

▶ Listing on the Stock Exchange of Hong Kong Limited through the Hong Kong Depositary Receipt (HDR) Regime



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CHARLTONS
易周律師行

www.charltonslaw.com

Disclaimers

- ▶ The interpretation of the Rules governing the listing of securities on the Stock Exchange of Hong Kong Limited (the “**Listing Rules**”) is subject to the interpretation of the Hong Kong Stock Exchange Limited (the “**Exchange**”) on its own rules and sometimes is inconsistent and changes without notice.
- ▶ As a Hong Kong legal adviser, we are only qualified to advise on Hong Kong law and we express no views as to the laws of any other jurisdictions.

Introduction to the Hong Kong Depository Receipt Framework

- ▶ On 9 May 2008, the Exchange published a new Chapter 19B to the Main Board Listing Rules which will allow issuers to list on the Main Board of the Exchange through Hong Kong Depository Receipts (“HDRs”) from 1 July 2008
- ▶ The HDR framework is formed as an alternative facility for, among others, issuers from jurisdictions that prohibit the issuance of shares or the maintenance of a share register overseas. It provides foreign issuers with additional channel to access Hong Kong, Mainland Chinese and regional institutional and retail investors
- ▶ The principal objective of the new HDR framework is to attract more overseas issuers to list in Hong Kong

Introduction to the Hong Kong Depository Receipt Framework (Cont'd)

- ▶ On an HDR issue, a global bank will act as a depository and take delivery of the shares (via a custodian in the issuer's jurisdiction), and issue HDRs in a given ratio to the shares in Hong Kong.
- ▶ The depository will hold the shares on behalf of the HDR holders, collect and convert dividends into either Hong Kong or US dollars (as elected by the issuer), account for any tax withholding or reclaim, and handle voting and entitlements on the HDR holders' behalf
- ▶ Trading through a depository bank will allow investors to trade within a relatively familiar trading and settlement environment without having to deal with such matters as share registration procedures, tax reclaims, currency conversion, foreign custody arrangement etc. involved in trading in overseas equity market

Introduction to the Hong Kong Depository Receipt Framework (Cont'd)

- ▶ The listing regime for listing of HDR is generally the same as for listing of shares on the Main Board of the Exchange. Requirements for admission, the listing process, and the continuing obligations are generally equivalent (this will be discussed in further details below)
- ▶ An issuer meeting the requirements of the Main Board Listing Rules can submit an application to list HDRS, even if it is not already listed on another stock exchange

Who may list HDRs

- ▶ The Exchange will accept applications from issuers from any foreign jurisdiction as long as they meet certain requirements, specifically that the laws of its home jurisdiction or its articles of association (or other constituent documents) provide a level of shareholder protection equivalent to that required under the Listing Rules as amplified by the Joint Policy Statement issued by the Exchange and Securities & Futures Commission dated 7 March 2007

**LISTING ON THE MAIN BOARD OF THE
HONG KONG STOCK EXCHANGE**

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Qualifications for listing on the Main Board

- ▶ The main requirements to be met for a Main Board listing is set out in Chapter 8 of the Main Board Listing Rules

- ▶ **Financial tests:** issuers must meet any one of the following 3 financial tests:
 1. **Profits test:** aggregate profits over 3 financial years equal or greater than HK\$50m (~US\$6.4m) + a market capitalisation at time of listing equal to or greater than HK\$200m (~US\$26m)

 2. **Market capitalisation / revenue test:** market capitalisation equal or greater than HK\$4 billion (~US\$513m) at the time of listing + revenue in most recent audited year equal to or greater than HK\$500m (~US\$64m) + at least 1,000 shareholders at the time of listing

 3. **Market capitalisation / revenue / cash flow test:** a market capitalisation at time of listing of at least HK\$2 billion (~US\$256m) + revenue in the most recent audited financial year of at least HK\$ 500m (~US\$64m) + positive cash flow from operating activities of at least HK\$100m (~US\$13m) in aggregate for the 3 preceding financial years

Qualifications for listing on the Main Board (Cont'd)

- ▶ Further, the issuer must have:
 - a **trading record** of not less than 3 financial years
 - **management continuity** for at least 3 preceding financial years
 - **ownership continuity** for at least the most recent audited financial year

