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HKEX PROPOSES SIMPLIFICATION OF HKEX LISTING REGIME FOR OVERSEAS COMPANIES

The Hong Kong Stock Exchange's Consultation Paper on the Listing Regime for Overseas Issuers¹ published on 31 March 2021 (**HKEX Consultation Paper**) puts forward potentially far-reaching changes to the requirements for listing offshore companies on the Hong Kong Stock Exchange (**HKEX**). For an overview of the proposed changes, please see Charltons' newsletter The HKEX Consultation Paper on the Listing Regime for Overseas Issuers.²

This newsletter looks in detail at the HKEX's proposals to simplify its listing requirements for companies incorporated outside Hong Kong and the PRC (**Overseas Companies**) by removing the existing distinction between Overseas Companies incorporated in a Recognised Jurisdiction (Bermuda or the Cayman Islands) and Overseas Companies incorporated in Acceptable Jurisdictions (the 28 jurisdictions which the HKEX has accepted as a listing applicant's place of incorporation). The listing requirements for companies incorporated in the PRC as joint stock companies (**PRC Companies**) (i.e. H share issuers) will continue to be set out separately in Chapter 19A of the Listing Rules.

Another key change proposed by the HKEX Consultation Paper is that all companies listed on the HKEX (including secondary listed companies) should provide the same level of shareholder protection irrespective of the company's place of incorporation and the nature of the listing (primary or secondary). The HKEX is thus proposing that all companies applying to list on HKEX (including Hong Kong and PRC Companies) should be required

to demonstrate how they comply with a single set of 14 core shareholder protection standards.

The key changes to the Listing Rules proposed in order to implement the above proposals are:

1. The text of Appendix 3 to the HKEX Listing Rules will be replaced by the core shareholder protection standards;
2. The Joint Policy Statement³ regarding the Listing of Overseas Companies first issued by the SFC and the HKEX in 2007 (the **SFC-HKEX Joint Policy Statement**) will be withdrawn;
3. Section 1 in Parts A (Bermuda) and B (the Cayman Islands) of Appendix 13 to the HKEX Listing Rules will be repealed. The shareholder protection standards required of Bermuda and Cayman Islands incorporated companies currently set out in Parts A (Bermuda) and B (the Cayman Islands) of Appendix 13 will be replaced by the Core Standards set out in revised Appendix 3 to the HKEX Listing Rules;
4. HKEX Listing Rules 19C.06 to 19C.09 in respect of Grandfathered Greater China companies and Non-Greater China companies will be repealed and superseded by the Core Standards;
5. Consequential changes will be made to the requirements for PRC Companies in Chapter 19A of the HKEX Listing Rules; and

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

2 <https://www.charltonslaw.com/the-hkex-consultation-paper-on-the-listing-regime-for-overseas-issuers/>

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?la=en

6. Certain requirements of the SFC-HKEX Joint Policy Statement will be codified.

HKEX Listing Regime for Overseas Companies

Acceptable and Recognised Jurisdictions

For an Overseas Company to be eligible for listing on the HKEX, it must be incorporated in a Recognised Jurisdiction or an Acceptable Jurisdiction. It must also be able to demonstrate how it meets the HKEX Listing Rule requirement that Overseas Companies should be subject to shareholder protection standards at least equivalent to those of Hong Kong (the **Equivalence Requirement**) (under HKEX Listing Rules 19.05(1)(b) and 19.06(b)).

Two issues identified by the HKEX Consultation Paper which it seeks to address are:

- i) the complexity of the requirements for listing Overseas Companies on the HKEX; and
- ii) differences in the shareholder protection standards provided by companies incorporated in Recognised Jurisdictions and those incorporated in Acceptable Jurisdictions.

Complexity of the listing requirements for Overseas Companies

The HKEX Consultation Paper notes that the current listing regime for Overseas Companies regime is fragmented, complex and difficult to navigate. Currently, the listing requirements for Overseas Companies are found in:

- a) Chapter 19 (Overseas Issuers) and Chapter 19C (Secondary Listings of Qualifying Issuers) of the HKEX Listing Rules;
- b) Appendices 3 and 13 of the HKEX Listing Rules;
- c) The SFC-HKEX Joint Policy Statement;
- d) The HKEX Country Guides; and
- e) Various HKEX guidance materials.

