances including the factors set out in section 4.2 of the Introduction to the Codes<sup>5</sup> to determine whether a secondary listed company is a “public company in Hong Kong”.

1. Provide a brief description of the regulatory framework that governs takeovers, mergers and share buy-backs of companies incorporated in the New Jurisdiction.
2. Specify and provide full analysis of:
  - (a) any conflicts between the laws and regulations of the New Jurisdiction and the Codes;
  - (b) the laws and regulations of the New Jurisdiction which would render an offeror, offeree company or their related parties being unable to comply with the Codes; and
  - (c) the proposed actions that a potential applicant incorporated in the New Jurisdiction will take to resolve these conflicts or differences, including any waivers or exemptions available under the local jurisdictions the waiver/exemption of which would allow the parties to fully comply with the Codes, and the relevant procedures.
3. Provide details of any statutory takeovers or mergers regime in the New Jurisdiction which provides for (a) compulsory acquisition or squeeze out rights; and (b) appraisal rights for dissenting shareholders.
4. Advise whether the New Jurisdiction permits treasury shares to be held and if permitted, the voting rights and dividend entitlement attached to such treasury shares.

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<sup>5</sup> <https://www.sfc.hk/web/EN/rules-and-standards/codes-and-guidelines/codes/>

**Appendix II - List of Jurisdictions for which the Exchange has assessed the relevant Domestic Standards ([link](#))**

1. Austria
2. Australia
3. Bermuda
4. Brazil
5. British Virgin Islands (“**BVI**”)
6. Canada-Alberta
7. Canada-British Columbia
8. Canada – Ontario
9. Cayman Islands
10. Cyprus
11. England & Wales
12. France
13. Germany
14. Guernsey
15. India
16. Ireland
17. Isle of Man
18. Israel
19. Italy
20. Japan
21. Jersey
22. Republic of Korea
23. Labuan
24. Luxembourg
25. Netherlands
26. Russia
27. Singapore
28. United States of America – State of California
29. United States of America – State of Delaware
30. United States of America - State of Nevada

**HKEX GUIDANCE LETTER**  
**HKEX-GL[●]-21 ([●] 2021)**

<b>Subject</b>	<b>Migration of the majority of trading to the Exchange’s markets of secondary listed overseas issuers’ shares and de-listing of their shares from overseas exchanges of primary listing</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Listing Rules 19C.11, 19C.11A, 19C.11B, 19C.11C, 19C.13 and 19C.13A</b>
<b>Related Publications</b>	<b>HKEX-GL94-18 - Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C</b>
<b>Author</b>	<b>IPO Vetting Department</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules shall prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter. All references in this letter to the Listing Rules means the Main Board Listing Rules unless otherwise specified. Defined terms in the Listing Rules shall have the same meaning in this letter.*

**1. Purpose**

1.1 This letter provides guidance to Overseas Issuers<sup>1</sup> that have a secondary listing on the Exchange pursuant to Chapter 19C of the Listing Rules with regards to issues relating to (a) the migration of the majority of trading in their listed shares to the Exchange’s markets under Listing Rule 19C.13; and (b) de-listing of their shares or depository receipts issued on their shares (as the case may be) from the Recognised Stock Exchange<sup>2</sup> on which they are primary listed under Listing Rule 19C.13A. Any reference to shares in this letter shall include depository receipts issued on such shares where applicable.

**2. Relevant Listing Rules**

2.1 Listing Rule 19C.13 states that if the majority of trading in an Overseas Issuer’s listed shares migrates to the Exchange’s markets on a permanent basis, the Exchange will regard the issuer as having a dual-primary listing and consequently Listing Rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply to the issuer. Exceptions set out in Listing Rules 19.58 to 19.60 may however apply depending on the relevant facts and

<sup>1</sup> An “Overseas Issuer” has the same meaning as defined in Chapter 1 of the Listing Rules.

<sup>2</sup> “Recognised Stock Exchange” as defined in Chapter 1 of the Listing Rules.

circumstances.

