

# Capital Markets

Major stock exchange groups (the current top 10 by market capitalization) of issued shares of listed companies

Rank	Stock exchange	Region	Market cap (USD bn)	
1	New York Stock Exchange	United States	25,5	
2	Nasdaq	United States	11,2	
3	Japan Exchange Group	<ul><li>Japan</li></ul>	5,1	
4	Shanghai Stock Exchange	China	4,9	
5	Hong Kong Stock Exchange	* Hong Kong	4,6	
6	Euronext	European Union	4,2	
7	Shenzhen Stock Exchange	China	3,4	
8	London Stock Exchange	United Kingdom	2,9	
9	TMX Group	<b>■◆■</b> Canada	1,7	
10	Bombay Stock Exchange	India	1,5	

Source: Data from <u>World Federation of Exchanges</u> (as at the 23rd of April 2020). LSE numbers do not include those of Borsa Italiana.



# China's Capital Markets

#### Mainland China's stock markets

- Shanghai Stock Exchange world's 4th largest by market cap in 2020
- Shenzhen Stock Exchange world's 7th largest by market cap in 2020
- Shanghai & Shenzhen exchanges are domestic exchanges only

CHARLTONS 易周律师行 The Mainland China stock markets:

- i. do not allow listing of foreign companies; and
- ii. restrict direct investment by foreign investors.

A unique collaboration between the Hong Kong, Shanghai and Shenzhen Stock Exchanges, is the Stock Connect allows international and Mainland Chinese investors to trade securities in each other's markets through the trading and clearing facilities of their home exchange. First launched in November 2014, the Stock Connect scheme now covers over 2,000 eligible equities in Shanghai, Shenzhen and Hong Kong.



#### Hong Kong Stock Exchange (HKEx)

The HKEx is an international exchange and boasts features including but not limited to:

- full access for international investors;
- allows listing of foreign companies which meet certain requirements;
- geographically it is in a strategic position and serves as a gateway between Mainland China and rest of the world;



- it is the international listing venue of choice for many Mainland China companies with 268 H Share Companies being listed on the HKEx as at 31 October 2020;
- the HKEx provides Mainland Chinese companies with access to international capital and offers international investors opportunity to invest directly in Mainland Chinese companies and participate in China growth story; and
- the number of overseas companies listing on the HKEx has been increasing in recent years.



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#### Why List in Hong Kong?

In addition to the above, Hong Kong is chosen as a listing venue for reasons which include but are not limited to:

- it is the premium International Financial Centre in Asia;
- access to Mainland Chinese investors currently through Qualified Domestic Institutional Investor programme; and
- Shanghai-Hong Kong Stock Connect launched in November 2014 and Shenzhen-Hong Kong Stock Connect launched in October 2016 allows Mainland Chinese investors to invest directly in HK listed stocks for the first time. The programme helps broaden the investor base and add liquidity to the HK market which in turn adds momentum to the market.







#### Shanghai – Hong Kong Stock Connect

Through the Stock Connect is a collaboration between the HKEx, the Shanghai and the Shenzhen Stock Exchanges which allows investors to trade securities in each other's markets through the trading and clearing facilities of their home exchange.





#### Eligible Shares

Eligible shares for Northbound Trading Link

- SSE 180 Index
- SSE 380 Index
- all the SSE-listed A shares that are not included as constituent stocks of the relevant indices but which have corresponding H shares listed on HKEx, except the following:
- a) SSE-listed shares which are not traded in RMB; and
- b) SSE-listed shares which are under risk alert.



## Eligible shares for Southbound Trading Link

- Hang Seng Composite LargeCap Index
- Hang Seng Composite MidCap Index
- H shares that are not included as constituent stocks of the relevant indices but which have corresponding shares in the form of A shares listed on SSE, except the following:

- a) Hong Kong shares that are not traded in Hong Kong dollars (HKD);
- b) H shares which have corresponding shares listed and traded on any exchange in Mainland China other than SSE; and
- c) H shares which have corresponding A shares put under risk alert.



# Shenzhen-Hong Kong Stock Connect

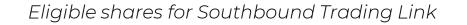
## Eligible Shares

Eligible shares for Northbound Trading Link

- SZSE Component Index
- SZSE Small/Mid Cap Innovation Index which have market capitalisation of not less than RMB 6 billion
- all the SZSE listed A shares which have corresponding H shares listed on SEHK, except the following:
- a) SZSE-listed shares which are not traded in RMB; and
- b) SZSE-listed shares which are under risk alert or under delisting arrangement.



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- All the eligible stocks for Southbound Trading under Shanghai Connect
- The constituent stocks of the Hang Seng Composite SmallCap Index which have a market capitalisation of not less than HK\$ 5 billion
- all the H shares of SEHK-listed companies which have A shares listed on SZSE, except the following:





- (a) Hong Kong shares that are not traded in HKD;
- (b) H shares which have corresponding shares listed and traded on any exchange in Mainland China other than SSE/SZSE; and
- (c) H shares which have corresponding A shares put under risk alert or delisting arrangement.