- ▶ Subject to fulfillment of certain requirements, the Exchange may accept a shorter trading record period and/or vary or waive the financial standards requirements for mineral companies or newly formed 'project' companies, and may accept a shorter trading record period for applicants applying under the market capitalisation / revenue test or under exceptional circumstances where the Exchange is satisfied the investors could have the necessary information available to make informed judgment of the applicant and securities to which listing is sought

Public float and shareholder spread requirements of a Main Board listing

- ▶ At least **25%** of an issuer's outstanding shares must be publicly held at all times (with some exceptions, e.g. where expected market capitalisation at the time of listing is over HK\$10 bn) (NB: this is not a requirement for secondary listing by an overseas issuer)

Note that in calculating public float, an HDR issuer can include the underlying shares provided they are the same class of security as those represented by the HDRs and there are no restrictions on the conversion of those shares into HDRs. This means that the total number of publicly held ordinary shares outside of Hong Kong, plus the shares represented by HDRs held by the public through the Exchange will count towards the 25% public float requirement under the Listing Rules

- ▶ Minimum of **300 shareholders** at the time of listing (other than listing under market capitalisation / revenue test which require 1,000 shareholders)
- ▶ Not more than 50% securities held by public at the time of listing may be beneficially owned by **3 largest public shareholders**

Important documents / disclosures to be included in the listing document

- ▶ **Financial statements** prepared under either IFRS, or HKFRS. Financial statements drawn up in other accounting standards may also be acceptable to the Exchange for overseas companies (e.g. US GAAP)
- ▶ **Working capital statement** (and the sponsor must provide confirmations to the Exchange) stating that, after due and careful enquiry, the issuer is satisfied that it and its subsidiary undertakings have sufficient working capital for the group's requirements for at least 12 months from the date of listing document
- ▶ **Disclosures of competing business of controlling shareholder(s)** (i.e. person or person acting together entitled to exercise 30% or more voting power at general meeting of issuer or controls its board) with the business of the issuer

Sponsor requirement

- ▶ Under Rule 3A.02 of the Main Board Listing Rules, an issuer must appoint a sponsor to assist with its listing application
- ▶ Sponsors must be a corporation or an authorised financial institution licensed or registered under applicable laws to advise on corporate finance matters (i.e. corporate financial advisers licensed by the Securities and Futures Commission)
- ▶ The sponsor will be responsible for organising the issuer for listing on the Exchange such as preparing necessary listing documents and filing the formal listing application and all supporting documentation required by the Exchange
- ▶ The Sponsor must also conduct due diligence inquiries with the issuer (often with the assistance of qualified lawyers) to ensure compliance with the Listing Rules and that the listing document contains accurate and complete information about the issuer

Corporate requirements of an overseas issuer listed on the Main Board

- ▶ **Process agent:** an overseas issuer must appoint and maintain through the period its securities are listed a person authorised to accept services of process and notices on its behalf in Hong Kong
- ▶ **Share Register:** overseas issuers must maintain a register of shareholders in Hong Kong
- ▶ **Executive Directors:** an issuer must have sufficient management presence in Hong Kong (at least 2 of its directors – with suitable character, experience, integrity and competence – must be ordinarily resident in Hong Kong)
- ▶ **Company Secretary:** a company secretary must be appointed who is either a member of the Hong Kong Institute of Companies Secretaries, a solicitor or barrister qualified in Hong Kong, a professional accountant or such person as Exchange with relevant academic or professional qualification satisfactory to the Exchange

Corporate requirements of an overseas issuer listed on the Main Board (Cont'd)

- ▶ **Authorised Representatives:** every issuer must appoint 2 authorised representatives to act at all times as the issuer's principal channel of communication with the Exchange. These will be either 2 directors or a director with the company secretary unless in exceptional circumstances. Contact details of authorised representatives (or suitable alternates) must be supplied to the Exchange (NB: for a secondary listing by an overseas issuer, only one authorised representative is required and s/he need not be a director or a secretary)
- ▶ **Independent Non-executive Directors:** every issuer must have at least 3 independent non-executive directors on its board (at least one with appropriate professional qualifications or accounting or related management expertise). Such directors shall not have more than 1% of the issuer's issued share capital and have no material interest in the issuer's principal business activities or its connected persons

