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CLIENT BRIEFING

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OVERSEAS ISSUER LISTING REGIME UPDATE

Summary

On 19 November 2021, The Stock Exchange of Hong Kong Limited (**HKEX**) published the conclusions to its proposal to streamline the listing regime for issuers that are incorporated outside of Hong Kong and the PRC (**Overseas Issuers**). The new rules came into effect on 1 January 2022 and have introduced a number of changes to facilitate the listing of Overseas Issuers (particularly for established issuers listed on recognised US and UK exchanges) on HKEX. These changes came at a time when PRC-based issuers listed in the US are facing increasing challenges, including the risk of delisting if their auditors do not comply with requests for information from US regulators as required under the Holding Foreign Companies Accountable Act (which came into effect on 10 January 2022), and would further enhance the attractiveness of HKEX as an additional or alternative listing venue for US-listed PRC issuers.

A summary of the key changes is set out below.

Key changes

Streamlining shareholder protection standards into one set of "Core Standards"

The shareholder protection requirements under the Listing Rules have been simplified and the existing requirement that shareholders of non-Hong Kong issuers must be afforded shareholder protection at least "equivalent to" that provided in Hong Kong and the distinction between Recognised Jurisdictions and Acceptable Jurisdictions have been repealed. HKEX has streamlined the requirements for all Overseas Issuers with a single set of Core Standards applicable to all Overseas Issuers from all overseas jurisdictions to ensure consistent protection is provided to all investors. These standards include (i) notice and conduct of general meetings, (ii) members' right (including HKSCC) to remove directors, requisition a meeting, vote, speak and appoint proxies or corporate representatives, and (iii) 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; (iv) restrictions on the term of a director appointed to fill a casual vacancy; (v) availability of the shareholders' register for inspection; and (vi) restrictions on shareholder voting on certain matters required by the Listing Rules.

These standards should be set out in the issuer's constitutional documents unless HKEX is satisfied that the domestic laws, rules and regulations to which the Overseas Issuer is subject provide for the same protection.

*Allowing eligible Overseas Issuers to dual-primary list directly while keeping their existing non-compliant weighted voting right (**WVR**) and/or VIE structures*

Grandfathered Greater China Issuers (i.e. Greater China Issuers primary listed on a Qualifying Exchange on or before 15 December 2017) and Non-Greater China Issuers have been allowed to dual primary list directly while retaining their non-conforming WVR structure and/or VIE structure provided that the issuers meet the current suitability and eligibility requirements of Chapter 19C of the Listing Rules. Once listed, they will be allowed to retain their existing WVR and/or VIE Structures in the event they subsequently delist from the Qualifying Exchange on which they were originally listed. The opportunity for Stock Connect inclusion (with the potential for increased trading volume and liquidity) which comes with the primary listing status would likely further enhance the attractiveness of this listing route.

Facilitating listing by issuers from traditional industries

Under the current regime, a company with a centre of gravity in Greater China is prohibited from secondary listing in Hong Kong unless it is an "innovative company" listed on a Qualifying Exchange, regardless of whether it has a WVR structure or not. Similarly, a company with a non-conforming VIE structure is required to demonstrate that it is an "innovative company" listed on a Qualifying Exchange in order to list on HKEX with its existing non-conforming VIE structure. This presents practical challenges and restrictions for established issuers from more traditional industries to list on HKEX.

Under the new regime, HKEX has relaxed the centre of gravity requirement and permit issuers listed on a Qualifying Exchange with a centre of gravity in Greater China but do not have a WVR structure to secondary list in Hong Kong without meeting the "innovative company" requirement (the market capitalisation requirement has also been reduced to HK$3 billion for these issuers). Companies with a non-conforming VIE structure (but no WVR structure) and which are listed on a Qualifying Exchange before 15 December 2017 have also been permitted to list in Hong Kong without needing to demonstrate that it is an "innovative company". The changes would provide more opportunities for established issuers (particularly those based in Greater China) from traditional industries to list in Hong Kong.

The relevant new rules can be found **here**.

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