### Quotas on a "Net Buy" Basis at SSE and SZSE

	Aggregate Quota*	Daily Quota
Northbound Trade	abolished since 16 August 2016	RMB 52 billion
Southbound Trade	abolished since 16 August 2016	RMB 42 billion



"Net buy" basis: Investors may sell cross-boundary securities regardless of quota balance

\* there was no Aggregate Quota introduced for the Shenzhen Connect.





#### Eligible Investors

Except ChiNext Stocks of Shenzhen Stock Exchange (SZSE) which may only be traded by institutional professional investors in the initial stage, Hong Kong and overseas investors are allowed to trade any Connect Securities through Shanghai and Shenzhen Connect. Only Mainland institutional investors and those individual investors who satisfy the eligibility criteria (i.e. individual investors who hold an aggregate balance of not less than RMB 500,000 in their securities and cash accounts) can participate in Southbound trading at SSE and SZSE link.





Shanghai and Shenzhen Connect is open to all SEHK Participants, SSE Members, SZSE Members, CCASS Participants, and ChinaClear Participants, subject to their meeting certain information technology capability, risk management and other requirements as may be specified by the relevant exchange and / or clearing house.



## Rules and Regulations

- Trading and clearing arrangements are subject to rules and regulations of the market where trading and clearing take place.
- Listed companies are only subject to rules and regulations of markets where they are listed.
- Stock Connect only operates on days that are trading day of both the SSE/SZSE and the HKEx and where the clearing is available in both markets.
- ChinaClear and HKSCC have entered into an agreement to establish clearing links for Shanghai Connect. This agreement has been extended to cover the clearing links for the Shenzhen Connect.





# Regulatory and Enforcement Cooperation

- CSRC and Securities and Futures Commission (SFC) will cooperate on:
  - referral and information exchange mechanisms concerning improper activities;
  - investigatory cooperation in relation to cross-border illegal activities including disclosure of false or misleading information, insider dealing and market manipulation;
  - bilateral enforcement exchange and training; and
  - enhancement of general standards of cross-border enforcement cooperation.



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# Benefits of HK listing

- Deep primary and secondary market liquidity
  - 163 new listings\* in 2019 raised US\$ 312.9 billion (\* excludes transfers from the GEM to Main Board)
- Equity fund raised by listed companies post-IPO in 2019 = HK\$139.1 billion
- Access to local and international funds Hong Kong is Asia's leading fund management centre with largest concentration of international fund managers.
- Number of companies listed on HKEx as at 13 November 2020 = 2,526.
  - 2 153 on the Main Board; and
  - 373 on the Growth Enterprise Market (GEM).





- Established legal system based on English common law + regulatory framework = investor confidence.
- Numerous tax advantages, currency convertibility, free transferability of securities and no restrictions on capital flow.
- Opportunities for overseas companies to raise profile and visibility in China and Asia-Pacific region.
- Branding opportunities for companies in the luxury goods sector – attracted listings of high profile companies such as Prada, L'Occitane and Samsonite.



- China's position as a major consumer of energy, minerals & metals has attracted mining & natural resource companies.
  - e.g. Swiss commodities giant Glencore International AG (Delisted in January 2018; Old Stock Code: 00805), Russia-based United Company Rusal PLC, Kazakhstan copper miner Kazakhmys PLC (Delisted in August 2018; Old Stock Code: 00847) and Brazilian metals and mining company Vale S.A. (Delisted in July 2016; Old Stock Code: 06210/06230).
- Vale S.A was the first overseas company to list on the HKEx in form of Hong Kong Depositary Receipts (HDRs). HDR listings are allowed on Main Board (but not GEM).





# Overseas listings



Issuer	Country of Operations/Headquarters	Country of Incorporation	Sector	Year of Listing	Funds Raised (HK\$ billion)			
BOC Aviation	Singapore	Singapore	Aviation	June 2016	1,1			
Future Data	Korea	Cayman Islands	IT	June 2016	0,034			
Worldgate Global Logistics	Malaysia	Cayman Islands	Logistics	July 2016	0,052			
RUSAL	Russia	Jersey	Natural Resources	January 2010	17.39			
Mongolian Mining Corporation	Mongolia	Cayman Islands	Natural Resources	October 2010	5.81			
PRADA SpA	Italy	Italy	Luxury	June 2011	19.23			
Samsonite International SA	Headquartered in United States	Luxembourg	Luxury Goods	June 2011	10.09			
L'Occitane	France	Luxembourg	Luxury Goods	May 2010	5.5			
SECONDARY LISTINGS BY WAY OF INTRODUCTION								
Manulife Financial Corporation		Canada - Ontario	Life Insurance	September 1999				
Fast Retailing Co		Japan	Clothing	March 2014				
SouthGobi Resources		Canada	Coal mining	January 2010				



# Hong Kong's markets

 Main Board – caters for established companies able to meet its profit or other financial standards.

Growth Enterprise Market ("GEM") –
caters for smaller growth companies,
has lower admission criteria and acts as
a stepping stone to the Main Board.



The post-listing obligations of GEM companies are now broadly similar to those of Main Board listed companies. The principal difference in the ongoing obligations of Main Board and GEM companies is that quarterly reporting is a Listing Rule requirement for GEM companies whilst for Main Board issuers it is still a Recommended Best Practice only (under the Corporate Governance Code).