Corporate requirements of an overseas issuer listed on the Main Board (Cont'd)

- ▶ **Audit Committee:** every issuer must establish an audit committee made up of at least 3 non-executive directors (at least one of which shall be an independent non-executive director with appropriate professional qualifications or accounting or related management expertise, and whom shall be the chair of the committee)
- ▶ **Compliance adviser:** a listed issuer is required to retain a compliance adviser from the commencing of its listing and ending on the publication of its financial results for the first full financial year after listing. Such compliance adviser must be licensed by the SFC to conduct sponsor work. The issuer should consult with the compliance adviser and seek their advice prior to such events as: the publication of any regulatory disclosures; when completing notifiable or connected transactions; when there are any change of use of IPO proceeds etc.

Additional requirements for second listing of overseas issuers

- ▶ **Shareholders protection:** an overseas listing applicant must demonstrate to the Exchange that its jurisdiction of incorporation and the exchange of its primary listing or its constitutive documents provide standards of shareholder protection which are at least equivalent to standards of shareholders protection provided in Hong Kong
- ▶ The issuer's primary listing must be on a regulated, **regularly operating, open stock market** recognised by the Exchange and which it has adequate nexus
- ▶ The primary regulator in that market must have entered into a **written agreement with the Exchange** governing the parties' respective roles in the regulation of the issuer
- ▶ The **listing document** need to contain a summary of relevant regulatory provisions applicable to companies with a primary listing on the issuer's primary stock exchange

Introduction as method of obtaining a secondary listing

- ▶ Introduction is an application for listing of securities which are already in issue where **no marketing arrangements** (e.g. issue of listing document) are required because the securities to be listed are already of such an amount and so widely held that their adequate marketability when listed can be assumed
- ▶ The Exchange will normally consider it appropriate to make a listing by way of introduction where:
 - ▶ - the securities to be listed are already listed on another stock exchange
 - ▶ - there is a likelihood of significant public demand for securities
 - ▶ - securities have been marketed in Hong Kong in the previous 6 months and the marketing was conditional on listing being granted for those securities
- ▶ The listing applicant must apply to the Exchange for confirmation that an introduction will be an appropriate method of listing

Some key post-listing and continuing obligations

- ▶ Disclosure obligations in respect of any price-sensitive information matters set out in Chapter 13 of the Listing Rules must be complied with at all times
- ▶ Disclosure obligations and shareholder approval requirements relating to connected transactions and notifiable transactions set out in Chapters 14 and 14A of the Listing Rules must be complied with at all times
- ▶ Restriction on disposals for controlling shareholder: A controlling shareholder of the issuer shall not dispose of or creation options, rights, interests or encumbrances over shares owned by it (or enter into agreements thereof) within 6 months from trading or do any such things which (on exercise or enforcement of which) will cause it to cease to be a controlling shareholder within the subsequent 6 months

Some key post-listing and continuing obligations (Cont'd)

- ▶ There shall be **no further issue of shares** or securities convertible into shares of a listed issuer or enter into any agreement for such an issue within 6 months from the date on which trading commenced
- ▶ Compliance with the **Code of Corporate Governance Practices** set out in Appendix 14 of the Main Board Listing Rules or explanation of non-compliance
- ▶ **Financial reporting:** the following financial reports must be sent to the Exchange and shareholders: (a) annual reports not less than 21 days prior to the Annual General Meeting of shareholders and no later than 4 months after financial year-end; (b) interim reports not later than 3 months after the sixth month of the fiscal year

