



Hong Kong

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HKEX PROPOSES EXTENSION OF ITS SECONDARY AND DUAL PRIMARY LISTING REGIMES

The Hong Kong Stock Exchange's Consultation Paper on the Listing Regime for Overseas Issuers¹ published on 31 March 2021 (**HKEX Consultation Paper**) proposes potentially far reaching changes to its requirements for secondary and dual primary listings of overseas companies on the Hong Kong Stock Exchange (the **HKEX**).

Two of the key proposals, which are the subject of this newsletter, are:

- a) to expand the secondary listing regime for overseas-listed Greater China companies from traditional sectors (i.e. companies not meeting the definition of "innovative" companies as set out in HKEX Guidance Letter GL94-18²) which do not have weighted voting rights (**WVR**) structures; and
- b) to allow companies to dual primary list on the HKEX while maintaining their existing weighted voting rights structures and variable interest entity (**VIE**) structures.

The HKEX Consultation Paper's third major proposal, to simplify the listing regime for overseas companies by removing the current distinction between Acceptable and Recognised Jurisdictions and to require all companies listing on the HKEX to meet a core set of 14 shareholder protection standards, is the subject of a separate newsletter, HKEX Proposes Simplification of HKEX Listing

Regime for Overseas Issuers.³ For an overview of the Consultation Paper's proposed changes, please see Charltons' newsletter The HKEX Consultation Paper on the Listing Regime for Overseas Companies.⁴

The consultation period will expire on 31 May 2021.

HKEX Proposals for Dual Primary Listings

1. Issues Identified

In the context of dual primary listings on the HKEX, the HKEX Consultation Paper has identified the following two issues:

- a) the HKEX Listing Rules and guidance materials provide no clear guidance on the basis on which the HKEX will grant waivers to primary and dual primary listed companies; and
- b) Grandfathered Greater China Issuers and Non-Greater China Issuers cannot apply directly to the HKEX for a dual primary listing and retain their WVR structures that do not comply with the Chapter 8A requirements for WVR structures of primary listing applicants and/or VIE structures that do not comply with the "narrowly tailored" requirements of HKEX Listing Decision 43-3.

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

2 <https://cn-rules.hkex.com.hk/規則手冊/gl94-18>

3 <https://www.charltonslaw.com/hkex-proposes-simplification-of-hkex-listing-regime-for-overseas-companies/>

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

2. HKEX Proposed Codification of the Common Waivers for Dual Primary Listed Companies and the Underlying Principle

Key differences in HKEX requirements for dual primary and secondary listings

The HKEX Listing Rules allow overseas companies not incorporated in the PRC or Hong Kong (**Overseas Companies**) to apply for a primary or dual primary listing on the HKEX's Main Board or GEM, or a secondary listing on the Main Board. Different HKEX Listing Rules apply depending on whether an Overseas Company is seeking a primary, dual primary or secondary listing.

Primary and dual primary listed companies typically have all or a majority of their equity securities traded on the HKEX and are required to fully comply with the HKEX Listing Rules, unless specifically waived. A company with a dual primary listing has a primary listing on both the HKEX and an overseas exchange and is subject to the full requirements of the HKEX Listing Rules and those of the overseas exchange on which its securities are listed. A dual primary listing can arise when: (i) a company which already has a primary listing on an overseas exchange seeks a primary listing on the HKEX; or (ii) an unlisted company applies for a primary listing simultaneously on the HKEX and on one or more overseas exchanges.

In contrast, where a company has a secondary listing on the HKEX, a majority of its equity securities will be traded outside of Hong Kong and the HKEX will grant the company extensive waivers from the HKEX Listing Rules (through automatic waivers) because it is already subject to regulations and enforcement in the jurisdiction of its primary listing. The HKEX therefore requires that a secondary listing applicant demonstrate that: (i) its jurisdiction of incorporation provides standards of shareholder protection that are at least equivalent to those of Hong Kong; and (ii) the market of primary listing also has shareholder protection standards equivalent to those provided in Hong Kong (Listing Rule 19.30(1)(b)). The HKEX and the SFC have recognised 15 overseas stock exchanges as Recognised Stock Exchanges that meet the latter requirement. These are currently listed in paragraph 95 of the SFC/HKEX Joint Policy Statement Regarding the Listing of Overseas Companies⁵ (**SFC-HKEX Joint Policy Statement**).