#### Eligibility of Overseas Listing Applicants

- The Listing Rules provide for listing of companies incorporated in Hong Kong, the PRC, the Cayman Islands and Bermuda (Recognised Jurisdictions). Countries incorporated in other jurisdictions are required to meet the requirements of Chapter 19 of the Listing Rules and are considered for listing on a "case-by-case" basis. Chapter 19 stipulates different requirements for primary and secondary listing.
- The HKEx Exchange has also approved the following jurisdictions (Acceptable Jurisdictions) for listing:



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 Austria, Australia, Brazil, the British Virgin Islands, Canada (Alberta), Canada (British Columbia), Canada (Ontario), Cyprus, England and Wales, France, Germany, Guernsey, India, Ireland, the Isle of Man, Israel, Italy, Japan, Jersey, the Republic of Korea, Labuan, Luxembourg, the Netherlands, Russia, Singapore, the states of California, Nevada and Delaware in the United States of America.

• To facilitate the listing of overseas companies from other jurisdictions, the SFC and the HKEx jointly issued the Joint Policy Statement Regarding the Listing of Overseas Companies in March 2007 (the "2007 Joint Statement"). The 2007 Joint Statement and the HKEx's Guidance Letter GL12-09 have both been superseded by the SFC and HKEx joint statement issued on 30 April 2018 (the "2018 Joint Statement").



Key requirements relate to:

- shareholder protection standards; and

- regulatory co-operation arrangements between statutory securities regulator(s) in the applicant's jurisdiction of incorporation and its place of central management and control (if different) and the Hong Kong's SFC.

 The HKEx requires listing applicants to demonstrate that the laws and regulations of its country of incorporation, and the provisions of its constitutional documents, together provide standards of shareholder protection which are equivalent to those provided under Hong Kong law.



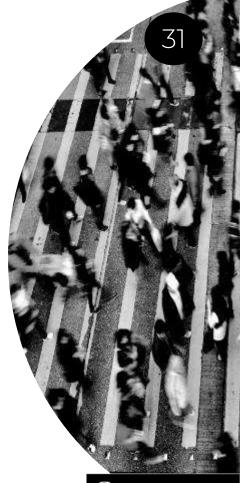
- Key shareholder protection standards relate to:
  - matters which require approval by a super-majority of shareholders' votes (e.g. material changes to the company's constitutive documents, voluntary winding-up of the company or changes to the rights attached to any class of shares);
  - a requirement that any change to the company's constitutional documents to increase an existing shareholder's liability to the company must be agreed by the shareholder in writing;



- the appointment, removal and remuneration of auditors must be approved by a majority of shareholders or another body that is independent of the board; and
- proceedings at general meetings including the requirement to hold an annual general meeting each year and that there should be no more than 15 months between one annual general meeting and the next.



- Applicants incorporated in Acceptable Jurisdictions –
  can refer to the HKEx's Country Guide for the
  applicable jurisdiction. Overseas applicants may avoid
  being required to provide a detailed explanation of its
  compliance with the key shareholder protection
  standards by adopting the arrangements set out in
  the applicable Country Guide.
- Applicants incorporated in a jurisdiction new to listing must demonstrate how the laws and regulations of their country of incorporation, their constitutional documents and the arrangements they adopt as a whole meet the key shareholder protection standards set out in the Joint Statement.



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#### Regulatory Cooperation Arrangements

- Listing applicant's not incorporated in one of the Recognised Jurisdictions, the statutory securities regulator in the listing applicant's (a) jurisdiction of incorporation and (b) place of central management and control (if different) must:
  - be a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the "IOSCO MMOU"); or
  - have entered an appropriate bilateral agreement with the SFC providing adequate arrangements with the SFC for mutual assistance and exchange of information for enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong.



#### Russia as an Acceptable Jurisdiction of incorporation

- Russia signed the IOSCO MMoU on 16 February 2015.
- The MMoU paved the way for Russia to become an Acceptable Jurisdiction for the purpose of listing in Hong Kong.
- The previous absence of such an MMoU was the reason why Lukoil, Russia's second largest oil producer, suspended preparations to list in Hong Kong in 2013.





- Before Russia singed the IOSCO MMoU, Russian companies incorporated in an Acceptable Jurisdiction would not be able to list if its place of central management and control is in Russia.
- Restructuring a Russian company under a listing vehicle incorporated in a Recognised Jurisdiction risked being considered unacceptable if viewed as a deliberate attempt to avoid the requirements of the Joint Statement.
- There are two Russian companies that are currently listed in Hong Kong: United Company RUSAL (formerly known as RUSAL Plc) ("Rusal"). Rusal was initially incorporated in Jersey, however, it recently completed its migration from Jersey to Russia by way of continuance out of Jersey and is now registered as an international public joint-stock company in the United State Register of Legal Entities of the Russian Federation. The second Russian company is IRC Limited. However, IRC Limited is incorporated in Hong Kong.



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- Rusal was incorporated in Jersey and listed before the introduction of the requirement for regulatory cooperation arrangements between the SFC and the statutory securities regulator in the listing applicant's place of central management and control.
- IRC Limited incorporated in Hong Kong (1 of the 4 Recognised Jurisdictions which do not require there to be regulatory cooperation arrangements in place with the jurisdiction of central management and control).