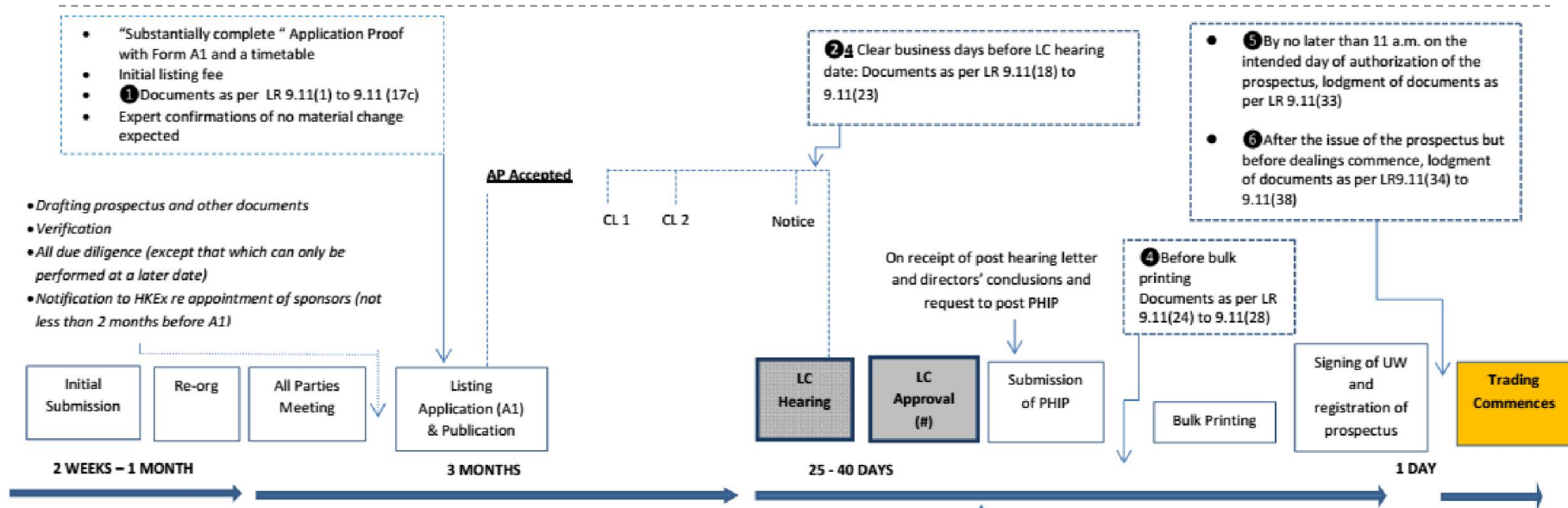
Timing

- ▶ The amount of time needed to effect a listing in Hong Kong will depend on the issuer's ability to fulfill the requirements of the Exchange
- ▶ Typically, once a company's financial statements have been prepared in accordance with acceptable accounting standards, and evidence that the issuer's home market regulations provide equivalent investors protection to that required under the Listing Rules has been submitted, a listing will become effectively in approximately three months (including review process of the listing documents)
- ▶ A new applicant must apply for an advance booking with Form A1 together drafts of listing documents (if any) with the payment of initial listing fee not less than 25 business days prior to expected date of the Listing Committee hearing to consider the application

Documents Required to be Submitted in Support of a MB Listing Application

<p>1 Documents as per LR 9.11(1) to 9.11(17c)</p>	<p>2 4 Clear days before LC hearing date: Documents as per under LR 9.11(18) to 9.11(23)</p>	<p>3 As soon as practicable after the hearing of the application by the LC, but on or before the date of issue of the listing document submission of the documents as per LR's 9.11(29) to 9.11(32)</p>	<p>4 Before bulk printing Documents as per LR 9.11(24) to 9.11(28)</p>	<p>5 By no later than 11 a.m. on the intended day of authorization of the prospectus, lodgment of documents as per LR 9.11(33) (In case of a listing document which constitutes a prospectus under the CO)</p>	<p>6 After the issue of the prospectus but before dealings commence, lodgment of documents as per LR9.11(34) to 9.11(38)</p>
<ul style="list-style-type: none"> • AP's as required by HKEx and 2 CD-ROMs • sponsor's undertaking and statement of independence • compliance adviser's undertaking • advanced draft of requests for waiver from LRs and Companies Ordinance ("CO") • directors'/supervisors' confirmations relating to:- <ul style="list-style-type: none"> – accuracy of information contained in AP – accuracy directors'/supervisors' biographical details – updating the HKEx re changes to directors'/supervisors' biographical details – declaration in Form B/H/I • If AP contains an accountants' report, an advanced draft of any statement of adjustments relating to the accountants' report • draft deposit agreement • specimen certificate for the depositary receipts (if applicable) • a final or an advanced draft of the board's profit forecast memorandum • certified copy of the new applicant's certificate of incorporation • sponsor's letter re working capital • any other document required by the HKEx to support the listing 	<ul style="list-style-type: none"> • final proof of the listing document as required by the HKEx together with 2 CD-ROM • confirmation from the new applicant's legal advisers that the new applicant's articles of association are not inconsistent with the LR • a certified copy of the signed deposit agreement (if applicable) • unless previously provided, all executed requests for waiver from the requirements of the LR and the provisions of CO 	<ul style="list-style-type: none"> • dated and signed copy of each of the English and the Chinese language versions of the listing document • copy of the formal notice, where applicable • a copy of the written notification issued by HKSCC stating the securities will be Eligible Securities • every written undertaking and confirmation from the new applicant, its shareholders and/or other relevant parties to the HKEx referred to in the listing document • original signed sponsor declaration(s) required by rule 3A.13 	<ul style="list-style-type: none"> • final proof of the formal notice, (where applicable) and application forms, and statement re sufficiency of working capital • final copy of all draft documents submitted to support the listing application 	<ul style="list-style-type: none"> • application for authorisation for registration of the prospectus under section 38D(3) or section 342C(3) of the CO • 2 printed copies of the prospectus, duly signed in accordance with section 38D(3) or section 342C(3) of the CO • certificate issued by translator 	<ul style="list-style-type: none"> • certified copies of the resolution(s) of the new applicant in general meeting (if any) authorising the issue of all securities and resolution(s) of the board of directors delegating powers • copy of the placing letter (where applicable) • sponsor's declaration (Form E) • director's declarations (Form F and B/H/I as applicable)