Additionally, the HKEX considers that the current regime may be seen as unduly burdensome and unappealing for prospective overseas listing applicants who are not familiar with the Hong Kong listing regime.

Inconsistent shareholder protection standards

The shareholder protection standards required of companies incorporated in Bermuda or the Cayman Islands (as Recognised Jurisdictions) set out in Appendix 13 to the HKEX Listing Rules are different from those required of companies incorporated in Acceptable Jurisdictions (as set out in Section 1 of the SFC-HKEX Joint Policy Statement). The HKEX has explained that this differential treatment is out of line with its “*objective of providing the same protection for investors of all issuers, irrespective of the place of incorporation.*”

The reason for the inconsistencies lies in the difference in how Recognised Jurisdiction companies and Acceptable Jurisdiction companies are required to satisfy the Equivalence Requirement.

Companies incorporated in Bermuda and the Cayman Islands are regarded as meeting the Equivalence Requirement if they amend their constitutional documents in accordance with the relevant Part of Appendix 13. Parts A and B of Appendix 13 set out the shareholder protection standards the HKEX considered necessary to make up for the shortfalls in the shareholder protections provided by the company law of Bermuda and the Cayman Islands, respectively, as compared to Hong Kong company law, at the time Appendix 13 was implemented in December 1989. The inconsistencies identified between the requirements for Cayman Islands companies in Part A and those for Bermuda-incorporated companies in Part B to Appendix 13 of the HKEX Listing Rules are due to differences in the shareholder protection standards provided by the company laws of Bermuda and the Cayman Islands at the time and the consequent need for companies incorporated in these jurisdictions to make up for different shortfalls in shareholder protection standards.

Overseas Companies incorporated outside the Recognised Jurisdictions are required to satisfy the Equivalence Requirement by demonstrating that the laws and regulations of their jurisdiction of incorporation and constitutional documents together meet the standards of shareholder protection required by Section 1 of the SFC-HKEX Joint Policy Statement (the **JPS Key Shareholder Protection Standards**). These shareholder protection standards are not jurisdiction specific but were developed to provide a benchmark against which the local laws of any jurisdiction can be compared to determine whether or not the Equivalence Requirement is met.

The HKEX Consultation Paper also notes that some of the shareholder protection standards in the HKEX Listing Rules are outdated, duplicated or no longer required.

HKEX's Proposed Shareholder Protection Standards

The HKEX proposes that all companies listed on the HKEX (including secondary listed companies) will be required to comply with a single set of 14 core shareholder protection standards (the **Core Standards**) which will be set out in Appendix 3 to the HKEX Listing Rules. This will mean that the Equivalence Requirement in Listing Rules 19.05(1)(b) and 19.05(6)(b) will be repealed and the terms "Recognised Jurisdictions" and "Acceptable Jurisdictions" will become redundant. The HKEX will not issue any new Country Guides (previously issued by HKEX to provide guidance on how listing applicants from Acceptable Jurisdictions could meet the JPS Key Shareholder Protection Standards). The existing Country Guides will however be retained and the HKEX may issue guidance on a case-by-case basis if novel issues arise in relation to the shares of a company incorporated in a new jurisdiction.

The proposed Core Standards amalgamate the shareholder protection standards currently contained in Chapter 19C, Appendices 3 and 13 of the Listing Rules and the JPS Key Shareholder Protection Standards, except for those which HKEX proposes to repeal which are set out in Schedule C to the HKEX Consultation Paper.

The proposed Core Standards cover fundamental shareholders' rights including rights in relation to notice and conduct of shareholders' meetings, approval of important matters, the right to requisition a meeting, remove directors, vote, speak and appoint proxies/corporate representatives, the appointment of directors to fill casual vacancies and inspection of the shareholders' register.

If adopted, the Core Standards will apply to all companies that list on the HKEX, including Hong Kong companies and PRC Companies.