• HKEx amended its country guide for Russia in March 2019 to provide for Russian listing applicants which are "international companies" under Russian law. The crucial difference between Russian "international companies" and Russian joint stock companies, for which the HKEx's Russia country guide previously catered, is that "international companies" can issue shares in certificated form, whereas joint stock companies seeking to list, can only list uncertificated shares. Thus while Russian joint stock companies are restricted to listing depositary receipts on HKEx's Main Board, Russian international companies can list shares.



- The Russia Country Guide has thus been amended to extend its application to Russian international companies. A paragraph has been added to the "Summary of our Approach" stating that listing applicants which are registered as Russian international companies must also meet the requirements of the Country Guide, and should consult the Listing Department of HKEx in the event of any inconsistency between the Country Guide and the International Companies Law.
- For more details please refer to Charltons newsletter at <a href="https://www.charltonslaw.com/hkex-amends-russia-country-guide-for-international-companies/">https://www.charltonslaw.com/hkex-amends-russia-country-guide-for-international-companies/</a>



### HKIAC Approved as Arbitration Venue for Russian Deals

- Hong Kong's International Arbitration Centre became the first foreign venue to be allowed to arbitrate certain corporate disputes involving Russian companies on 4 April 2019. The move follows reforms to Russia's arbitration laws which previously required the decision of a foreign arbitrator to be approved by a Russian court.
- The Arbitration Rules of the Hong Kong International Arbitration Centre are available in Russian and 38 Russian-speaking arbitrators are listed on the Arbitration Centre's arbitrator panels. Russian-speaking tribunal secretaries, transcribers and translators have also been recruited.



For more details please refer to Charltons newsletter at <a href="https://www.charltonslaw.com/hkiac-approved-as-arbitration-venue-for-russian-deals/">https://www.charltonslaw.com/hkiac-approved-as-arbitration-venue-for-russian-deals/</a>



## Mining and Natural Resource Companies

- New Listing Rules for Mineral and Petroleum companies were introduced in 2010.
- Advantage of listing as a Mineral Company on the Main Board is the opportunity to obtain a waiver from the requirement to meet the financial tests (the profit test, the market capitalisation/revenue/cash flow test or the market capitalisation/revenue test)



- Mineral Companies are defined as:
  - existing listing issuers that complete a relevant notifiable transaction which involves the acquisition of mineral or petroleum assets (i.e. 25% or more of existing activities) or above involving the acquisition of mineral or petroleum assets; or
  - new listing applicants whose Major Activity (whether directly or through its subsidiaries) is the exploration for and/or extraction of natural resources. A Major Activity is one that represents 25% or more of the total assets, revenue or operating expenses of the listing applicant and its subsidiaries.



- Other requirements for Mineral Company listing applicants include:
- must have at least discovered a portfolio of Indicated Resources (for minerals) or Contingent Resources (for petroleum) that are identifiable under one of the accepted reporting standards and substantiated in the report of an independent expert (Competent Person). This portfolio must be meaningful and of sufficient substance to justify a listing; and
- must also be able to demonstrate that it has the right to actively participate in the exploration for and/or extraction of resources.

Requirement for Competent Person's Report

• A new applicant's listing document must include a Competent Person's Report on its reserves and resources.



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- A Competent Person must:
  - have a minimum of 5 years' experience relevant to the type of mineral/petroleum assets and to the mining activity undertaken by the listing applicant;
  - be professionally qualified and a member of a recognised professional organisation in a jurisdiction whose statutory securities regulator has regulatory cooperation arrangements with Hong Kong;
  - take overall responsibility for the Competent Person's Report; and
  - be independent of the listing applicant and its directors.



- The Competent Person's Report must have an effective date less than 6 months before the date of publishing the listing document.
- A Competent Person's Report for mineral resources and reserves must be prepared in accordance with:
  - Competent Person's Report must be prepared in accordance with the JORC Code, NI 43-101 or the SAMREC Code (for mineral reserves and resources) or PRMS (for petroleum reserves and resources)
- If information is presented in accordance with other reporting standards (e.g. Chinese or Russian), reconciliation to the accepted reporting standards is required.



### Qualifications for Main Board listing

### Suitability for listing

 A listing applicant must satisfy the HKEx that the listing applicant and its business are suitable for listing.

## Operating History and Management

 A Main Board applicant must have a trading record period of, and management continuity for, at least 3 financial years and ownership continuity and control for at least the most recent audited financial year.





### Exception

- Under the market capitalisation/revenue test, the HKEx may accept a shorter trading record period under substantially the same management if the new applicant can demonstrate that:
  - its directors and management have sufficient and satisfactory experience of at least 3 years in the line of business and industry of the new applicant; and
  - management continuity for the most recent audited financial year.



Financial Tests – listing applicants must meet one of the three financial tests:

- 1. Profit test
- 2. Market cap/revenue test
- 3. Market Cap/Revenue/Cashflow test

For both Tests 2&3, only revenue from principal activities (not revenue from incidental activities) will be recognised. Revenue from "book transactions" is disregarded.