IPO timeline



(#)	Rejections can be appealed through a separate mechanism
A1	Form A1 in Appendix 5 to the Main Board Listing Rules) with a timetable
AP	Application Proof
CL1	Comment letter 1 – within 10 days of receipt of AP
CL2	Comment letter 2 (if any) – WITHIN 10 days of replies to CL1
LC	Listing Committee
LR	Listing Rules of the Main Board of the HKEx
Notice	Notice to hearing
PHIP	Post Hearing Information Pack
UW	Underwriting Agreement

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HDR SPECIFIC MATTERS

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Key features of Chapter 19B of the Listing Rules relating to HDR

- ▶ **HDR Qualities:** the HDRs must be freely transferable and the securities which the HDRs represent must be fully paid and free from all liens and restriction on the right of transfer to the depositary. HDRs may be issued in respect of newly issued shares and/or in respect of shares placed with a depositary by existing shareholders provided that the issuer applies to be the issuer of such depositary receipts and assumes the obligations and duties imposed on an issuer by the Listing Rules
- ▶ **Register of HDRs:** an approved share registrar is required to maintain in Hong Kong a register of HDR holders and the transfers of the HDRs. Only HDRs registered in Hong Kong will be permitted to be traded on the Exchange
- ▶ **Requirements for Depositary:** the depositary is required to: (a) be duly incorporated and operate in conformity with its constitutional documents; (b) be a suitably authorised and regulated financial institution acceptable to the Exchange; and (c) have adequate experience in issuing and managing DR programmes in Hong Kong or overseas. Depositaries will not require a depositary licence

Key features of Chapter 19B of the Listing Rules relating to HDR (Cont'd)

- ▶ **Deposit Agreement:** Issuers are required to enter into a deposit agreement with the depositary, which acts as the agent of the issuer for the benefit of the HDR holders. This will be vetted by the Listing Division of the Exchange.
- ▶ The deposit agreement is required to:
 - ▶ (a) stipulate the rights, duties and obligations of the depositary, issuer, HDR holders, and custodian;
 - ▶ (b) set out the fee structure of the depositary
 - ▶ (c) define the procedures for the replacement or removal of the depositary and/or the custodian
 - ▶ (d) specify the procedures for amending the agreement
 - ▶ (e) be governed by Hong Kong law or any other law that is generally used in accordance with international practice

Key features of Chapter 19B of the Listing Rules relating to HDR (Cont'd)