PRC Companies

PRC Companies will need to comply with the requirements of Chapter 19A of and Part D of Appendix 13 to the HKEX Listing Rules in addition to the Core Standards. However, the HKEX does not consider that this will significantly increase the compliance burden on PRC Companies since the Core Standards are identical to the Mandatory Provisions for Companies Listing Overseas⁴ and the Listing Rules that PRC Companies are already required to comply with, except for the Core Standard on HKSCC's right to appoint proxies and corporate representatives.

⁴ As set out 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

Overseas Companies' obligations regarding Core Standards

Appendix 3 to the HKEX Listing Rules will codify the existing practice that all companies listing on the HKEX will have to conform their constitutional documents to the Core Standards or else demonstrate how the domestic laws and regulations to which they are subject and their constitutional documents, taken together (**Domestic Standards**), provide the Core Standards.

An Overseas Company applying to list on the HKEX will therefore need to review the laws and regulations it is subject to and its constitutional documents to assess whether they, together, provide the Core Standards.

An Overseas Company will also be required to notify the HKEX if it is subject to any laws or regulations or provisions in its constitutional documents with respect to matters that are not covered by the Core Standards or the HKEX Listing Rules, that may be materially detrimental to the interests of shareholders as a whole. The HKEX will reserve the right to consider an Overseas Company to be unsuitable for listing in these cases.

Listing document disclosure

An Overseas Company listing on HKEX will also be required to disclose in its listing document:

- i) the major differences between the Domestic Standards and the Core Standards and details of the measures that have been or will be put in place to address the differences; and
- ii) the risk that the extent to which Hong Kong courts may be used as an avenue for aggrieved shareholders of non-Hong Kong companies is subject to certain limitations concerning, for example, the enforcement of a Hong Kong judgment against the overseas assets, operations and/or directors of a non-Hong Kong company listed on the HKEX and the enforcement of an overseas judgment in the Hong Kong courts (paragraph 14 of the proposed Guidance Letter for Overseas Issuers (at Schedule E to the HKEX Consultation Paper)).

Ongoing compliance with Core Standards

Overseas Companies listed on the HKEX will be required to monitor their compliance with the Core Standards on an ongoing basis and to inform the HKEX of any material changes in the local laws or regulations which may affect their ability to comply with the Core

Standards (paragraph 13 of the proposed Guidance Letter for Overseas Issuers (at Schedule E to the HKEX Consultation Paper)).

Consultation on Proposed Core Standards

The HKEX is seeking feedback on the Core Standards and whether they should cover any additional matters. The proposed Core Standards are set out below in *italics* together with a brief summary of the reasons given for their inclusion.

Removal of directors

“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.”

This standard is currently provided by Appendix 3 and Part B of Appendix 13 to the HKEX Listing Rules except for a slight difference in the wording. The right will be stated to be the right of “members” rather than “the issuer” (as under the current HKEX Listing Rules) to make explicit that this is a shareholders’ right. It is included because the HKEX believes that shareholders’ ability to remove a director by ordinary resolution is fundamental to shareholder protection and important for effective corporate governance. The HKEX Consultation Paper notes that a minority of Grandfathered Greater China companies may need to amend their constitutional documents to comply with this standard.

In the case of Grandfathered Greater China companies and Non-Greater China companies with “non-compliant WVR structures” allowed under the HKEX Listing Rules, the right of non-WVR shareholders to remove directors may undermine the effectiveness of the permitted WVR structure. A non-compliant WVR structure is one that does not meet with the requirements of Chapter 8A of the HKEX Listing Rules (for example a WVR structure with corporate WVR holders or a “board-based” WVR structure which gives certain individuals control of the board which is disproportionate to their equity stake in the company). They are permitted under Chapter 19C for “Grandfathered Greater China Issuers” which are Greater China companies primary listed on one of three qualifying stock exchanges on or before 15 December

2017 which secondary list on the HKEX. In these cases, the HKEX has stated that they will assess the applicability of the standard to relevant companies on a case-by-case basis.

Casual vacancy appointments

“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.”

This standard is currently provided by Appendix 3 to the HKEX Listing Rules. The Hong Kong Companies Ordinance⁵ provides that a vacancy created by the removal of a director can be filled as a casual vacancy but does not stipulate that the appointed director will hold office only until the next annual general meeting (AGM). The HKEX proposes to apply the core standard to all HKEX listed companies to preserve shareholders’ ability to elect directors after a casual vacancy arises. The HKEX Consultation Paper notes that a minority of Grandfathered Greater China companies may need to amend their constitutional documents to comply with this standard.