## Financial Requirement Waivers for Mineral Companies

- A listing applicant can obtain a waiver from the financial tests if their directors and senior management together have more than 5 years' experience relevant to the exploration and/or extraction activity that Mineral Company is engaged in. Details of such experience must be included in the listing document.
- Pre-production stage companies seeking a waiver must be able to show a clear path to commercial production.



## Waivers for non-Mineral Companies

The HKEx may also accept a shorter trading record period and/or may vary or waive the financial standards requirements for:

- newly formed "project" companies (for example a company formed to construct a major infrastructure project); or
- in exceptional circumstances, if the applicant or its group has a trading record of at least two financial years and the HKEx is satisfied that the applicant's listing is in the interests of the applicant and its investors and that the investors have the necessary information available to arrive at an informed judgement concerning the listing applicant and the securities for which the listing is sought.







## Public float

The Listing Rules require:

- a minimum of 25% of the issuer's total number of issued shares must be held by the public at all times; and
- that the expected market capitalisation of shares held by the public at the time of listing must be at least HK\$125 million.



Where an issuer has more than 1 class of securities apart from the class of securities for which listing is sought, the total securities of the issuer held by the public on all regulated market(s) including the HKEx must be at least 25% of the issuer's total issued share capital at the time of listing. The class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of at least HK\$125 million.



### The HKEx's Discretion to Accept Lower Public Float

For large companies, with an expected market capitalisation in excess of HK\$10 billion, the HKEx has a discretion to permit a lower percentage of public float between 15% and 25% provided that:

- the HKEx is satisfied that the number of securities and their distribution will enable the market to operate properly with a lower percentage;
- the issuer makes appropriate disclosure of the lower prescribed percentage of public float in the listing document;



- the issuer confirms the sufficiency of public float in successive annual reports after listing; and
- a sufficient proportion (to be agreed in advance with the HKEx)
  of any securities to be marketed contemporaneously in and
  outside Hong Kong, must normally be offered in Hong Kong.

The waiver cannot be applied for post-listing if the issuer subsequently satisfies the HK10 billion market capitalisation requirement.



## Minimum number of shareholders

- The minimum number of shareholders at the time of listing is 300; and
- subject only to a few exceptions, not more than 50% of the publicly held shares can be beneficially owned by the 3 largest public shareholders.

## Market capitalisation at time of listing

Minimum expected market capitalisation of new applicant is:

- HK\$500 million for Profit Test applicants;
- HK\$4 billion for Market Capitalisation/Revenue Test applicants; or
- HK\$2 billion for Market Capitalisation/Revenue/Cash Flow Test applicants.







### <u>Determination of Market Capitalisation</u>

The expected market capitalisation at the time of listing is calculated on the basis of all issued share capital of the applicant including:

- the class of securities to be listed; and
- any other class(es) of securities whether unlisted or listed on other regulated markets.

The expected issue price of the securities to be listed is used to determine the market value of securities that are unlisted or listed on other markets.



## Working capital sufficiency

- Listing document must contain confirmation of sufficient working capital for at least next 12 months from the date of publication of the listing document.
- The sponsor must provide written confirmation to the HKEx that it has obtained written confirmation from the applicant as to the sufficiency of working capital and it is satisfied that the issuer's confirmation is given after due and careful enquiry and that the persons or institutions providing finance have stated in writing that the relevant financing facilities exist.





### Mineral Companies

A new Mineral Company listing applicant is required to have sufficient working capital for 125% of the group's requirements for the next 12 months.

### Competing businesses

The Main Board Listing Rules allow competing businesses of an applicant's directors and "controlling shareholder(s)" provided that full disclosure is made at the time of listing and on an on-going basis. Disclosure includes the name(s) of the controlling shareholder, the amount of the controlling shareholder's interest in the share capital of the listing applicant and a statement explaining how the listing applicant is satisfied that it is capable of carrying on its business independently of the controlling shareholder after listing. The listing applicant must also include the particulars of the matters that it relied on when making such a statement.

A "controlling shareholder" is person(s) controlling 30% or more of the voting power at general meetings; or the composition of a majority of the board of directors.





## Requirements on relation the accountants' report and accounting standards

A listing applicant must include in its listing documents an accountants' report that covers 3 financial years prior to issue of the listing document. The accountants' report must be prepared in accordance with the Hong Kong Financial Reporting Standards, the International Financial Reporting Standards or the China Accounting Standards for Business Enterprises (CASBE) in the case of a PRC issuer that has adopted CASBE for the preparation of its annual financial statements, or where the overseas company is seeking a listing on HKEx, US GAAP may be acceptable.

#### **Directors**

- Collectively responsible for management and operations of listed issuer.
- Fiduciary duties and duties of due skill and care.
- Character, experience and integrity requirement.





## Independent non-executive directors



#### Minimum Number of INEDs

There must be a minimum of 3 independent non-executive directors (INEDs) and at least 1 of the INEDs must be appropriately qualified (see below). At least one-third of an issuer's board must be INEDs. Listed issuer must inform the HKEx and publish an announcement immediately if the number of its INEDs falls below the minimum or it does not have one appropriately qualified (see immediately below) INED. A listed issuer that contravenes the aforementioned rules will have 3 months to rectify the situation.

