

EXCHANGE LAUNCHES CONSULTATION TO STREAMLINE THE LISTING REGIME FOR OVERSEAS ISSUERS AND FACILITATE LISTING BY COMPANIES LISTED ON QUALIFYING EXCHANGES

Summary

On 31 March 2021, The Stock Exchange of Hong Kong Limited (HKEX) published a [consultation paper](#) seeking public feedback on proposed amendments to the Listing Rules in order to streamline the listing regime for, and facilitate the listing of, issuers that are incorporated outside of Hong Kong and the PRC (**Overseas Issuers**) (**Overseas Issuers Consultation**).

The proposed amendments would provide for a more uniform set of rules for Overseas Issuers and provide greater clarity to the market, and enhance the attractiveness of the Hong Kong market to established Greater China issuers listed on NYSE, NASDAQ or the Main Market of the LSE (**Qualifying Exchanges**).

Background

In 2018, as part of its effort to attract listings by companies from emerging and innovative sectors, HKEX introduced three new chapters to the Main Board Listing Rules to (i) permit listings of biotech issuers that do not meet any of the Main Board financial eligibility tests (Chapter 18A); (ii) permit listings of companies with weighted voting rights (WVR) structures (Chapter 8A); and (iii) establish a new concessionary secondary listing route for established issuers listed on Qualifying Exchanges (Chapter 19C). Since then, an increasing number of US-listed Greater China Issuers have sought “homecoming” secondary listings on HKEX. HKEX expects many more such listings in the future. It is also one of HKEX’s initiatives in its Strategic Plan 2019-2021 to continue to develop Hong Kong as a listing and capital raising hub for major global and regional companies on either a primary or secondary basis.

In this context, HKEX has proposed a number of changes to the existing overseas listing regime to streamline the existing requirements and facilitate the listing by Overseas Issuers.

Consultation Proposals

The proposals in the Overseas Issuers Consultation are broadly divided into two categories:

- (1) amendments to streamline the listing requirements for Overseas Issuers; and
- (2) changes to further facilitate the listing by companies listed on Qualifying Exchanges.

Streamlining Proposals

Under the existing regime, the requirements for Overseas Issuers are scattered in various places in the Listing Rules, the “Joint policy statement regarding the listing of overseas companies” published by HKEX and the SFC (JPS) and Country Guides, resulting in market feedback that they are fragmented, complex and difficult to navigate.

The proposals aim to consolidate and streamline these requirements, under which:

- Chapter 19 will be amended and relate to primary listings of Overseas Issuers only;
- The secondary listing routes will be consolidated and Chapter 19C will cover all secondary listings by Overseas Issuers (the JPS will be withdrawn, and its requirements would be codified into Chapter 19C with minor modifications in relation to the eligibility for automatic waivers);

- The distinction between Recognised Jurisdictions and Acceptable Jurisdictions would be removed, with a uniform set of core shareholder protection standards under Appendix 3 that will apply to all issuers;
- Appendix 13 will be repealed (other than those provisions relating to PRC issuers);
- HKEX will issue a new consolidated guidance letter for Overseas Issuers and no new Country Guides will be issued;
- the Trading Migration Requirement (see below), which currently only applies to Greater China Issuers listed under Chapter 19C, would apply to all secondary listed issuers; and
- the qualification criteria for Automatic Waivers for secondary listed issuers would be streamlined (issuers without WVR could either meet the qualification requirement under the JPS which has a lower market capitalisation requirement of HK\$3 billion but a longer requirement of five years for good compliance record or meet the qualification requirement under the current Chapter 19C with a higher market capitalisation requirement of HK\$10 billion but a shorter requirement of two years for good compliance record).

Proposals to facilitate the listing by companies listed on US/UK exchanges

Dual primary listings for Grandfathered Greater China Issuers with Non-compliant WVR and/or VIE Structures

Under the existing regime, Grandfathered Greater China Issuers with WVR structures that do not comply with the requirements under Chapter 8A of the Listing Rules and/or VIE Structures that do not comply with requirements under LD43-3 could only list in Hong Kong on a secondary basis under Chapter 19C and could not directly dual primary list in Hong Kong. Recognising that these issuers would become dual primary listed on HKEX with such non-compliant structures if the bulk of trading in their shares migrates to Hong Kong¹ (**Trading Migration Requirement**) after their secondary listing in any event, HKEX proposed to amend the Listing Rules to allow Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to apply directly for a dual primary listing and retain such non-compliant structures as long as they meet the eligibility and suitability requirements of Chapter 19C for Qualifying Issuers with a WVR structure.

The option of direct dual-primary listing is likely to be attractive to Qualifying Issuers given the greater prospect of Stock Connect inclusion, as there has been no indication that the exclusion of secondary listed issuers under Chapter 19C from Stock Connect would be lifted.

Removal of the “Innovative Companies” requirement for non-WVR secondary issuers

Under the current regime, Greater China Issuers seeking a “homecoming” secondary listing are required to demonstrate that they are “Innovative Companies” irrespective of whether they have a WVR structure. HKEX proposed to remove this requirement for non-WVR secondary listing applicants (including those with a centre of gravity in Greater China) such that they will no longer be required to demonstrate that they are “Innovative Companies”. This would permit a greater number of Greater China issuers (those who may find it difficult to demonstrate innovation) to secondary list on HKEX.

Guidance for secondary listed issuers that de-list from their primary stock exchange

Under the existing regime, the Listing Rules are silent on whether a Grandfathered Greater China Issuer or a Non-Greater China Issuer can retain its non-compliant WVR and/or VIE structures if it delists from their primary overseas exchange. The Exchange proposed amendments to the Listing Rules to make it clear that a Grandfathered Greater China Issuer or a Non-Greater China Issuer is allowed to retain its non-compliant structures even after it de-lists from its primary exchange. The automatic waivers granted to such issuers (on account of the fact that the issuer is listed on a secondary basis) would fall away after a grace period.

¹ Pursuant to Listing Rule 19C.13, if the majority of trading in a Greater China Issuer’s listed shares migrates to HKEX’s markets on a permanent basis, HKEX will regard the issuer as having a dual-primary listing and consequently the exceptions set out in Listing Rule 19C.11 will no longer apply to the issuer.

Consultation Timetable

The Overseas Issuers Consultation is open for public comment until 31 May 2021.

The full Overseas Issuers Consultation paper can be found [here](#).

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