

Client Alert

Corporate Finance

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Hong Kong's enhanced listing regime for overseas issuers will take effect in 2022

On 19 November 2021, The Stock Exchange of Hong Kong Limited (**Exchange**) published the [consultation conclusions](#) on its proposals to enhance and streamline the listing regime for overseas issuers¹ published in March 2021 (*see our [previous client alert](#)*).

The Exchange will adopt all the proposals with minor modifications.

Under the revised listing regime for overseas issuers:

- one common set of core shareholder protection standards will apply to all issuers, providing the same level of protection to all investors;
- an overseas issuer primary listed on a Qualifying Exchange² with a centre of gravity in Greater China (**Greater China Issuers**) without a weighted voting rights (**WVR**) structure can secondary list: (a) without demonstrating it is an "innovative company" and (b) with a lower minimum market capitalisation at listing than currently required; and
- Grandfathered Greater China Issuers³ and Non-Greater China Issuer⁴ eligible for secondary listing with their existing WVR and/or variable interest entity (**VIE**) structure may opt for a dual primary listing.

The amended Listing Rules will become effective from **1 January 2022**.

Salient points of the revised overseas issuers listing regime are set out below.

Shareholder protection standards

Current regime

Shareholders of non-Hong Kong issuers must be afforded shareholder protection at least "*equivalent to*" that provided in Hong Kong (**Equivalence Requirement**).

The Exchange has adopted different approaches in evaluating compliance with the Equivalence Requirement:

- companies incorporated in Recognised Jurisdictions (i.e. the Cayman Islands, Bermuda, the PRC and Hong Kong) are required to (i) comply with the provisions in Appendix 3 to the Listing Rules; and (ii) incorporate in their articles of association a number of provisions set out in Appendix 13 to the Listing Rules with a view to conforming the provisions relating to shareholder rights to those stipulated under Hong Kong company laws; and

¹ "Overseas issuers" mean issuers incorporated or otherwise established outside Hong Kong and the People's Republic of China.

² A "Qualifying Exchange" means The New York Stock Exchange, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority's "Premium Listing" segment).

³ A "Grandfathered Greater China Issuer" means a Greater China Issuer which is (a) primary listed on a Qualifying Exchange on or before 15 December 2017; or (b) controlled by corporate WVR beneficiaries as at 30 October 2020 and primary listed on a Qualifying Exchange after 15 December 2017, but on or before 30 October 2020.

⁴ A "Non-Greater China Issuer" means an issuer with a centre of gravity outside of Greater China which is primary listed on a Qualifying Exchange.

- companies incorporated in Acceptable Jurisdictions (i.e. jurisdictions other than Recognised Jurisdictions that the Exchange has accepted as an issuer's place of incorporation eligible for listing in Hong Kong) are required to demonstrate compliance with the provisions in Appendix 3 to the Listing Rules and the JPS⁵.

New regime

The Equivalence Requirement and the distinction between Recognised Jurisdictions and Acceptable Jurisdictions will be removed.

A baseline level of shareholder protection requirements (**Core Standards**), largely derived from the JPS, will be adopted for all issuers (including Hong Kong issuers and PRC issuers) concerning:

- the notice and conduct of general meetings;
- members' right to remove directors, requisition a meeting, vote, speak and appoint proxies or corporate representatives;
- the reservation of auditor appointment, etc. to a committee independent of the board of directors of a company or a majority of the shareholders and the reservation of certain other material matters to supermajority votes by shareholders;
- restrictions on the term of a director appointed to fill a casual vacancy;
- availability of the shareholders' register for inspection; and
- restrictions on shareholder voting on certain matters required by the Listing Rules.

The Core Standards should be set out in the issuer's constitutional documents unless the Exchange is satisfied that the domestic laws, rules and regulations to which the issuer is subject provide for the same protection.

Existing listed issuers will have to ascertain if they are in full compliance with the Core Standards, otherwise they would have until their **second annual general meeting following 1 January 2022** to make any necessary amendments to their constitutional documents to conform to the Core Standards.

Secondary listing requirements

Current regime

Companies with a centre of gravity in Greater China are prohibited from secondary listing in Hong Kong except where they meet the stringent requirements for listing under Chapter 19C of the Listing Rules (e.g. it is an "Innovative Company", listed on a Qualifying Exchange, with a minimum market capitalisation of HK\$10 billion and revenue of at least HK\$1 billion). This is regardless of whether they have WVR structures.

Provisions for the two secondary listing routes are scattered in different documents:

- the route for "innovative" large issuers primary listed on a Qualifying Exchange is set out in Chapter 19C of the Listing Rules; and
- the route for other issuers listed on a recognised stock exchange (including the Qualifying Exchanges) is set out in the JPS.

New regime

Secondary listing requirements for Greater China Issuers without a WVR structure will be relaxed by:

- removing the "Innovative Company" condition; and
- lowering the market capitalisation requirement to: (A) HK\$3 billion (if they can demonstrate a track record of good regulatory compliance of at least five full financial years on a Qualifying Exchange); or (B) HK\$10 billion (if they can demonstrate a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange).

The Exchange may reject a secondary listing application if a material part of the applicant's business was listed on the primary listing market by way of a reverse takeover.