⁵ 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#page=17

Common waivers available to Overseas Companies dual primary listed on the HKEX

The appendix to the SFC-HKEX Joint Policy Statement sets out 14 common waivers that are available to Overseas Companies applying for a dual primary listing on the HKEX, subject to specified conditions, and a smaller number of common waivers that Overseas Companies seeking a primary listing on the HKEX may apply for.

The HKEX requires Overseas Companies applying to dual primary list on the HKEX to submit a waiver application demonstrating their need for any common waiver(s) applied for and their ability to meet the prescribed conditions. The HKEX considers each waiver application based on the company's particular circumstances.

The HKEX determines whether to grant a common waiver based on the underlying principle that the Overseas Company must demonstrate that strict compliance with both the relevant HKEX Listing Rule and the overseas exchange's requirement would be unduly burdensome or unnecessary (the **Underlying Principle**). Therefore, where the circumstances which supported the grant of an exemption or waiver to an Overseas Company no longer exist (e.g. on its de-listing from an overseas exchange), the HKEX has the discretion to revoke the exemption or waiver.

Proposed codification of common waivers

Neither the HKEX Listing Rules nor the SFC-HKEX Joint Policy Statement set out the principles underlying the grant of common waivers and the HKEX has not published any guidance or codified the basis on which it will grant waivers to Overseas Companies applying for a primary or dual primary listing.

The HKEX proposes to codify the following:

- a) the Underlying Principle; and
- b) certain common waivers set out in the appendix to the SFC-HKEX Joint Policy Statement where the HKEX believes that the underpinning principle and conditions are unlikely to change in the foreseeable future.

The HKEX proposes to codify in proposed HKEX Listing Rule 19.59 the common waivers for which companies seeking a primary or dual primary listing could apply together with their prescribed conditions. Applicants for dual primary listing would be able to apply for waivers from HKEX Listing Rules 2.07C(4)(a), 4.03, 9.09, 11.06, 19.06 and paragraph 15(2)(c) of Appendix 1A and

paragraph 49(2)(c) of Appendix 1E to the HKEX Listing Rules. The Underlying Principle would be codified in Listing Rule 19.58.

Despite the proposed codification of certain common waivers, the HKEX will still require companies to apply for common waivers and the HKEX will continue to grant common waivers on a case by case basis subject to applicants demonstrating, at a minimum, that they meet the prescribed conditions.

3. HKEX Proposals for Dual Primary Listings of Grandfathered Greater China Issuers and Non-Greater China Issuers

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

Companies with weighted voting rights (**WVR**) and/or variable interest entity (**VIE**) structures which apply for a *primary or dual primary listing* on the HKEX must meet the requirements for WVR structures under Chapter 8A of the HKEX Listing Rules and HKEX Guidance Letter 93-18⁶ (which sets out further requirements for WVR-structured companies to be considered suitable for listing) and the relevant requirements for VIE Structures under Listing Decision 43-3 as set out in HKEX Guidance Letter 94-18⁷ (as applicable). Companies which have WVR structures that do not comply with the requirements of Chapter 8A of the HKEX Listing Rules and HKEX Guidance Letter 93-18 (**Non-compliant WVR structures**) and/or VIE Structures which do not comply with Listing Decision 43-3 (**Non-compliant VIE structures**) must amend these structures to comply with the relevant requirements if they want to primary or dual list in Hong Kong.

In contrast, Grandfathered Greater China Issuers and Non-Greater China Issuers which secondary list on the HKEX under Chapter 19C of the HKEX Listing Rules, are exempt from the requirements for WVR structures under Chapter 8A of the HKEX Listing Rules (HKEX Listing Rule 19C.12). Grandfathered Greater China Issuers and Non-Greater China Issuers are also exempt from the “narrowly tailored requirements” for variable interest entity structures under HKEX Listing Decision 43-3. This means that Grandfathered Greater China Issuers and Non-Greater China Issuers can *secondary list* on the HKEX notwithstanding that they have WVR structures that do not comply with the Chapter 8A requirements for WVR structures and/or VIE structures that do not comply with the relevant requirements of HKEX Listing Decision 43-3.