- ▶ **Number of Authorised HDRs:** HDRs seeking to list on the Main Board will be able to represent any number of shares. In addition, the issuer can apply to list any number of HDRs provided that it meets all other listing requirements (e.g. the public float requirement). To allow for future conversions of the underlying shares into HDRs, the issuer may apply to list a greater number of HDRs than will be issued for capital raising (i.e. it may apply for “**headroom**”). Any combination of HDRs issued for capital raising or issued as a result of conversion of underlying shares will be permitted and listing approvals will be given for specific purposes and amounts.
- ▶ No further application for listing HDRs will be required for the creation of listed HDRs resulting from the conversion of shares into HDRs. Likewise, no further listing of HDRs will be needed for any further issue of shares, provided that the original amount of listed HDRs is not exceeded. The depositary will monitor the level of outstanding HDRs on a day-to-day basis and will not permit shares to be converted into HDRs if this would cause the number of authorised HDRs to be exceeded. Listing must be sought for all further issues of HDRs in excess of the amount of HDRs already listed.

Key features of Chapter 19B of the Listing Rules relating to HDR (Cont'd)

- ▶ **Currency:** the Exchange accepts trading and clearing in both Hong Kong dollars and US dollars (the choice will be that of the issuer)
- ▶ **Trading and settlement procedures:** the trading, clearing and settlement arrangements for HDRs will be the same as for shares. Investors can trade HDRs through their brokers, and will be traded on the same Exchange trading platform on which shares exchange hands.
- ▶ **Tax:** stamp duty tax applies to trades in HDRs at the rate of 0.2% (split between the buyer and the seller), similar to the taxation of trades in ordinary shares. The issuance or cancellation of HDRs will not result in the imposition of stamp duty. No withholding tax or capital gains tax will be levied in Hong Kong on the sale of HDRs
- ▶ **HDR Scrip:** HDRs will have to be deposited in the Central Clearing and Settlement System (CCASS) to be tradable and will be traded and settled on a book-entry electronic basis

Key features of Chapter 19B of the Listing Rules relating to HDR (Cont'd)

- ▶ **Dividend Payment:** the depositary will convert dividends received from the issuer into either Hong Kong or US dollars and will remit the proceeds, net of any applicable taxes and the depositary's own fee, to the HDR holder
- ▶ **Rights of HDR Holders:** the rights of HDR holders will be broadly equivalent, but not identical, to those of the underlying shareholders. The rights of HDR holders will be contractual and will arise from the deposit agreement, whereas the rights of shareholders are reinforced by statute in the issuer's jurisdiction of incorporation
- ▶ The local laws may prohibit foreign investors from holding shares directly: no such restriction will however apply to the HDRs. Subject to compliance with local laws and regulations, HDR holders who want to enforce their rights as shareholders may choose to convert their HDRs into shares of the issuer. As regards voting rights, the depositary will send information on resolutions and voting procedures to the HDR holders and will pass the HDR holders' voting instructions back to the issuer

Key features of Chapter 19B of the Listing Rules relating to HDR (Cont'd)

- ▶ **Short Selling:** HDRs will be subject to the existing rules on short selling. Where the HDR issuer satisfies the Exchange's criteria and is placed on the list of eligible stocks, short selling in the normal manner will be allowed
- ▶ **Listing fees:** listing fees for HDR issuers are generally the same as those paid by issuers that list ordinary shares. However, since the fee scale is commensurate with the number of securities seeking listing, there may be savings of initial and annual listing fees. For example, if an issuer does not apply for the listing of all HDRs representing the entire class of underlying shares (see "headroom" above), the initial listing fees will be lower
- ▶ **HDR ratio:** the issuer is free to decide the ratio of HDRs to the number of home market shares that underlie them (usually approximates the per share (or per HDR) price of its sector peers that trade on the same stock exchange)
- ▶ **Listing document requirement:** modeled closely with listing document relevant to listing of ordinary shares (must be in English and Chinese)

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: enquiries@charltonslaw.com
Website: <http://www.charltonslaw.com>



CHARLTONS
易周律師行

Other Locations

China

Beijing Representative Office

3-1703, Vantone Centre
A6# Chaowai Avenue
Chaoyang District
Beijing
People's Republic of China
100020

Telephone: (86) 10 5907 3299
Facsimile: (86) 10 5907 3299
enquiries.beijing@charltonslaw.com

Myanmar

Yangon Office of Charltons Legal Consulting Ltd

161, 50th Street
Yangon
Myanmar
enquiries.myanmar@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

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