- 2.2 Note 1 to Listing Rule 19C.13 sets out the benchmark against which the majority of trading in an Overseas Issuer's listed shares is considered to have migrated to the Exchange's markets on a permanent basis, i.e. when 55% or more of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depository receipts issued on those shares) over the issuer's most recent financial year, takes place on the Exchange's markets.
- 2.3 Note 2 to Listing Rule 19C.13 provides such an Overseas Issuer with a grace period of 12 months within which to comply with the applicable Listing Rules ("**Grace Period**")<sup>3</sup>. The Grace Period will end at midnight on the first anniversary of the date of the Exchange's written notice of its decision that the majority of trading in the listed shares has migrated permanently to the Exchange's markets ("**Exchange Notice**").
- 2.4 Listing Rule 19C.13A states that if an Overseas Issuer's shares or depository receipts issued on its shares (as the case may be) ceased to be listed on the Recognised Stock Exchange on which it is primary listed, the Exchange will regard the issuer as having a primary listing in Hong Kong and consequently Listing Rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply to the issuer.
- 2.5 Listing Rule 2.04 states that the Exchange may waive, modify or not require compliance with the Listing Rules in individual cases (to suit the circumstances of a particular case), as a variety of circumstances may exist which require it to make ad hoc decisions.

### **3. Guidance**

- 3.1 This guidance is for Overseas Issuers whose shares/ depository receipts are listed on a Recognised Stock Exchange that are secondary listed on the Exchange under Chapter 19C of the Listing Rules. These issuers are subject to the trading migration requirements under Listing Rule 19C.13.
- 3.2 This guidance is also relevant to secondary listed Overseas Issuers that start to plan a voluntary de-listing, or that reasonably expect to be de-listed involuntarily, from the relevant Recognised Stock Exchange of primary listing.

#### **Migration of the majority of trading to the Exchange's markets of Overseas Issuers' shares under Chapter 19C**

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<sup>3</sup> For the avoidance of doubt, the Grace Period is conditional on the continued primary listing of the Overseas Issuer on the relevant Recognised Stock Exchange. Otherwise, it would be subject to the relevant guidance under the section headed "De-listing from a Recognised Stock Exchange of primary listing" in this guidance letter.

### Responsibility for monitoring

- 3.3 Secondary listed Overseas Issuers should monitor their compliance with Listing Rule 19C.13 from the start of their first full financial year after listing on the Exchange. For example, where an Overseas Issuer is listed in June 2021 and has a December year-end, it should monitor its compliance with Listing Rule 19C.13 from 1 January 2022.

### Notification to the Exchange

- 3.4 Secondary listed Overseas Issuers should notify the Exchange in writing:
- (a) within 5 business days of the end of the third quarter of their financial year, as to whether or not the trading volume of their shares in Hong Kong has exceeded 50% of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depository receipts issued on those shares) based on the cumulative trading volume over that nine-month period and the respective total trading volume of their shares in Hong Kong and the total worldwide trading volume over that period; and
  - (b) within 5 business days of the end of their financial year, as to whether or not the trading volume of their shares by dollar value in Hong Kong exceeded 55% of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depository receipts issued on those shares) based on the cumulative trading volume over that financial year and the respective total trading volume of their shares in Hong Kong and the total worldwide trading volume over that year.

### Exchange Notice

- 3.5 The Exchange will consider the notification made to it by an issuer under paragraph 3.4(b) and will issue an Exchange Notice to the issuer if it decides that the majority of the issuer's trading has migrated permanently to Hong Kong under Listing Rule 19C.13.

### Issuer announcement

- 3.6 As soon as practicable after receiving an Exchange Notice, the Overseas Issuer must publish an announcement stating that the majority of the trading of its shares have migrated to the Exchange's markets on a permanent basis under Listing Rule 19C.13, including:
- (a) details of the consequences of the Exchange Notice;
  - (b) details of the Grace Period;
  - (c) its obligation to make necessary arrangements to enable it to comply with

applicable Listing Rules upon the end of the Grace Period; the potential consequence of its failure to comply with this obligation; the potential consequences of the withdrawal of any specific waivers from strict compliance with any Listing Rules granted by the Exchange on an individual basis; and

- (d) the issuer's intention, if applicable, to apply to the Exchange for certain specific waivers and/ or exemptions to continue after the Grace Period ends.

- 3.7 If the notification to the Exchange required by paragraph 3.4(a) above states that the relevant trading volume in the issuer's shares has exceeded the threshold set out in that paragraph, the issuer should begin its assessment of the impact to it of the disapplication of exemptions due to the application of Listing Rule 19C.13 and the potential withdrawal of specific waivers granted by the Exchange, so that it is in a position to publish the announcement required by paragraph 3.6 above at the relevant time.