#### Qualification of INEDs

Rules require appointment of at least one INED with appropriate professional qualifications or accounting or related financial management expertise.



#### Audit and Remuneration Committees

The establishment of an audit committee and remuneration committee is compulsory under Main Board Rules.

The audit Committee must be made up only of non-executive directors, the majority must be INEDs of the issuer. The audit committee must have a minimum of 3 members and at least one must be an INED with appropriate professional qualifications or accounting or related financial management expertise. The audit committee must be chaired by an INED.

The Remuneration Committee must be chaired by and INED and must be made up of a majority of INEDs with written terms of reference and chaired by an INED.



#### **Sponsor**

- A new applicant seeking a listing of equity securities on the Main Board must appoint one or more sponsors under a written engagement agreement to assist with its listing application (Rule 3A.02). Only firms that are licensed under Part V of the Securities and Futures Ordinance ("SFO") for Regulated Activity Type 6 (Advising on Corporate Finance) and are permitted by their licence to conduct sponsor work are allowed to act as sponsors to new listing applicants.
- At least one sponsor must be independent of the listing applicant.
- The sponsor(s) must be appointed at least 2 months before submission of the listing application.

# <u>Compliance adviser</u>

- Listing applicants must appoint a compliance adviser for the period commencing on initial listing and ending on the publication of financial results for the first full financial year after listing.
- A compliance adviser must be either a corporation licensed or an authorised institution registered to advise on corporate finance matters under the SFO.
- During the period for which an issuer must retain a compliance adviser (as described) the issuer must consult their compliance adviser:



- before publication of any regulatory announcement or report, circular or financial report;
- where a transaction, which might be a notifiable or connected transaction is contemplated (including share issues and share repurchases);
- where the issuer proposes to use IPO proceeds other than as set out in the listing document or where its business activities, developments or results differ from any forecast, estimate or other information in the listing document; and
- where the HKEx makes an inquiry as to unusual movements in the price or trading volume of the issuer's securities.



The HKEx may require a listed issuer to appoint a compliance adviser after the initial first financial year post listing. In such a case, the HKEx will set out a time period for the appointment, the circumstances in which the compliance adviser must be consulted and the responsibilities that the compliance adviser must discharge.

## Service/Process agent

Overseas companies must appoint and maintain the appointment of a person authorised to accept service of process and notices on their behalf in Hong Kong throughout the period it is listed on the HKEx. The overseas issuer must keep notify the HKEx of the service/process agent's appointment and any termination of appointment. The overseas must issuer must provide the HKEx with the details of the service/process agent which include contact details, service address and contact details.



## Share register

Overseas companies must maintain a register of shareholders in Hong Kong and provide for transfers to be registered locally.

## Management Presence

Normally at least two of the executive directors must be ordinarily resident in Hong Kong.

## <u>Authorised Representatives</u>

Every issuer must appoint 2 authorised representatives to act at all times as the issuer's principal channel of communication with the HKEx (either 2 directors or a director and the company secretary).





## Responsibilities of an authorised representative

- The authorised representative is the principal channel of communication between the HKEx and the listed issuer; and
- ensures that whenever he is outside Hong Kong suitable alternates are appointed, available and known to the HKEx.

## Company Secretary

- A listed issuer must appoint an individual as its company secretary.
- A person to be appointed as company secretary needs to have appropriate academic or professional qualifications or relevant experience.



- The HKEx takes into account the length of the person's employment with the issuer, familiarity with Hong Kong's Listing Rules and regulatory regime, training, and professional qualifications in other jurisdictions.
- A company secretary is not required to be resident in Hong Kong.



## Listing Application Procedure

- At the time of application to list, an applicant must submit a listing application form, a draft listing document (the Application Proof) and all other relevant documents required by the Listing Rules and the information in which must be "substantially complete" except in relation to information that by its nature can only be finalised and incorporated at a later date;
- The HKEx has the power to return a listing application on the ground that the information in the listing application or Application Proof is not "substantially complete;"

- If the HKEx returns a listing application to a sponsor before issuing its first comment letter to the sponsor, the initial listing fee will be refunded but in other cases it will be forfeited;
- If an application is returned, a new application cannot be submitted until 8 weeks after the Return Decision:
- The names of the applicant and sponsor(s) together with the return date will also be published on the HKEx's website;
- Before submitting the listing application, the sponsor is required to perform all reasonable due diligence on the listing applicant (except in relation to matters that can only be dealt with later); and
- Sponsors also have a duty to report to the HKEx's any material information concerning non-compliance with Listing Rules or other regulatory requirements relevant to the listing.



Other documents which must be submitted with the listing application include:

- Written confirmation by each director/supervisor that the information in the Application Proof and their biographical details are accurate and complete in all material respects and not misleading or deceptive;
- Reporting accountants' confirmation that no significant adjustment is expected to be made to the draft accountants' reports on (i) historical financial information; (ii) pro-forma financial information; and (iii) profit forecast (if any) included in the Application Proof based on the work done as of the date of the confirmation;



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- Experts' confirmation a written confirmation to the new applicant from each of the experts who is named as an expert in the listing document (excluding reporting accountants) that no material change is expected to be made to the relevant expert opinion included in the Application Proof based on the work done as of the date of the confirmation;
- Where the Application Proof is required to contain a statement by the directors as to the sufficiency of working capital, an advanced draft letter from the sponsor confirming that it is satisfied that the directors' sufficiency of working capital statement has been made by the directors after due and careful enquiry; and
- Certified copy of the applicant's certificate of incorporation or equivalent.