In the case of Grandfathered Greater China companies and Non-Greater China companies with non-compliant WVR structures allowed under the HKEX Listing Rules, the permitted WVR structure may allow WVR holders to appoint directors. The applicability of this standard to these companies will therefore be reviewed by the HKEX on a case-by-case basis.

The HKEX proposes that if this standard is adopted, the “comply or explain” requirement on casual vacancy appointments in the HKEX Corporate Governance Code in Appendix 14 to the Listing Rules (the **HKEX Corporate Governance Code**) will be repealed.

General Meetings – timing of general meetings

“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.”

⁵ Section 462(5).

This proposed Core Standard is based on provisions in the HKCO and the Mandatory Provisions. HKEX listed companies will be required to hold an AGM for each financial year. The HKEX proposes to include a note that the AGM of an HKEX-listed company must be held within six (6) months after the end of its financial year.

Parts A and B of Appendix 13 to the HKEX Listing Rules and the JPS Key Shareholder Protection Standards currently require the companies to which they apply to hold an AGM each year within 15 months of the previous AGM (the **15 Month Rule**).

An HKEX-listed company which is currently subject to the 15 Month Rule will be considered by the HKEX to be compliant with this Core Standard if it complies with the relevant requirements that applied to it at listing.

General Meetings – notice of annual general meeting

“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.”

The current notice requirements for shareholders’ meetings are summarised in the table below.

Place of Incorporation	Notice of general meeting
Acceptable Jurisdictions	Reasonable notice period is required for general meetings with no specific limit imposed.
Grandfathered Greater China listed companies and Non-Greater China listed companies	Reasonable notice period is required for general meetings with no specific limit imposed.
PRC Companies	The Mandatory Provisions require 45 days’ notice of a general meeting and the PRC Company Law requires 20 days’ notice for AGMs and 15 days’ notice for special general meetings.
Cayman Islands and Bermuda	21 days’ notice for annual general meetings and 14 days’ notice for any other general meeting.

Save for PRC Companies listed on the HKEX, the HKEX proposes that HKEX listed companies will have to give at least 21 days’ notice for an AGM and at least 14 days’ notice for any other general meeting. For PRC Companies listed on the HKEX, the HKEX

will consider 20 days’ notice for annual general meetings and 15 days’ notice for special general meetings acceptable.

Companies which are currently listed on the HKEX which have been allowed to list with a shorter notice period, will be considered to be in compliance with this proposed Core Standard provided that they comply with the requirements which applied to them at the time of listing.

If this proposed Core Standard is adopted, the “comply or explain” provision in the HKEX Corporate Governance Code which requires 20 clear business days’ notice for an AGM, will be repealed.

General Meetings – right to speak and vote

“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 must not be counted towards the resolution).”

The current requirements on shareholders’ rights to speak and vote at general meetings are summarised in the table below.

Place of Incorporation	Right to speak and vote at general meetings?
SFC-HKEX Joint Policy Statement applicable to companies incorporated in: a) Acceptable Jurisdictions; and b) Grandfathered Greater China listed companies and Non-Greater China listed companies	Yes. Paragraph 43 of the SFC-HKEX Joint Policy Statement. <i>“Members must have the right to speak and vote at a shareholder meeting except where a member is required, by the Listing Rules, to abstain from voting to approve the transaction or arrangement (e.g. the member has a material interest in the transaction or arrangement).”</i>
Companies incorporated in Bermuda and the Cayman Islands	Neither the SFC-HKEX Joint Policy Statement nor the HKEX Listing Rules specifically impose the above standard on companies incorporated in Bermuda or the Cayman Islands.

Place of Incorporation	Right to speak and vote at general meetings?
Companies incorporated in Hong Kong or the PRC	Neither the SFC-HKEX Joint Policy Statement nor the HKEX Listing Rules specifically impose this standard on companies incorporated in Hong Kong or the PRC which are listed on the HKEX. However, shareholders' right to speak and vote at general meetings is implied in the Hong Kong Companies Ordinance and the Mandatory Provisions.