⁶ https://en-rules.hkex.com.hk/sites/default/files/net_file_store/gl9318.pdf

⁷ <https://en-rules.hkex.com.hk/rulebook/gl94-18>

A **Grandfathered Greater China Issuer** is a company which has its centre of gravity in Greater China and was primary listed on one of three qualifying stock exchanges (the New York Stock Exchange, Nasdaq or the “Premium Listing” segment of the London Stock Exchange’s Main Market) (**Qualifying Exchanges**) on or before:

- a) 15 December 2017 - if it has an individual weighted voting rights structure; or
- b) 30 October 2020 - if it has a corporate weighted voting rights structure.

A **Non-Greater China Issuer** is a company which is primary listed on a Qualifying Exchange and **does not** have its centre of gravity in Greater China.

Where a Grandfathered Greater China Issuer with a Non-compliant WVR and/or VIE structure secondary lists on the HKEX under Chapter 19C, and the demand for its shares in Hong Kong subsequently increases and results in the majority of trading in its listed shares migrating to the HKEX on a permanent basis (a **Trading Migration**), the company will be regarded as dual primary listed in Hong Kong and will lose the benefit of the automatic waivers granted to it under HKEX Listing Rule 19C.11 (HKEX Listing Rule 19C.13). However, Grandfathered Greater China Issuers are permitted to retain their Non-compliant WVR and/or VIE structures on the occurrence of a Trading Migration despite having a dual primary listing on the HKEX.

Similarly, Non-Greater China Issuers with Non-compliant WVR and/or VIE structures can secondary list under Chapter 19C of the HKEX Listing Rules, and can retain their Non-compliant WVR and/or VIE structures, even if the majority of trading in their shares migrates to the HKEX on a permanent basis. This is because the HKEX restriction on Trading Migration does not apply to Non-Greater China Issuers as the HKEX is not concerned about the possibility of regulatory arbitrage for these companies.

Proposal to allow Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-Compliant WVR and/or VIE structures to dual primary list

The HKEX proposes that Grandfathered Greater China Issuers and Non-Greater China Issuers should be allowed to dual primary list directly on the HKEX while retaining their Non-compliant WVR and/or VIE structures. However, these companies will still be required to comply with the suitability and eligibility requirements of Chapter 19C of the HKEX Listing Rules despite the fact that they are applying for a dual primary listing.

The HKEX explains in the Consultation Paper that it does not consider this proposal to expand the concessions available to these companies since the HKEX Listing Rules already allow them to be dual primary listed while retaining Non-compliant WVR and/or VIE structures through a “two step” route when a Trading Migration occurs following their secondary listing under Chapter 19C (as described above). However, these companies will be subject to the full set of HKEX Listing Rules (subject to any waivers granted by the HKEX), even where a majority of the trading in their listed shares takes place outside Hong Kong.

Proposal to Allow Grandfathered Greater China Issuers and Non-Greater China Issuers to retain their Non-Compliant WVR and/or VIE structures if they are de-listed from their Qualifying Exchange

Currently, Grandfathered Greater China Issuers and Non-Greater China Issuers may retain their pre-existing Non-compliant WVR and/or VIE structures on listing. These structures can also continue notwithstanding the permanent migration of the majority of trading of the relevant companies’ listed shares to the HKEX.

However, the HKEX Listing Rules and related guidance materials do not currently provide guidance on whether Grandfathered Greater China Issuers or Non-Greater China Issuers can retain their Non-compliant WVR and/or VIE structures if they de-list from the overseas exchange of their primary listing.

The HKEX therefore proposes that Grandfathered Greater China Issuers and Non-Greater China Issuers will be allowed to retain their Non-Compliant WVR and/or VIE structures which are pre-existing at the time of their secondary listing on the HKEX if they are de-listed from a Qualifying Exchange. The HKEX Consultation Paper notes that the HKEX reserves the right to reject a listing applicant on suitability grounds if its Non-compliant WVR structure constitutes an extreme case of non-conformance with governance norms (e.g. if there are non-voting shares) and that these companies will still be subject to all the other Listing Rule requirements, unless specifically waived. Ultimately, this means that Grandfathered Greater China Issuers and Non-Greater China Issuers which have non-compliant WVR and/or VIE structures that apply for a dual primary listing, will be assessed by the HKEX in the same way as those applying for a secondary listing on the HKEX.