## Requirements for Secondary Listings

- Overseas companies can list on the Main Board (but not GEM) by way of a dual primary listing or a secondary listing.
- A dual primary listing requires the company to comply with the full requirements of the HKEx and the requirements of the overseas exchange.
- A secondary listing in Hong Kong means that the company will be principally regulated by the rules of the jurisdiction of its primary listing. For this reason, it will normally be granted extensive waivers from the Hong Kong Listing Rules.





- The HKEx expects the dominant market in the company's securities to be on the overseas exchange.
- An overseas company seeking a secondary listing must demonstrate to the HKEx that its jurisdiction of incorporation and the exchange of its primary listing provide standards of shareholder protection which are at least equivalent to the standards of shareholder protection provided in Hong Kong. Any shortcoming in the relevant standards can be rectified by amendments to the applicant's constitutive documents.
- The Recognised Exchanges which are considered to provide equivalent standards of shareholder protection including the main markets of:





- the Amsterdam Stock Exchange
- the Australian Securities Exchange
- the Brazilian Securities, Commodities and Futures Exchange
- the Frankfurt Stock Exchange
- the Italian Stock Exchange
- the London Stock Exchange (premium segment, LSE)
- the Madrid Stock Exchange
- NASDAQ OMX
- the New York Stock Exchange
- the Paris Stock Exchange
- the Singapore Exchange
- the Stockholm Stock Exchange
- the Swiss Exchange
- the Tokyo Stock Exchange
- the Toronto Stock Exchange



• Additional requirements apply where the HKEx expects that the majority of trading in the issuer's securities will be on the HKEx. These aim to prevent a company selecting as its primary exchange an exchange with lower standards of regulation than the HKEx and using the HKEx as the main venue for trading its securities.





- These requirements are that:
  - the issuer's primary listing must be on a regulated, regularly operating, open stock market which is recognised by the HKEx for this purpose (only London and Irish Stock Exchanges have been recognised to date). If an overseas issuer's primary listing will be on a different stock market, in these circumstances, then the overseas issuer must satisfy the HKEx that the proposed stock market should be recognised by the HKEx for this purpose;
  - the issuer must have an adequate nexus with that market; and
  - the primary regulator in that market must have entered into a written agreement with the HKEx governing the parties' respective roles in the regulation of the issuer.



# Additional Requirements for Secondary Listings

Overseas Listing

Listing on the issuer's primary exchange must have been granted before the listing on the HKEx can be granted.

Public Float

The public float requirement does not apply. However, the listed issuer must ensure that there sufficient registered shares on its Hong Kong register to ensure liquidity and must transfer shares from its overseas share register, if it is necessary to do so.



## Listing Document

- The HKEx may require the listing document to contain a summary of the relevant regulatory provisions applicable to companies with a primary listing on the issuer's primary stock exchange.
- If a company is incorporated in a Recognised Jurisdiction that is not also its place of central management and control, the listing document must disclose whether the statutory securities regulator of its place of central management and control is a full signatory of the IOSCO MMOU or has entered into a bilateral regulatory cooperation agreement with the SFC.







The overseas issuer need only appoint one authorised representative who need not be a director or secretary, but must be a person acceptable to the HKEx.

Waivers from Listing Rule Requirements

Waivers from compliance with certain Listing Rules if certain conditions are met. There are two types of waiver, (i) common waivers and (ii) automatic waivers which may be granted by the HKEx.

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To obtain a common waiver, the listing applicant must:

- (a) have a market capitalisation above USD400 million;
- (b) have been listed in its primary market for at least five years; and
- (c) demonstrate a good record of compliance with the rules and regulations of its home jurisdiction and primary market.





To obtain an automatic waiver, the listing applicant must:

- (a) meet the above three requirements for common waivers;
- (b) be primarily listed on a Recognised Exchange; and
- (c) have a "centre of gravity" outside of Greater China.



- Listing by way of Introduction is the most commonly used method of obtaining a secondary listing on the HKEx.
- Vale SA (delisted in 2016), KAZ minerals PLC (delisted in 2018) and Coach, Inc (Delisted 2018) secondary listings by way of introduction.
- There is often no fund raising and no new issue of shares.
- Raises brand awareness among investors and consumers in the China market and rest of Asia.



- The HKEx will not normally allow a listing by way of introduction where:
  - there is a pre-existing intention to dispose of the securities;
  - there is likely to be significant public demand for the securities;
  - there will be a change in the issuer's circumstances or in the nature of the issuer's business;
  - if the securities have been marketed in Hong Kong in the previous 6 months and the marketing was conditional on listing being granted for those securities.





- Restriction on controlling shareholders' disposal of shares following a company's new listing;
- Restriction on new issues of shares;
- Disclosure of Inside Information (i.e. Price Sensitive Information);
- Announcements of various matters;
- Disclosure of financial information;
- Compliance with requirements relating to notifiable transactions;
- · Compliance with requirements relating to connected transactions;
- Compliance with requirements under the Corporate Governance Code; and
- Compliance with the rules governing dealings by directors in their listed securities ("Model Code for Securities Transactions by Directors of Listed Companies").