The HKEX Corporate Governance Code further requires that HKEX-listed companies ensure that the chairman attends general meetings to answer shareholders' questions and that directors should also attend general meetings to get an understanding of shareholders' views. The HKEX is therefore of the view that there is an expectation in the HKEX Listing Rules that all HKEX-listed companies should provide members with a right to speak.

This proposed Core Standard will be applied to all HKEX listed companies to align shareholder protection standards across all jurisdictions.

General Meetings – restriction on shareholder voting

“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.”

This proposed Core Standard is currently included in Appendix 3 to the HKEX Listing Rules and is also a JPS Key Shareholder Protection Standard. The HKEX considers this to be a fundamental shareholder protection and proposes to apply it to all companies listed on the HKEX. If an HKEX-listed company can demonstrate that it can achieve this Core Standard via an alternative means (e.g. a two-tier voting arrangement), the HKEX may consider it to be in compliance with the Core Standard.

General Meetings – right to convene an extraordinary general meeting

“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.”

The current requirements on shareholders' rights to convene an extraordinary general meeting are summarised below.

Place of Incorporation	Right to convene an EGM?
SFC-HKEX Joint Policy Statement applicable to: a) Companies incorporated in Acceptable Jurisdictions; and b) Grandfathered Greater China listed companies and Non-Greater China listed companies	Yes. Under the SFC-HKEX Joint Policy Statement, the minimum level of members' support required to convene an extraordinary general meeting must be no higher than 10%.
Companies incorporated in Bermuda, the Cayman Islands or the PRC	The laws of Bermuda and the Mandatory Provisions applicable to Bermuda and PRC-incorporated companies, respectively, have equivalent provisions. While there is no equivalent provision under Cayman Islands law, the HKEX is of the view that all primary-listed Cayman Islands companies listed on the HKEX have already incorporated this proposed Core Standard into their constitutional documents.
Hong Kong incorporated companies	Under the Hong Kong Companies Ordinance, shareholders representing 5% of the total voting rights of all members may request the directors to call a general meeting.

The HKEX is of the view that members representing a minimum of 10% of the voting rights of an HKEX listed company should be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. It therefore proposes to apply this Core Standard to all HKEX-listed companies.

Other shareholder rights – variation of class rights

“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 ‘supermajority’.”

There is currently a JPS Key Shareholder Protection Standard to the above effect which applies to companies incorporated in Acceptable Jurisdictions, Grandfathered Greater China listed companies and Non-Greater China listed companies. However, there are inconsistencies with respect to the threshold required to vary class rights and the level of quorum required. The SFC-HKEX Joint Policy Statement requires a “two thirds majority” vote for the variation of class rights but does not specify the level of quorum required. For Grandfathered Greater China listed companies and Non-Greater China listed companies, Chapter 19C of the HKEX Listing Rules requires variation of class rights by “a two thirds majority of the members *present and voting*.”

For PRC-incorporated companies, the Mandatory Provisions require a two-thirds majority vote of the shareholders that are present and have voting rights to amend class rights.

For Cayman Islands and Bermuda incorporated companies, Appendix 13 to the HKEX Listing Rules requires their constitutional documents to specify a three-fourths majority as the threshold for class rights variation which is in line with the proposed Core Standard. The Hong Kong Companies Ordinance similarly specifies a three-fourths majority.

The HKEX is proposing to apply the proposed Core Standard to all HKEX listed companies. However, for PRC-incorporated companies, it is proposed that the current standards set out in the Mandatory Provisions be maintained.

For existing HKEX-listed companies which are currently subject to the JPS Key Shareholder Protection Standard which defines a “super-majority vote” as a “two-thirds majority”, the HKEX does not intend to impose a higher threshold on these companies. They will be considered to comply with the Core Standard if they satisfy the requirements that applied to them on listing and will not need to amend their constitutional documents to comply with this proposed Core Standard.

Other shareholder rights – constitutional documents

“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 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 vote’.”