HKEX Proposals for Secondary Listings

1. Background

The HKEX allows companies to secondary list on the HKEX if they are already listed on an overseas exchange or will simultaneously

primary list on an overseas exchange and secondary list on the HKEX. Applicants for secondary listing need to be principally regulated by the rules and regulations of the primary listing exchange and must not have been exempted or have received waivers from the rules and regulations generally applicable to listed companies in their primary market.

To safeguard investors, the HKEX restricts secondary listings to companies which have a track record of good regulatory compliance on their exchange of primary listing and are of significant size. Companies seeking a secondary listing on the HKEX are required to have an expected market capitalisation at listing of at least US\$400 million, which is approximately six times higher than the HK\$500 million market capitalisation requirement for companies primary listing on the HKEX.

An Overseas Company seeking a secondary listing on the HKEX must appoint a sponsor to advise it on compliance with the HKEX Listing Rules. It is also required to demonstrate how the laws, rules and regulations of the place of its incorporation together with its constitutional documents provide shareholder protection standards equivalent to those of Hong Kong and to maintain those standards on an on-going basis after listing. Companies secondary listed on the HKEX are also subject to the provisions of the Securities and Futures Ordinance (Cap. 571) on false or misleading disclosure, disclosure of inside information, market manipulation and insider dealing.

A company which is primary listed on a Recognised Stock Exchange which meets the requirements for secondary listing under the SFC-HKEX Joint Policy Statement, will be granted automatic waivers on the basis that the HKEX considers the Recognised Stock Exchanges to provide standards of shareholder protection equivalent to those provided in Hong Kong.

Secondary listings of Hong Kong and PRC incorporated companies

The HKEX explains that secondary listings pose a regulatory risk where the secondary listing route is used to avoid the full rigour of the primary listing requirements. To mitigate against the regulatory risks, Overseas Companies with a “centre of gravity” in Greater China wishing to secondary list in Hong Kong cannot rely on the SFC-HKEX Joint Policy Statement. Instead, these companies must meet the criteria in Chapter 19C of the HKEX Listing Rules.

For companies with their centre of gravity in Greater China listed under Chapter 19C, the automatic waivers granted under HKEX Listing Rule 19.11 will be revoked if the majority of trading in

the issuers' shares migrates permanently to the HKEX's markets (the "**Trading Migration Requirement**").

The Consultation Paper also notes that a majority of the Greater China companies that have secondary listed on the HKEX have been "Foreign Private Issuers" (as defined under Rule 405 of Regulation C of the US Securities Act of 1933 and Rule 3b-4 of the US Securities Exchange Act of 1934) which are exempt from various US obligations that would otherwise apply to them, for example the requirements 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. A company applying to secondary list under Chapter 19C which is a Foreign Private Issuer is required to disclose this and the exemptions it enjoys as a result in its listing document (HKEX Listing Rule 19C.14).

2. Issues Identified in relation to Secondary Listings on the HKEX

The HKEX Consultation Paper identifies the following key issues in relation to secondary listings on the HKEX:

- a) the co-existence of two secondary listing regimes under the SFC-HKEX Joint Policy Statement and under Chapter 19C of the HKEX Listing Rules has caused confusion;
- b) the requirements for secondary listing are more restrictive for companies which have a centre of gravity in Greater China than for those with a centre of gravity outside Greater China;
- c) the HKEX's approach to granting waivers to secondary listing applicants is currently unclear; and
- d) the market is unclear as to whether automatic and other waivers granted to a secondary listed company will continue when: (i) the majority of trading in its shares migrates to the HKEX; or (ii) it de-lists from the overseas exchange on which it is primary listed.

Co-existence of two secondary listing regimes

There are currently two routes to secondary listing on the HKEX:

- a) the SFC-HKEX Joint Policy Statement provides for the secondary listing of Overseas Companies that have a centre of gravity outside Greater China and can meet the additional eligibility requirements set out in Section 5 of the SFC-HKEX Joint Policy Statement; or

- b) Chapter 19C of the HKEX Listing Rules provides for the secondary listing of innovative companies that are listed on one of the three Qualifying Exchanges (**Qualifying Issuers**) and can meet the suitability and additional eligibility requirements set out in Chapter 19C and related guidance materials. Companies are eligible for secondary listing under Chapter 19C whether or not they have a centre of gravity in Greater China, but companies with a centre of gravity in Greater China are only eligible for secondary listing under Chapter 19C.