The Listing Rules impose restrictions on the disposal of shares by controlling shareholders following a company's new listing.

## Restriction on new issues of shares

Subject to a number of exceptions, a listed issuer cannot issue any shares in the 6 months following listing.





Listed issuers must disclose inside information to the public as soon as reasonably practicable after inside information has come to their knowledge. Failure to do so may attract civil sanctions.

### <u>Announcements</u>

Listed issuers are required to publish announcements on a wide range of matters such as board meeting for approval of results; periodic results; change in auditor or financial year end; change in directors; notice of general meetings; issue of securities; public float; share repurchase etc.



## Disclosure of financial information

- Listed issuers are required to publish financial information including annual reports, half-year reports and quarterly reports (quarterly reports are only applicable to GEM board issuers).
- In particular, annual accounts must be audited by practising accountants of good standing and independent of the issuers.

## Compliance with requirements relating to notifiable transactions

 Listed issuers are required to comply with certain requirements in respect of certain transactions, principally acquisitions and disposals, entered into by a listed issuer and its subsidiaries.





• The requirements include obligations to notify the HKEx of the transaction, disclose the transaction to the public by publication of an announcement and in certain circumstances to obtain prior shareholders' approval depending on the size of the transaction.



# Compliance with requirements relating to connected transactions

- Listed issuers are required to comply with the requirements relating to connected transactions.
- Generally, a connected transaction is any transaction between a listed issuer or any of its subsidiaries and a connected person.

<u>Compliance with requirements under the Corporate Governance</u> <u>Code</u>

Listed issuers must state in their half-year and annual reports whether they have complied with the code provisions under the Corporate Governance Code and give reasons for any non-compliance.



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Compliance with the rules governing dealings by directors in their listed securities ("Model Code for Securities Transactions by Directors of Listed Companies")

 Listed issuers must adopt rules governing dealings by directors in their listed securities on terms no less stringent than the terms set out in the Listing Rules.

 The Model Code sets out the circumstances under which a director of a listed issuer must not deal in the securities of the company.



# Hong Kong Sponsor Due Diligence Guidelines

• In order to help sponsors and other IPO participants better understand the revised standards contained in the Code of Conduct, Charltons acted as the coordinating law firm in relation to the publication of the Hong Kong Sponsors Due Diligence Guidelines ("Due Diligence Guidelines"). The 2020 edition of the Due Diligence Guidelines are currently under progress.

- In addition to drafting the Due Diligence Guidelines, Charltons is responsible for managing and leading the publication of the Due Diligence Guidelines.
- The Due Diligence Guidelines can be downloaded free at <u>www.duediligenceguidelines.com</u>, a website created and managed by Charltons.
- Chinese version of the Guidelines is also available free online at <a href="http://duediligenceguidelines.cn">http://duediligenceguidelines.cn</a>
- Printed copies of the Due Diligence Guidelines can be purchased from <u>orders@duediligenceguidelines.com</u>







#### Charltons

- Charltons' extensive experience in Hong Kong corporate finance makes us uniquely qualified to provide a first class legal service
- Extensive initial public offering and listing experience
- Representative offices in Shanghai, Beijing and Yangon
- "Boutique Firm of the Year" awarded to Charltons by Asian Legal Business for the years 2002-2018
- "Corporate Finance Law Firm of the Year in Hong Kong" awarded to Charltons in the Corporate INTL Magazine Global Award 2014
- "Hong Kong's Top Independent Law Firm" awarded to Charltons in the Euromoney Legal Media Group Asia Women in Business Law Awards 2012 and 2013
- "Equity Market Deal of the Year" awarded to Charltons in 2011 by Asian Legal Business for advising on the AIA IPO



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### Contact us

Hong Kong Office 12th Floor Dominion Centre 43 – 59 Queen's Road East Hong Kong

Telephone (852) 2905 7888 Fax: (852) 2854 9596

Email: <a href="mailto:enquiries@charltonslaw.com">enquiries@charltonslaw.com</a>
Website: <a href="mailto:http://www.charltonslaw.com">http://www.charltonslaw.com</a>

#### Other locations

#### <u>China</u>

100020

Beijing Representative Office 3-1703, Vantone Centre A6# Chaowai Avenue Chaoyang District Beijing People's Republic of China

Telephone: (86) 10 5907 3299 Facsimile: (86) 10 5907 3299

enquiries.beijing@charltonslaw.com

Shanghai Representative Office

Room 2006, 20th Floor

Fortune Times

1438 North Shanxi Road

Shanghai

People's Republic of China

200060

Telephone: (86) 21 6277 9899

Facsimile: (86) 21 6277 7899

enquiries.shanghai@charltonslaw.com

In association with:

Boase Cohen & Collins 布高江律師行

#### Networked with:





### <u>Myanmar</u>

Yangon Office of Charltons Legal Consulting Ltd 161, 50th Street Yangon Myanmar Telephone: (95) 1 203 898

enquiries.myanmar@charltonslaw.com

www.charltonsmyanmar.com



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