Similar to the inconsistencies described immediately above with respect to the threshold and quorum required to vary class rights of shareholders, there are similar inconsistencies with respect to the required threshold and quorum required to amend the constitutional documents of an HKEX-listed company depending on the place of incorporation.

It is proposed that the Core Standard which sets the threshold for a “super majority” vote at a three-fourths majority of the total voting rights of the members present and voting will be adopted for all HKEX-listed companies so as to align it with the current requirements for Overseas Companies incorporated in Bermuda or the Cayman Islands.

The current requirements for PRC Companies under the Mandatory Provisions require a two-thirds majority for amendments to the constitutional documents. These will be maintained.

For existing HKEX-listed companies which are currently subject to the JPS Key Shareholder Protection Standard requiring a two-thirds majority vote, the HKEX does not intend to impose a higher threshold on these companies. They will instead be considered to comply with this proposed Core Standard if they comply with the requirements which were applicable to them at the time of listing on the HKEX.

Other shareholder rights – appointment of auditors

“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.”

This proposed Core Standard is currently a JPS Key Shareholder Protection Standard while the Hong Kong Companies Ordinance and the Mandatory Provisions have equivalent protections.

The company laws of Bermuda have similar provisions except that two-thirds of the votes cast at a general meeting are required for the removal of an auditor.

The Cayman company laws do not have such a requirement. Therefore, if this proposed Core Standard is adopted, companies incorporated in the Cayman Islands may need to amend their constitutional documents to ensure compliance. The HKEX proposes that this Core Standard be applied to all HKEX-listed companies.

Other shareholder rights - proxies and corporate representatives

“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.”

Currently, only companies incorporated in the Cayman Islands or the PRC are subject to this requirement under the HKEX Listing Rules, while the company laws of Bermuda have an equivalent provision. This proposed Core Standard is also consistent with the Hong Kong Companies Ordinance which provides that a member of a company is entitled to appoint a proxy. Accordingly, companies incorporated in Acceptable Jurisdictions and Grandfathered Greater China listed companies and Non-Greater China listed companies may need to amend their constitutional documents to ensure compliance with this Core Standard which gives members a right to appoint a proxy or a corporate representative, as applicable.

Other shareholder rights - HKSCC's right to appoint proxies or corporate representatives

“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 rights to vote, attend (personally or by proxy) and speak at general meetings.”

This standard currently applies to companies incorporated in Bermuda and the Cayman Islands under Appendix 13 to the HKEX Listing Rules. It is also a JPS Key Shareholder Protection Standard applicable to issuers incorporated in Acceptable Jurisdictions and Non-Greater China companies and Grandfathered Greater China companies. Although the HKEX Listing Rules do not currently require Hong Kong or PRC-incorporated companies to comply with this shareholder protection standard, existing listed companies incorporated in these jurisdictions comply with this standard in practice.

It is proposed that this Core Standard is applied to all HKEX-listed companies.

Other shareholder rights - Inspection of branch register

“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.”

This proposed Core Standard is not a JPS Key Shareholder Protection Standard.

Cayman Islands- incorporated companies are currently subject to this proposed Core Standard while the Hong Kong Companies Ordinance and the company laws of Bermuda have equivalent provisions.

The Mandatory Provisions applicable to PRC-incorporated companies listed on the HKEX also provide for shareholders' rights to inspect the branch register.

The HKEX proposes to apply this Core Standard to all HKEX-listed companies. Therefore, companies already listed on the HKEX which are incorporated in Acceptable Jurisdictions or are Non-Greater China listed companies or Grandfathered Greater China listed companies, may need to amend their constitutional documents to comply.

Other shareholder rights - Voluntary winding up

“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'."

There is a current misalignment between the requirements under the JPS Key Shareholder Protection Standards, the Mandatory Provisions and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (**CWUMPO**). The relevant JPS Key Shareholder Protection Standard and the Mandatory Provisions both require a two-thirds majority vote whereas CWUMPO requires a voluntary winding-up to be passed by a special resolution, i.e. a resolution passed by at least 75% of the total voting rights of all members who vote on the resolution (in person or by proxy). Companies incorporated in Bermuda or the Cayman Islands are not required to comply with this shareholder protection standard.

