



Hong Kong

April 2021

THE HKEX CONSULTATION PAPER ON THE LISTING REGIME FOR OVERSEAS ISSUERS

The Stock Exchange of Hong Kong Limited (**HKEX**) published a potentially far-reaching consultation paper on the Listing Regime for Overseas Issuers¹ on 31 March 2021 (the “**HKEX Consultation Paper**”). The purpose of the HKEX Consultation Paper is to obtain feedback from the market on the HKEX’s proposals to amend the HKEX Listing Rules to streamline the listing regime for overseas listed companies including listed companies which have a “centre of gravity” in Greater China. This newsletter is a brief summary of the proposals which will be expanded on in more detail in subsequent newsletters.

Chapter 19C of the HKEX Listing Rules defines a *Greater China Issuer* as a Qualifying Issuer which is a company that is listed on either the New York Stock Exchange, NASDAQ, or the premium segment on the Main Market of the London Stock Exchange, with its “centre of gravity” in Greater China. Factors that the HKEX will look at when considering if a company has a centre of gravity in Greater China include (a) whether the company has a listing in Greater China; (b) where the company is incorporated; (c) the history of the company and where it is headquartered; (d) place of central management and location of its business operations and assets; (e) location of the company’s corporate and tax registration; and (f) the nationality and country of residence of the controlling shareholder and management.

The HKEX’s Overseas Listed Companies regime

The HKEX Listing Rules apply to three categories of listed companies. These are companies which are incorporated in Hong

Kong, companies incorporated in the PRC and companies which are incorporated in neither Hong Kong nor the PRC (i.e. overseas incorporated companies listed on the HKEX) (“**Overseas Listed Companies**”). The HKEX Consultation Paper is primarily focussed on Overseas Listed Companies. However, some of the proposed amendments to the HKEX Listing Rules will affect all HKEX listed companies. For example, the investor protection requirements and standards.

The HKEX’s Overseas Listed Companies regime has developed significantly since it was first introduced in 1989. The HKEX’s Overseas Listed Companies regime is currently split into jurisdictions which are considered *Recognised Jurisdictions* and those jurisdictions which are considered by the HKEX as being *Acceptable Jurisdictions*.² The Recognised Jurisdictions are Hong Kong, the PRC, the Cayman Islands and Bermuda. While the Acceptable Jurisdictions are Austria, Australia, Brazil, British Virgin Islands, Canada (Alberta, British Columbia and Ontario), Cyprus, England & Wales, France, Germany, Guernsey, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Republic of Korea, Labuan, Luxembourg, Netherlands, Russia, Singapore and the United States of America (California, Delaware, and Nevada).

A key development in the existing Overseas Listed Companies regime was the publication of the first Joint Statement³ issued by the SFC and the HKEX in 2007 (the “**SFC-HKEX Joint Statement**”). Since 2007 the SFC-HKEX Joint Statement has gone through a

1 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Consultation-Paper/cp202103.pdf?la=en>

2 https://www.hkex.com.hk/Listing/Rules-and-Guidance/Listing-of-Overseas-Companies/List-of-Acceptable-Overseas-Jurisdictions?sc_lang=en

3 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/Understanding-the-Risks-of-Investing-in-Overseas-Issuers/jps_20180430.pdf

number of iterations and was last updated on 30 April 2018. The SFC-HKEX Joint Statement is aimed at providing guidance to companies which are incorporated overseas and wish to list on the HKEX. A major aspect of the SFC-HKEX Joint Statement is the guidance on how Overseas Listed Companies can meet the shareholder protection standards at least equivalent to those of Hong Kong (the “**Equivalence Requirement**”).

Further updates to the Overseas Listed Companies regime were made in 2018 with the adoption of Chapter 19C of the HKEX Listing Rules to facilitate the secondary listing of established innovative companies listed on a Qualifying Exchange. As referred to above, the HKEX recognises the following Qualifying Exchanges:

- a) New York Stock Exchange;
- b) NASDAQ; and
- c) the Main Market of the London Stock Exchange (and belong to the “Premium Listing” segment of the UK Financial Conduct Authority).

The table below sets out a breakdown by place of incorporation of listed companies that are listed on the HKEX as of 31 December 2020. It is evident from the table below that 78% of companies listed on the HKEX have Cayman or Bermuda offshore holding companies (“**Cayman and Bermuda Holding Companies**”). A vast majority of the Cayman and Bermuda Holding Companies are holding companies of PRC or Hong Kong based groups while only 8% of the companies listed on the HKEX are incorporated in Hong Kong and a mere 2% are from Acceptable Jurisdictions, the latter usually holding businesses outside of the PRC or Hong Kong.