As outlined previously, the HKEX considers that the existence of two secondary listing regimes has caused confusion and is unattractive to Overseas Companies considering listing on the HKEX.

More restrictive requirements for companies with a centre of gravity in Greater China

Higher Quantitative Eligibility Requirements

For a company with a centre of gravity in Greater China which does not have a WVR structure to secondary list under Chapter 19C with the benefit of the automatic waivers specified in HKEX Listing Rule 19C.11, the company is currently required to have:

- a) a track record of at least two financial years of good compliance on a Qualifying Exchange; and
- b) an expected market capitalisation at the time of secondary listing on the HKEX 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 (HKEX Listing Rules 19C.04 and 19C.05).

In contrast, for a company with a centre of gravity *outside* Greater China which does not have a WVR structure to secondary list under Chapter 19C with the benefit of the automatic waivers specified in HKEX Listing Rule 19C.11, the company is only required to have an expected market capitalisation at secondary listing of HK\$10 billion as well as a track record of two financial years of good compliance on a Qualifying Exchange.

Alternatively, companies with a centre of gravity *outside* Greater China that are listed on a Recognised Stock Exchange can list under the SFC-HKEX Joint Policy Statement, which has an even lower required expected market capitalisation of only US\$400 million (approximately HK\$3 billion), provided they demonstrate at least a five-year track record of good compliance on their Recognised Stock Exchanges.

The higher quantitative eligibility requirement for companies with a centre of gravity in Greater China is intended to mitigate the regulatory arbitrary risk associated with these companies. The HKEX Consultation Paper notes in particular that a Greater China-based business may have listed overseas through a reverse takeover which was not subject to a regulatory vetting process as rigorous as that applied to IPOs on the overseas exchange. It would then be eligible to seek a secondary listing on the HKEX and enjoy the automatic waivers from the Listing Rules.

“Innovative Company” Requirement Applies only to Companies with a Centre of Gravity in Greater China

Chapter 19C of the HKEX Listing Rules only allows companies to secondary list if they are listed on a Qualifying Exchange and meet the HKEX’s definition of “Innovative Company”, even if they do not have a WVR structure. According to HKEX Guidance Letter GL94-18⁸, an “innovative company” is a company that demonstrates at least one of the following characteristics:

- a) its success is demonstrated to be attributable to the application, to the company’s core business, of (1) new technologies; (2) innovations; and/or (3) a new business model, which also serves to differentiate the company from existing players;
- b) research and development is a significant contributor to its expected value and constitutes a major activity and expense;
- c) its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- d) it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

The “innovative company” requirement was imposed to prevent WVR structures from becoming commonplace in Hong Kong by only allowing them for tech and other new economy companies. The HKEX notes that requiring all companies secondary listing under Chapter 19C to be innovative companies – including those *without* a WVR structure – goes beyond its regulatory intention. Since Chapter 19C provides the only route to secondary listing for companies with a centre of gravity in Greater China, the “innovative company” requirement prevents large and good quality Greater China companies operating in traditional industries from secondary listing on the HKEX.

⁸ <https://cn-rules.hkex.com.hk/規則手冊/gl94-18>

The HKEX’s Trading Migration Requirement only Applies to Greater China Issuers

Currently, under the HKEX Listing Rules, where the majority of trading in a Greater China Issuer’s listed shares migrates permanently to the HKEX, the HKEX will regard the Greater China Issuer as having a dual primary listing on the HKEX. This will result in the automatic waivers granted to the secondary listed Greater China Issuer ceasing to have effect under HKEX Listing Rule 19C.13 (the **HKEX Trading Migration Requirement**).

The HKEX Trading Migration Requirement does not apply to secondary listed companies with a “centre of gravity” outside of Greater China even in circumstances where a majority of the company’s listed shares migrates permanently to the HKEX.