Method of calculation of trading migration test

- 3.8 The following method is to be used to calculate the percentage of trading volume by dollar value on the Exchange's markets for the purpose of Listing Rule 19C.13<sup>4</sup>:

$$= \frac{\text{Total cumulative trading volume in Hong Kong by dollar value over a full financial year}}{\text{Total cumulative worldwide trading volume by dollar value over a full financial year}} \times 100\%$$

- 3.9 For the purpose of calculating "dollar value" and the exchange rate to be adopted, issuers are expected to use data published by a reputable independent third party market data provider.

Disapplication of exceptions, waivers and exemptions

- 3.10 Upon the expiration of a Grace Period, all exceptions to the Listing Rules applicable to an Overseas Issuer set out in Listing Rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply<sup>5</sup>. Prior to the expiry of the Grace Period, issuers must make arrangements to comply with the Listing Rules applicable to them, including seeking shareholder approval where required under the Listing Rules in respect of a transaction entered into during the Grace Period but expected to be completed thereafter.

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<sup>4</sup> Such data can be sourced from reputable independent third party market data provider.

<sup>5</sup> Please refer to Note 3 to Listing Rule 19C.13 for the extended Grace Period for continuing transactions and the condition giving rise to early expiration of such extended Grace Period.



- 3.11 During the Grace Period, an Overseas Issuer should provide the Exchange with a report, on a monthly basis, updating the Exchange on its progress towards compliance with the Listing Rules that will apply to it at the end of the Grace Period.
- 3.12 The Exchange reserves the right to withdraw a specific waiver that it granted on an individual basis to an issuer under Listing Rule 2.04 if the circumstances upon which that waiver was granted have since changed. A change in the nature of an issuer's listing due to the application of Listing Rule 19C.13 may constitute such a change in circumstances and may result in the Exchange withdrawing specific waivers granted to the issuer.
- 3.13 If an issuer believes it has grounds for certain waivers/exemptions to continue after the expiry of the Grace Period, it should submit an application to the Exchange at the earliest opportunity including the reasons as to why they should continue to apply. The Exchange will consider the issuer's application before making its decision on the matter.
- 3.14 For the avoidance of doubt, an issuer can continue to adopt a body of alternative financial reporting standards (as set out in Guidance Letter HKEX-GL[●] - Guidance for Overseas Issuers) as the accounting standards used for the preparation of its financial statements even if the application of Listing Rule 19C.13 results in it being deemed a dual-primary listed Overseas Issuer. This is as long as the issuer maintains a primary listing in the relevant jurisdiction of the alternative overseas financial reporting standards<sup>6</sup>.

#### WVR and VIE structures

- 3.15 Listing Rule 19C.03 and Guidance Letter HKEX-GL94-18 allow a Grandfathered Greater China Issuer<sup>7</sup> and Non-Greater China Issuers<sup>8</sup> to retain their pre-existing WVR structure<sup>9</sup> and variable interest entity structure ("VIE structure"), as applicable, after listing on the Exchange and exempt them from certain requirements in this regard. These exemptions are not affected by an Exchange decision that the majority of trading in such Overseas Issuers' shares has migrated to the Exchange's markets on a permanent basis under Listing Rule 19C.13.

#### Dis-application of stock marker "S" in the stock short name

- 3.16 The purpose of the marker is to provide sufficient notification to inform/ alert investors that the issuer is not subject to the full extent of the Listing Rules due to its status as a secondary listed issuer. Upon application by the issuer, it would not be required to retain the marker "S" at the end of its stock short name upon the expiration of the Grace Period. Such application should be

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<sup>6</sup> This is except for issuers incorporated in an EU member state which are allowed to adopt EU-IFRS.

<sup>7</sup> "Grandfathered Greater China Issuer" as defined in Listing Rule 19C.01.

<sup>8</sup> "Non-Greater China Issuers" as defined in Listing Rule 19C.01.

<sup>9</sup> "WVR structure" as defined in Listing Rule 19C.01.

submitted together with the notification to the Exchange required by paragraph 3.4(b) above.

## **De-listing from a Recognised Stock Exchange of primary listing**

### Disapplication of exceptions, exemption and waivers

- 3.17 With immediate effect upon a secondary listed Overseas Issuer de-listing from its Recognised Stock Exchange of primary listing (“**Overseas De-listing**”), the exceptions to the Listing Rules that were granted to such issuer (“**Relevant Issuer**”) as set out in Listing Rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply.
- 3.18 Listing Rules which are applicable to primary listed Overseas Issuers on the Exchange but are exempted or not applicable to a Relevant Issuer based on or conditional upon its secondary listing status<sup>10</sup> will also become applicable to the Relevant Issuer immediately upon the Overseas De-listing.
- 3.19 Similar to paragraph 3.12 above, a change in the nature of an issuer’s listing due to the Overseas De-listing may constitute a change in circumstances and may result in the Exchange withdrawing any other specific waiver granted to a Relevant Issuer.
- 3.20 Accordingly, unless a waiver (including any grace period) is granted as described in paragraph 3.24 below or a grace period applies as described in paragraph 3.35 below, a Relevant Issuer must comply with all Listing Rules applicable to a primary listed Overseas Issuer immediately upon the Overseas De-listing.