Note: Where a secondary listing applicant was primary listed on an overseas exchange through a de-SPAC transaction that was not subject to the IPO due diligence requirements or eligibility requirements applicable to new listings, it is an indicator that the secondary listing application may constitute an attempt at regulatory arbitrage, and the Exchange will apply the reverse takeover test to such companies as a safeguard.

⁵ "JPS" means the "Joint policy statement regarding the listing of overseas companies" first published jointly by the Exchange and the Securities and Futures Commission in 2007, updated on 27 September 2013, and last amended on 30 April 2018.

The two secondary listing routes will be codified with modifications (e.g. removing the “Innovative Company” requirement for all companies without a WVR structure as mentioned above).

Secondary listed issuers’ conversion to primary listing status

Current regime

The Listing Rules do not set out the requirements that apply in the circumstances of: (a) secondary listed issuers that de-list (voluntarily or involuntarily) from their exchange of primary listing; or (b) issuers that voluntarily choose to transfer from a secondary to a dual-primary listing.

Chapter 19C of the Listing Rules provides for mandatory conversion to a primary listing status only for Greater China Issuers listed under that chapter and only if the majority of trading in their securities migrates to the Exchange. Chapter 19C also sets out transitional arrangements such as a 3-year transitional period for certain continuing transactions.

New regime

A secondary listed issuer will be regarded as a primary listed issuer in the event of:

- delisting from the exchange of primary listing (**Route 1**);
- the majority of trading in their listed shares migrates (**Trading Migration**) to the Exchange’s markets on a permanent basis (i.e. 55% or more of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depositary receipts issued on those shares) over the overseas issuer’s most recent financial year, takes place on the Exchange’s markets) (**Route 2**); or
- voluntary conversion (**Primary Conversion**) from seconding listing to dual-primary listing on the Exchange (**Route 3**).

Route 1 - For issuers delisted from the overseas exchange:

- Issuers will have an automatic 12-month grace period for the preparation of financial statements in accordance with HKFRS/ IFRS in the event of a delisting from the primary listing market (so that the issuer may switch to HKFRS/IFRS, at the latest, by the time it publishes its first financial statements (which may be annual or interim statements (or quarterly for GEM issuers only)) after the first anniversary of its delisting).
- The exceptions, waivers and exemptions applicable to the secondary listing status (**Automatic Waivers**) will be disapplied in respect of other Listing Rules as soon as a secondary listed issuer is delisted from the primary listing market.
- For involuntary delisting from the overseas exchange, transitional arrangements apply for continuing transactions entered into before the issuer’s notification of the expected involuntary delisting to the Exchange so that the transactions are exempt from applicable Listing Rules (e.g. annual review, monetary caps) for 3 years from the date of the delisting notification. The Exchange reserves the discretion to modify or not to grant this exemption if the issuer fails to notify the Exchange of the expected involuntary delisting on a timely basis.
- In the event that an overseas issuer anticipates difficulty in complying with specific applicable Listing Rules (e.g. insufficient preparation time in view of the delisting timetable), a grace period may be granted in respect of specific Listing Rules on a case-by-case basis (e.g. taking into account the amount of time reasonably needed for the issuer to be able to fully comply with the applicable rules), where the Exchange considers it justifiable to do so. The Exchange reserves the power to require the issuer’s stock short name to include a special stock marker (TP) to signify that the issuer is a primary listed issuer under transitional arrangements.

Route 2 - For issuers that become primary listed in Hong Kong as a result of Trading Migration:

- All Automatic Waivers will be revoked upon reclassification as a dual primary listed issuer subject to the existing transitional arrangements of Chapter 19C of the Listing Rules (e.g. continuing transactions entered into before the Exchange’s notice of Trading Migration are exempt from the applicable Listing Rules for a period of 3 years from the date of the notice).

Route 3 - For issuers that become dual primary listed in Hong Kong as a result of Primary Conversion:

- All Automatic Waivers will be revoked upon the effective date of Primary Conversion. A grace period for full compliance with the Listing Rules will not normally be granted.

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

Current regime

Grandfathered Greater China Issuers and Non-Greater China Issuers may retain their existing WVR and/or VIE structures without amending them to comply with all Exchange requirements provided that they meet the stringent eligibility requirements of Chapter 19C of the Listing Rules.

New regime

The WVR and/or VIE structures of Grandfathered Greater China Issuers will continue to be grandfathered following conversion to primary listing status (under either of Routes 1, 2 or 3 discussed above).

The existing WVR and/or VIE structures of such issuers will also be grandfathered if they apply for dual primary listing directly.

Transitional arrangements

As mentioned above, the amended rules will become effective from 1 January 2022.

Companies which submit applications before 1 January 2022 but expect to be listed on or after 1 January 2022 will be assessed under the new regime and are expected to demonstrate how they are able to comply with the requirements under the new regime.

In the event that an overseas issuer secondary listed in Hong Kong would like to proceed with a change of listing status prior to 1 January 2022, the Exchange will consider the matter on a case-by-case basis by reference to the approach set out in the Guidance Letter for Change of Listing Status (contained in Appendix VI to the [consultation conclusions](#)).

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