Unclear approach to granting waivers to secondary listing applicants

The HKEX does not require secondary listed companies to comply with the full extent of the HKEX Listing Rules as they are already subject to the laws and regulations of their place of primary listing. It has therefore granted automatic and common waivers to these companies on a number of occasions. However, as with waivers granted to dual primary applicants (discussed above), the HKEX has not codified the basis on which it grants these waivers. In addition, although the automatic waivers for Qualifying Issuers that secondary list under Chapter 19C are codified, the automatic waivers for companies secondary listing under the SFC-HKEX Joint Policy Statement are not codified.

Trading migration requirement and de-listing

The HKEX has received requests from the market to clarify whether automatic and other waivers granted to a secondary listed company will be dis-applied where: (a) the majority of trading in the shares of the secondary listed company migrates to the HKEX; and (b) the secondary listed company is considering de-listing from the stock exchange on which it is primary listed.

3. Proposals for Secondary Listings on the HKEX

Consolidation of requirements to reduce complexity

The HKEX is therefore proposing to consolidate the requirements for secondary listings into Chapter 19C of the HKEX Listing Rules. The revised Chapter 19C would include the secondary listing requirements currently set out in Chapter 19 and Section 5 of the SFC-HKEX Joint Policy Statement (with the amendments set out in the HKEX Consultation Paper) would be codified in Chapter

19C. The HKEX also proposes to consolidate the requirements for Overseas Companies primary listing on the HKEX in Chapter 19.

Proposed Requirement for an Applicant to be Subject to the Regulatory Requirements of its Market of Primary Listing

The HKEX is proposing to include in the HKEX Listing Rules a provision similar to that included in the SFC-HKEX Joint Policy Statement (at paragraph 96) that the HKEX has the right to refuse to list the shares of a secondary listing applicant which 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. The proposed provision aims to ensure that the HKEX can rely on the regulatory regime of companies' primary listing market.

Proposed Quantitative Eligibility Requirements for Secondary Listing Applicants on HKEX

The HKEX is proposing that all Overseas Companies without WVR structures (including those with a centre of gravity in Greater China) be allowed to seek a secondary listing and 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:
 - i) on a Qualifying Exchange for an Overseas Company without a WVR structure; or
 - ii) on a Recognised Stock Exchange for an Overseas Company 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; 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.

This proposal aims to consolidate the existing two routes to secondary listing by codifying the SFC-HKEX Joint Policy Statement's requirements for companies without WVR structures (Criteria A) alongside the requirements of Chapter 19C (Criteria B). Criteria A is substantially the same as the existing requirements of the SFC-HKEX Joint Policy Statement 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 currently set out in the SFC-HKEX Joint Policy Statement, which is consistent with the round number format and currency denomination (i.e. HK Dollar) used for other market capitalisation thresholds in the HKEX Listing Rules.

The current requirements for profit, revenue and cashflow would continue to apply to secondary listing applicants without WVR structures, as would the management continuity and ownership continuity requirements under HKEX Listing Rule 8.05.

Secondary listing applicants with WVR structures would not be affected by the proposed Criteria A and Criteria B eligibility requirements. They would instead need to satisfy the existing quantitative eligibility requirements under Chapter 19C.

Proposed Secondary Listing without a Listing Compliance Record

The SFC-HKEX Joint Policy Statement currently provides that the five-year listing compliance record requirement does not apply if a secondary listing applicant is well-established and has a market capitalisation that is significantly larger than US\$400 million. This exception was included in the SFC-HKEX Joint Policy Statement to provide for the secondary listing of Glencore International plc on the HKEX in May 2011 without a track record of listing on a Recognised Stock Exchange. Its market capitalisation at listing was approximately HK\$468 billion. The HKEX is proposing 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) 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).

Proposals to make secondary listing requirements for companies with a centre of gravity in Greater China less restrictive

In recent years, increasing numbers of overseas listed companies with a centre of gravity in Greater China have sought a “homecoming” secondary listing on the HKEX under Chapter 19C. However, these companies face more restrictive requirements for secondary listing under Chapter 19C than companies with a centre of gravity outside Greater China. The HKEX is concerned that the tighter restrictions under Chapter 19C for companies with a centre of gravity in Greater China, but without WVR structures, may be disproportionate to the level of risk these companies pose to investors.