### Notification to the Exchange

- 3.21 A Relevant Issuer that starts to plan a voluntary de-listing, or that reasonably expects it may be de-listed involuntarily, from its Recognised Stock Exchange of primary listing, should notify the Exchange of this possibility in writing as soon as practicable to give the Exchange early notice (“**Overseas De-listing Issuer Notification**”) prior to its Overseas-De-listing<sup>11</sup>.
- 3.22 The Exchange will consider the information in the Overseas De-listing Issuer Notification and may require additional information. Following its review of the information, the Exchange will issue a notice to remind the Relevant Issuer that upon the Overseas De-listing, it will regard such Relevant Issuer as having a primary (rather than secondary) listing status on the Exchange

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<sup>10</sup> This includes Listing Rules 6.12 to 6.15 in relation to withdrawal of listing, Listing Rules 19.08 to 19.28 in relation to additional requirements, modifications or exceptions which apply to an Overseas Issuer whose primary listing is on the Exchange (where applicable).

<sup>11</sup> For a secondary listed Overseas Issuer with primary listing on an exchange in the United States, such notification should be submitted to the Exchange as soon as practicable and prior to the first filing of Form 8K (domestic issuer)/ 6K (foreign private issuer) with the US Securities and Exchange Commission which formally announces the potential de-listing.

**(“Overseas De-listing Exchange Notice”).**

Waiver applications

- 3.23 If a Relevant Issuer wishes to retain, following its Overseas De-listing, any exemption or waiver that was previously available or granted to it or wishes to apply for a new waiver from strict compliance with any Listing Rules, it should submit a waiver application to the Exchange together with its Overseas De-listing Issuer Notification. The waiver application(s) should contain sufficient information to demonstrate the basis for the Exchange to grant such waiver(s).
- 3.24 Upon receipt of the waiver application(s), the Exchange will make the assessment on a case-by-case basis and exercise its discretion as to whether to grant the waiver(s) to a Relevant Issuer. Any waiver decision (including any grace period and any other conditions for granting the waiver) will be issued to such Relevant Issuer together with the Overseas De-listing Exchange Notice.
- 3.25 Any grace period granted under a time-relief waiver will commence from the time of the Overseas De-listing. The length of the grace period for each Listing Rule so relieved will be assessed with reference to the individual facts and circumstances of a Relevant Issuer, including but not limited to (a) the expected date of such Relevant Issuer’s Overseas De-listing; and (b) the amount of time reasonably needed for such Relevant Issuer to be able to fully comply with the applicable Listing Rules.
- 3.26 As a general principle, a Relevant Issuer that has become primary listed in Hong Kong upon de-listing from the Recognised Stock Exchange of primary listing is expected to use its best endeavours to comply with all the Listing Rules as applicable to other primary listed Overseas Issuers. Except for the financial reporting standards requirement set out in paragraph 3.35 below, the Exchange believes that a grace period will be justified only in limited circumstances. In any event, the Exchange will not normally grant any grace period for compliance with the Listing Rules that are rarely waived for issuers having a sole primary listing on the Exchange. These rules generally concern key requirements that, the Exchange considers, must be fully complied with for the purpose of primary listing, such as a majority of the requirements on notifiable transactions and connected transactions<sup>12</sup>.
- 3.27 In the event that no waiver is requested by or granted to a Relevant Issuer in respect of a transaction which was entered into prior to the Overseas De-listing but is expected to be completed on or after the Overseas De-listing

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<sup>12</sup> Under exceptional circumstances (e.g. a transaction entered into but not yet completed prior to the Overseas De-listing occurring), the Exchange may exercise its discretion to waive the shareholders’ approval requirement but the Relevant Issuer will be expected to comply with the other requirements imposed on such transaction, including, where applicable, circular, independent financial advisor, accountants’ report and annual reporting requirements.

and would have been required to be disclosed under the Listing Rules (e.g. by virtue of Listing Rule 14.34 or 14.38A), the Relevant Issuer is encouraged to make an announcement of the transaction on a timely basis, providing details of the transaction, the expected timetable and how the Relevant Issuer will comply with the applicable Listing Rules.