Place of incorporation	Number of HKEX listed companies	Percentage
Acceptable Jurisdictions	46	2%
Bermuda	505	20%
Cayman Islands	1,482	58%
Hong Kong	214	8%
PRC	291	12%
Total	2,538	100%

Issues which the HKEX Consultation Paper on the Listing Regime for Overseas Issuers seeks to address

The HKEX has identified seven (7) broad issues which the proposals contained in the HKEX Consultation Paper seek to address. These issues are:

1. the complexity of the requirements for overseas incorporated companies listed or wishing to list on the HKEX;
2. inconsistent shareholder protection standards for Recognised Jurisdictions and Acceptable Jurisdictions arising from a shortfall between the shareholder protections and standards in the laws and regulations of the jurisdiction of incorporation of the Overseas Listed Companies and the laws and regulations in Hong Kong and those set out in the SFC-HKEX Joint Statement for companies incorporated in Acceptable Jurisdictions;
3. the co-existence of two secondary listing regimes;
4. secondary listing requirements which are more restrictive for Overseas Listed Companies which have a “centre of gravity” in Greater China;
5. the need for guidance on trading migration requirements and delisting from overseas exchanges for secondary listed companies;
6. grandfathered Greater China companies and non-greater China companies currently cannot apply for a direct dual primary listing on the HKEX and retain their non-compliant weighted voting rights and/or VIE structures; and
7. common waivers and automatic waivers for listed companies are not codified in the HKEX Listing Rules, aside from the automatic waivers for Qualifying Issuers.

Summary of the proposals in the HKEX Consultation paper on the Listing Regime for Overseas Issuers

HKEX Recognised Jurisdictions and Acceptable Jurisdictions

It is proposed that these two regimes will be merged and that there will be no distinction between Recognised Jurisdictions and Acceptable Jurisdictions.

HKEX Shareholder protection standards

A set of core standards on shareholder protections (the “**Core Standards**”) has been proposed to replace the current shareholder protection standards set out in HKEX Listing Rules Chapter 19C, appendices 3 and 13 of the HKEX Listing Rules and the SFC-HKEX Joint Statement. The Core Standards will be applicable to all HKEX listed companies and will introduce a minimum level of investor

protection for HKEX listed companies regardless of the place of incorporation of the company. If this proposal is adopted, the Equivalence Requirement will be removed.

HKEX Dual primary listings

It is proposed that the grandfathered Greater China listed companies and non-greater China listed companies with non-compliant WVR and/or VIE structures (the “**Non-Compliant Structures**”) may apply for a dual primary listing on the HKEX and retain their Non-Compliant Structures **provided they can meet the eligibility requirements set out in Chapter 19C of the HKEX Listing Rules** which include, for example, a market capitalisation of HK\$40 billion at the time of listing or a market capitalisation of at least HK\$10 billion at the time of listing and revenue of at least HK\$1 billion for the most recent audited financial year.

Additionally, the HKEX seeks to codify some of the conditional common waivers for dual-primary listed companies and the principles for granting common waivers.

Secondary listings on the HKEX

The HKEX proposes to merge the current two routes to a secondary listing provided for under the SFC-HKEX Joint Statement and Chapter 19C of the HKEX Listing Rules (the “**Two Secondary Listing Routes**”) which have different eligibility requirements for Overseas Listed Companies which do not have their “centre of gravity” in China. Instead, the HKEX proposes to merge the Two Secondary Listing Routes by codifying the secondary listing related provisions in the SFC-HKEX Joint Statement into Chapter 19C of the HKEX Listing Rules.

With respect to the SFC-HKEX Joint Statement, the HKEX proposes a codification of the automatic waiver of eligibility requirements with minor amendments which include (i) a change to the compliance record period from five (5) years to five (5) full

financial years and (ii) to change the minimum expected market capitalisation from US\$400 million to HK\$3 billion.

Where a listed company has a secondary listing on the HKEX and subsequently de-lists from the exchange where it has its primary listing, the HKEX proposes that the listed company will in these circumstances be regarded as having its primary listing on the HKEX subject to certain required notifications to the HKEX.

It is proposed in relation to non-WVR Greater China listed companies that the requirement to demonstrate (i) that they are an “Innovative Company” be removed while (ii) including an alternative option for these non-WVR Greater China listed companies to meet a minimum market capitalisation at the time of listing of either HK\$3 billion or HK\$10 billion, with applicable requirements relating to track record periods depending on the relevant threshold.

In respect of secondary listings and investor protection, the HKEX proposes that it may in its discretion, on a case by case basis, grant a time-relief waiver, suspend trading of the HKEX listed company’s shares or alternatively impose such other measures as the HKEX deems necessary for the protection of investors and the maintenance of an orderly market. The HKEX has stated that it will issue further guidance on this point.

Finally, the HKEX proposes that a Grandfathered Greater China listed company or a non-greater China listed company is allowed to retain its Non-Compliant Structures which subsist at the time of its secondary listing in Hong Kong, if the company de-lists from the Qualifying Exchange on which it is primary listed.

Deadline for comments to the HKEX Consultation Paper

The HKEX invites comments on the HKEX Consultation Paper with responses to be submitted to the HKEX by 31 May 2021.

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