The factors relevant to determining whether a company has a “centre of gravity” in Greater China include: whether or not the company has a listing in Greater China; the company’s place of incorporation; its history; where the company is headquartered and where it has its place of central management and control; the location of the company’s main business operations and assets and corporate and tax registrations; and the nationality or country of residence of the company’s management and controlling shareholder(s).

Proposal to Lower the Minimum Market Capitalisation Thresholds for Secondary Listings of Companies with a Centre of Gravity in Greater China

The proposed Criteria A set out above would allow companies with a centre of gravity in Greater China to secondary list on the HKEX with a minimum market capitalisation at listing of at least HK\$3 billion if they have a track record of five full financial years of good regulatory compliance on a Qualifying Exchange. Companies with a centre of gravity in Greater China with a track record of two years’ good regulatory compliance on a Qualifying Exchange, could secondary list under Criteria B if they have a minimum market capitalisation at listing of at least HK\$10 billion. However, to avoid the risks of regulatory arbitrage, an application for the secondary listing of a company with a centre of gravity in Greater China which is primary-listed on a Recognised Stock Exchange will be considered only in exceptional circumstances on the basis of the company’s particular circumstances and the merits of the case.

These proposals would allow more companies with a centre of gravity in Greater China to secondary list on the HKEX.

Proposed Dis-application of the Innovative Company Requirement for Companies without WVR Structures

The HKEX proposes to remove the innovative company requirement for secondary listing applicants without a WVR structure (including companies with a “centre of gravity” in Greater China).

Proposal to Address Regulatory Arbitrage Risk

The HKEX Consultation Paper notes that companies may seek a secondary listing on the HKEX after obtaining a primary listing on an overseas exchange through a reverse takeover or other transactions in an attempt to circumvent the Listing Rules that apply to primary listings. To deter attempts at such regulatory arbitrage, the HKEX proposes to introduce a Listing Rule giving the HKEX discretion to reject a secondary listing application if it considers that the listing is an attempt to avoid the Listing Rules applicable to a primary listing.

The HKEX is proposing to apply the test for a reverse takeover under Chapter 14 of the HKEX Listing Rules to determine whether 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 listing applicant. If a material part of a secondary listing applicant’s business was primary listed on the overseas exchange by way of a reverse takeover, the HKEX will normally consider the application to constitute an attempt to avoid the Listing Rules applicable to a primary listing.

Effect of the Proposals on the Number of Secondary Listings of Companies with a Centre of Gravity in Greater China

According to the HKEX’s estimates, around 18 companies with a centre of gravity in Greater China that are listed on a Qualifying Exchange would have met the proposed lower market capitalisation criteria described above and been eligible to apply for a secondary listing on the HKEX as at 29 March 2021. The HKEX considers that the proposed market capitalisation requirements at listing of at least HK3 billion or HK\$10 billion and requirements for five or two years of good listing compliance will mitigate the risk of secondary listed companies coming to dominate the Hong Kong market.

Proposed Application of the HKEX Trading Migration Requirement to All Secondary Listed Companies

The HKEX is proposing to extend the Trading Migration Requirement to all companies with a secondary listing on the HKEX.

Proposed codification of waivers for secondary listed companies

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

The HKEX proposes to codify the following principles according to which the HKEX will waive, modify or grant exemptions from the HKEX Listing Rules for companies with or applying for a secondary listing on the HKEX:

- a) reliance can be placed on the regulatory standards which apply to the Overseas Company offshore (including those of its jurisdiction of incorporation and the Recognised Exchange on which it has a primary listing) and on the enforcement of those regulatory standards by relevant regulatory authorities;
- b) regulatory cooperation agreements are in place between the SFC and the Overseas Company's jurisdiction of incorporation and its jurisdiction of primary listing (where they are different);
- c) a majority of the trading in the Overseas Company's shares **does not** take place on the HKEX on a permanent basis; and
- d) strict compliance with the HKEX Listing Rules would be unduly burdensome.

The HKEX will reserve the right to revoke any specific or automatic waivers granted to a secondary listed company where any of the factors set out in (a) to (d) above ceases to apply.

Codification of automatic waivers and certain common waivers for secondary listed companies

The HKEX proposes to codify in the Listing Rules the automatic waivers and certain common waivers in circumstances where the HKEX believes that the underpinning principle and conditions of these waivers are unlikely to change over time.