- 3.28 In the event a Relevant Issuer is unable to fully comply with a Listing Rule upon the end of the grace period granted under a time-relief waiver, the Exchange may, on a case by case basis, exercise its discretion to either extend the grace period, suspend trading of such Relevant Issuer's shares or impose other measures as it considers necessary for the protection of the investors and the maintenance of an orderly market.
- 3.29 For the avoidance of doubt, notwithstanding the submission of the Overseas De-listing Issuer Notification or receipt of the Overseas De-listing Exchange Notice, a Relevant Issuer will continue to be entitled to the exemptions/waivers granted or applicable to it as a secondary listed Overseas Issuer on the Exchange provided that it is still primary listed on a Recognised Stock Exchange.

#### Issuer announcements

- 3.30 A Relevant Issuer must announce its forthcoming Overseas De-listing in accordance with its general obligation of disclosure under Listing Rule 13.09 and no later than the announcement of this information on its Recognised Stock Exchange of primary listing<sup>13</sup>. This announcement must state:
- (a) the intention and/ or reasons for the Overseas De-listing;
  - (b) the expected or estimated date of the Overseas De-listing;
  - (c) the Relevant Issuer's obligations to comply with all applicable Listing Rules as a primary listed Overseas Issuer on the Exchange following the Overseas De-listing if it occurs; the potential consequences of its failure to comply with these obligations; and the potential consequences of the withdrawal of any specific waiver from strict compliance with any Listing Rules granted by the Exchange on an individual basis; and
  - (d) where applicable, any application(s) made to the Exchange for waiver(s) from strict compliance with any Listing Rule following the Overseas De-listing.
- 3.31 Upon its Overseas De-listing occurring, the Relevant Issuer should publish a second announcement which must state:

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<sup>13</sup> For a secondary listed Overseas Issuer with primary listing on an exchange in the United States, this refers to no later than the first filing of the Form 8K (domestic issuer)/ 6K (foreign private issuer) with the US Securities and Exchange Commission which formally announces the potential de-listing.

- (a) the Relevant Issuer's obligations to comply with all applicable Listing Rules as a primary listed Overseas Issuer on the Exchange following the Overseas De-listing; the potential consequences of its failure to comply with these obligations; and the consequences of the withdrawal of any waiver from strict compliance with any Listing Rules granted by the Exchange on an individual basis; and
- (b) where applicable, details of any waiver from strict compliance with any Listing Rules, including conditions and basis for granting such waiver(s) such as the length of any relevant grace periods.

#### WVR and VIE structures

- 3.32 Grandfathered Greater China Issuers and Non-Greater China Issuers are permitted to retain their WVR structures and VIE structures which are pre-existing at the time of their secondary listing in Hong Kong as exempted from the relevant requirements pursuant to Listing Rule 19C.03 and Guidance Letter HKEX-GL94-18. These exemptions are not affected by their de-listing from the Qualifying Exchange<sup>14</sup>.

#### Dis-application of stock marker "S" in the stock short name

- 3.33 Under the same principle set out in paragraph 3.16, upon application by a Relevant Issuer, it would not be required to have the marker "S" at the end of its stock short name upon its Overseas De-listing. Such application should be submitted together with the Overseas De-listing Issuer Notification.

#### Financial reporting standards

- 3.34 Listing Rules 19.13 and 19.25A provides that accountants' reports and annual accounts are required to conform with financial reporting standards acceptable to the Exchange, which will normally be Hong Kong Financial Reporting Standards ("**HKFRS**") or International Financial Reporting Standards ("**IFRS**"):
- 3.35 As set out in Note 3 to Rule 19C.23, where the annual accounts of a Relevant Issuer have been drawn up in conformity with alternative overseas financial reporting standards in accordance with Listing Rule 19C.23, it will be granted a grace period to adopt HKFRS or IFRS upon its Overseas De-listing to make the necessary amendments to its internal controls to facilitate the change. Such grace period will end immediately on the first anniversary of its Overseas De-listing. This means that any interim and annual financial statements falling due, and published, after the first anniversary of the Overseas De-listing shall be prepared in accordance with either HKFRS or IFRS. This grace period is automatic and an application to the Exchange is not required.

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<sup>14</sup> "Qualifying Exchange" as defined in Listing Rule 19C.01.

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