This proposed Core Standard will be applied to all HKEX-listed companies with a proposal to use a three-fourths majority definition for a "super-majority" vote. This will align all HKEX-listed companies save for PRC-incorporated companies listed on the HKEX. For PRC incorporated companies listed on the HKEX, it is proposed that the current requirement for a two-thirds majority under the Mandatory Provisions be retained. Additionally, for existing HKEX-listed companies which are subject to the JPS Key Shareholder Protection Standard which requires a two-thirds majority vote, the HKEX does not propose to impose a higher threshold. These companies will be regarded as complying with the proposed Core Standard if they meet the requirement that applied to them at listing.

Repeal of Certain Existing Shareholder Protection Standards

The HKEX proposes to repeal a number of shareholder protections currently set out in Appendices 3 and 13 of the HKEX Listing Rules

and the SFC-HKEX Joint Policy Statement as set out in Schedule C to the HKEX Consultation Paper. The provisions that will be repealed, are considered by the HKEX to not concern fundamental shareholder rights which are commonly found in the company laws and listing rules of leading stock markets.

Application of the Proposed Core Standards to Existing HKEX Listed Companies

Subject to the responses to the HKEX Consultation Paper, the Proposed Core Standards will apply to companies already listed on HKEX as well as to new listing applicants, save for where the HKEX has expressly stated that a proposed Core Standard will not apply to existing HKEX listed companies (as described above in relation to the proposed Core Standards on variation to class rights, the amendment of constitutional documents and voluntary winding up).

Companies listed on HKEX at the time the proposed Core Standards are implemented will have until their second AGM after implementation to make the required amendments to their constitutional documents to ensure compliance.

The HKEX is of the view (after having conducted a review) that a vast majority of HKEX-listed companies already conform to the proposed Core Standards and that their adoption should not cause listed companies an undue compliance burden.

Codification of SFC-HKEX Joint Policy Statement Requirements

With the proposed repeal of the SFC-HKEX Joint Policy Statement, the HKEX is proposing to codify some of its requirements.

Regulatory co-operation

The SFC-HKEX Joint Policy Statement currently requires that in order for an Overseas Company to list on the HKEX, the statutory securities regulator in the Overseas Company's jurisdiction of incorporation and its place of central management control (if different) must:

- i) be a full signatory of the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the **IOSCO MMOU**); or
- ii) 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.

The HKEX Consultation Paper defines this requirement as the “Regulatory Co-operation Requirement”. The HKEX can make an exception to the Regulatory Co-operation Requirement but only with the consent of the SFC.

Currently, the Regulatory Co-operation Requirement does not apply to companies incorporated in Hong Kong, the PRC, Bermuda or the Cayman Islands. The HKEX is proposing to apply it to all companies listing on the HKEX by including it as a listing requirement under Chapter 8 of the HKEX Listing Rules. Its aim in doing so is to facilitate the SFC’s investigations and enforcement actions against all companies with core assets and operations outside Hong Kong.

The HKEX Consultation Paper notes that no company from an Acceptable Jurisdiction has ever been accepted for listing on the basis of a bi-lateral agreement between the SFC and an overseas statutory securities regulator. It explains that the presence of such a bi-lateral agreement is not a standalone requirement and is only one factor taken into consideration when assessing compliance with the Regulatory Co-operation Requirement. The HKEX proposes removing the reference to “bi-lateral agreement” in the Regulatory Co-operation Requirement and to codify the existing practice which is to consider on a case-by-case basis any exception to the requirement for the statutory securities regulator in a company’s place of incorporation and place of central management control to be a full signatory of the IOSCO MMOU.

Auditing Standards

The HKEX proposes to retain the existing list of alternative auditing standards that can be used by Overseas Companies and the current list will be published as guidance.

Financial Reporting Standards

The HKEX proposes to codify certain provisions of the SFC-HKEX Joint Statement with respect to the suitability of alternative financial reporting standards.

The SFC-HKEX Joint Policy Statement provides that the suitability 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. On this basis, the HKEX

has accepted financial statements and accountants’ reports prepared in accordance with various foreign financial reporting standards and subject to certain limitations as set out in the SFC-HKEX Joint Statement (as summarised in the table below).