The common waivers that will *not* be codified for secondary listed companies are the same as those that will not be codified for companies dual primary listed on the HKEX. These are Listing Rules 3.28, 8.12, 10.04, 10.07(1), 10.08, paragraph 5(2) of Appendix 6 and Appendix 3 to the HKEX Listing Rules.

Removal of Pre-emptive Rights Condition

The HKEX is proposing to remove the condition for waiver of the shareholders' consent requirement for a new issue, allotment or grant of securities by a secondary listed company under HKEX Listing Rule 13.36. The requirement for shareholders' consent can currently be waived for a secondary listed company which is not subject to any other statutory or other requirement giving pre-emptive rights to shareholders over further issues of share capital. The HKEX is of the view that a waiver by the HKEX of Listing Rule 13.36 will not have a materially adverse effect on shareholders. This is because where the shareholders of a secondary listed company have pre-emptive rights outside of the HKEX Listing Rules, the company will still have to offer securities to them first. In effect, the shareholders will still retain the right to participate in future share issues and protect themselves against possible dilution.

Board Diversity Policy

HKEX Listing Rule 13.92 requires a listed company's nomination committee (or board) to have a policy on board diversity which must be disclosed in the listed company's corporate governance report. Prior to January 2019, this requirement was a Code Provision under the Corporate Governance Code and Corporate Governance Report. In April 2018, secondary listed companies were exempted from compliance with the Corporate Governance Code, including the diversity policy requirement. As that requirement has been upgraded to a Listing Rule requirement but is not covered by an automatic waiver, the HKEX has received requests for clarification as to whether secondary listed companies are still exempt from the requirement.

The HKEX strongly supports board diversity and clarifies that secondary listed companies are required to have a policy on board diversity and to disclose it in their corporate governance reports.

Proposals relating to de-listing from an overseas exchange of primary listing

Dis-application of Waivers

The HKEX Listing Rules are currently silent on the effect on automatic waivers and other waivers granted to a secondary listed company when the company is de-listed from the overseas exchange on which it is primary listed.

The HKEX proposes that in the event that a secondary listed company is de-listed from the overseas exchange where it is

primary listed, the HKEX will regard the company as having a primary listing on the HKEX. This will result in any automatic waivers and specific waivers that were granted to the company based on or conditional upon its status as a secondary listed company ceasing to apply. The company will then have to comply with all the HKEX Listing Rules applicable to a primary listed company immediately upon its de-listing from the overseas exchange of its primary listing, subject to any waivers and/or grace periods granted by the HKEX.

The HKEX will require advance written notice from an HKEX secondary listed company where it plans to voluntarily de-list from its primary listing exchange or where it forms a reasonable expectation that it may be de-listed involuntarily (**De-listing Notice**). This notice should be given as soon as practicable and the HKEX may request the provision of additional information. The HKEX will issue a written notice to the secondary listed company informing it that it will regard the company as having a primary listing on the HKEX on the occurrence of its de-listing from its primary listing exchange.

Requests for HKEX Listing Rule Waivers

Where a secondary listed company wants to retain, following its de-listing from the overseas exchange on which it is primary listed, any exemption or waiver that was previously granted or

available to it or wants to apply for a new waiver from any of the HKEX Listing Rules, it will be required to submit a waiver application to the HKEX together with the De-Listing Notice. The waiver application(s) will need to contain sufficient information to demonstrate the basis for the HKEX to grant the waiver(s).

The HKEX will assess waiver applications on a case by case basis. It will issue its decision on the grant of the waivers applied for, including any grace period and conditions for granting the waivers together with its notice informing the company that it will be regarded as primary listed on the HKEX. Any grace period granted under a time-relief waiver will commence from the time the company is de-listed from the overseas exchange of its primary listing.

As a general principle, a company that becomes primary listed on the HKEX as a result of its de-listing from the overseas exchange of its primary listing will be expected to use its best endeavours to comply with all the Listing Rules applicable to primary listed companies. With the exception of the financial reporting standards requirement discussed below, the HKEX considers that a grace period will only be justified in limited circumstances. The HKEX will not normally grant any grace period for compliance with HKEX Listing Rules that are rarely waived for primary listed companies.

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