Financial Reporting Standard	Limitations
EU-IFRS	For companies incorporated in EU member states
US GAAP	For companies with, or seeking, a secondary listing or a dual-primary listing in the US and on the HKEX
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 Japan	
Singapore Financial Reporting Standards	
UK adopted international accounting standards	

The HKEX proposes to codify the basis for determining the suitability of alternative financial reporting standards as currently set out in the SFC-HKEX Joint Policy Statement. The list of acceptable alternative financial reporting standards subject to the existing limitations on their use will be retained as guidance.

The HKEX will also codify the requirement of the SFC-HKEX Joint Policy Statement that a listed company which has adopted one of the accepted alternative financial reporting standards must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative financial reporting standards. This requirement does not apply to listed companies incorporated in an EU member state which adopted EU-IFRS. Companies will however be given an automatic grace period (i.e. not requiring an application to the HKEX) for the adoption of HKFRS or IFRS which will end on the first anniversary of the company’s delisting.

Qualification requirements for auditors and reporting accountants

The HKEX intends to amend the HKEX Listing Rules to reflect the changes that were made to the Financial Reporting Council Ordinance (Cap. 588) (the **FRCO**) which established the Financial Reporting Council as Hong Kong’s independent regulator of listed company auditors. The changes to the FRCO include the adoption of a system of registration or recognition for audit firms which prepare an auditors’ report or accountants’ report with respect to a listed company’s annual financial statements or listing

document or a very substantial acquisition or reverse takeover conducted by a listed company. These changes will be reflected in the HKEX Listing Rules.

Qualification requirements for accountants' reports

The HKEX proposes to retain its existing practice that accountants' reports must be prepared by certified public accountants who are qualified under the Professional Accountants Ordinance (Cap. 50) (the **PAO**). In circumstances where the preparation of an accountants' report constitutes a public interest entity engagement under the FRCO, the HKEX proposes that the HKEX listed company must normally appoint a firm of practising accountants that is qualified under the PAO and is a registered public interest entity auditor under the FRCO.

With respect to accountants' reports for a reverse takeover or a very substantial acquisition circular for the acquisition of an overseas company, the HKEX proposes to amend the HKEX Listing Rules to allow the appointment of an overseas audit firm that is not qualified under the PAO but is a recognised audit firm under the FRCO. This exception will not apply to Hong Kong incorporated companies, while only PRC incorporated companies will be able to appoint PRC auditors pursuant to the FRCO.

The SFC-HKEX Joint Policy Statement and the current practice of the HKEX permit overseas audit firms which meet the requirements of the SFC-HKEX Joint Policy Statement to prepare accountants' reports in relation to public interest entity engagements and notifiable transactions. The HKEX proposes to codify this practice and the applicable requirements which require the overseas audit firm to:

- 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. The HKEX explains that 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.

Collection of FRC levies

The HKEX proposes to amend the HKEX Listing Rules to reflect that the HKEX is responsible for collecting on behalf of the FRC, transaction levies and the annual public interest entity levy.

Company Information Sheets

If the SFC-HKEX Joint Policy Statement is repealed as proposed, its requirement for certain Overseas Companies to make additional disclosures in company information sheets will be codified in the HKEX Listing Rules. The requirement to produce a company information sheet currently applies to companies primary listed on the HKEX which are not incorporated in the Recognised Jurisdictions of Hong Kong, the PRC, Bermuda and the Cayman Islands and all secondary listed companies. The HKEX is proposing to require company information sheets to be prepared by HKEX secondary listed companies and any other Overseas Company where the HKEX believes that the publication of a company information sheet will be useful to Hong Kong investors (e.g. to provide them with information on unfamiliar laws and regulations to which the company is subject).

Guidance on Practical and Operational Matters

The HKEX proposes to amalgamate in a combined guidance letter for Overseas Companies the guidance on various practical and operational matters for Overseas Companies provided in the SFC-HKEX Joint Policy Statement and the HKEX's guidance for Overseas Companies seeking to list in Hong Kong⁶ published on 29 October 2019.

HKEX requests for comment timeline

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

⁶ https://www.hkex.com.hk/news/regulatory-announcements/2019/191029news?sc_lang=en

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