



## HKEX's New Listing Regime for Overseas Issuers Effective 1 January 2022

Revised HKEX Listing Rules took effect on 1 January 2022 simplifying the listing regime for companies incorporated outside Hong Kong and the People's Republic of China (the **PRC**) (**Overseas Issuers**) and extending opportunities for Chinese homecoming secondary listings on the HKEX. In particular, Chinese companies in traditional sectors with primary listings in New York or London are now able to secondary list on the HKEX if they do not have a weighted voting rights structure, increasing the number of Chinese companies eligible for secondary listing in Hong Kong. While the rule changes relate principally to Overseas Issuers, a set of 14 core shareholder protection standards will be required of all issuers, including Hong Kong and PRC companies and all companies already listed on 1 January 2022 (**Existing Issuers**). The rule changes follow the HKEX's publication of its [Consultation Conclusions on the Listing Regime for Overseas Issuers<sup>1</sup>](#) (the **Consultation Conclusions**) stating its intention to implement the proposals to streamline the listing requirements for Overseas Issuers set out in its [March 2021 consultation paper<sup>2</sup>](#), with minor amendments. For a summary of the proposals, please see Charltons' April 2021 newsletters "[The HKEX Consultation Paper on the Listing Regime for Overseas Issuers](#)" and "[HKEX Proposes Extension of its Secondary and Dual Primary Listing Regimes](#)".

The Listing Rule changes fall into four main categories:

## **1. The introduction of a core set of shareholder protection standards (Core Standards)**

Revised Appendix 3 to the Main Board and GEM Listing Rules sets out a core set of 14 shareholder protection standards which all HKEX-listed companies are required to provide. Companies applying for listing are required to have conformed their constitutional documents to the Core Standards before listing on the HKEX. Existing Issuers, including issuers incorporated in Hong Kong, Bermuda, the Cayman Islands and the PRC, have until their second annual general meeting (**AGM**) after 1 January 2022 to make any necessary amendments to their Articles of Association (or other constitutional documents) to ensure they conform to the Core Standards. For some Core Standards, issuers will be deemed to comply if they comply with requirements in force at the date of their listing (as detailed further below).

## **2. Greater flexibility for Greater China Issuers to secondary list on the HKEX**

Greater China companies in non-innovative sectors without a weighted voting rights (**WVR**) structure with a primary listing on a Qualifying Exchange are allowed to secondary list on the HKEX with either:

- a. a market capitalisation of HK\$3 billion and five financial years good regulatory compliance on a Qualifying Exchange; or
- b. a market capitalisation of HK\$10 billion and two financial years good regulatory compliance on a Qualifying Exchange.

## **3. Dual primary listing option for Grandfathered Greater China Issuers and Non-Greater China Issuers**

Grandfathered Greater China Issuers and Non-Greater China Issuers which are eligible for secondary listing with WVR and/or variable interest entity (**VIE**) structures that do not comply with the Listing Rules are now allowed to dual primary list on the HKEX.

## **4. Housekeeping changes**

Various housekeeping changes have been made which include an update of the Listing Rules' accounting-related provisions to reflect the requirements of the Financial Reporting Council Ordinance (the **FRCO**).

The HKEX has issued the following guidance materials which took effect on 1 January 2022:

- New Guidance Letter [GL111-22](#) (Guidance for Overseas Issuers);
- New Guidance Letter [GL112-22](#) (Change of listing status from secondary listing to dual-primary or primary listing on the Main Board); and
- [FAQ Series 25](#) (Listing Overseas Companies)

The following provides a summary of the Listing Rule changes.

## **Core Standards of Shareholder Protection in Appendix 3 to the HKEX Listing Rules**

The HKEX has removed the Listing Rule requirement for Overseas Issuers to provide shareholder protection standards equivalent to those provided in Hong Kong (formerly Main Board Listing Rule 19.05(1)(b) and GEM Listing Rule 24.03)). It has also repealed the HKEX and SFC “Joint policy statement regarding the listing of overseas companies” (the **Joint Policy Statement**) which previously set out the key shareholder protection standards required of Overseas Issuers incorporated outside the four recognised jurisdictions (Hong Kong, Bermuda, the Cayman Islands and the PRC). It also repealed the shareholder protection standards required of Bermuda and Cayman Islands companies previously included in Appendices 3 and 13 and of secondary listed companies under Chapter 19C of the Listing Rules.

Under the revised HKEX Listing Rules, all HKEX listed issuers are required to provide the 14 Core Standards set out in revised Appendix 3 to the HKEX Listing Rules. These apply to all issuers listed on the HKEX, including issuers incorporated in Hong Kong, the PRC, Bermuda and the Cayman Islands. The Core Standards are based on standards set out in the Hong Kong Companies Ordinance (Cap. 622) or already required under the HKEX Listing Rules. A majority of the Core Standards are the same as the key shareholder protection standards previously included in the Joint Policy Statement.

Revised Appendix 3 requires issuers to demonstrate how applicable domestic laws, regulations and rules and their constitutional documents, together, provide the Core Standards. Post-listing, an issuer must monitor its on-going compliance with the Core Standards and notify the HKEX if it becomes unable to comply with any of them.

### **Application of Core Standards to PRC Issuers**

The requirements of Part D of Appendix 13 relating to PRC issuers (i.e. H share

issuers) remain. These set out the specific requirements for PRC issuers which the Mandatory Provisions<sup>3</sup> require to be included in a PRC issuer's articles. While PRC issuers are required to comply with the Core Standards, certain exceptions are provided for them due to the requirements of the Mandatory Provisions. These include:

- a. a 20 day notice period for annual general meetings (**AGMs**) and 15 days for other general meetings (as opposed to 21 and 14 days, respectively under the Core Standards); and
- b. a two-thirds majority definition of a "super-majority vote" for approving a variation of class rights, amendments of constitutional documents and voluntary winding-up (as opposed to a three-fourths majority under the Core Standards).

## **Repeal of Joint Policy Statement**

The HKEX has repealed the Joint Policy Statement which previously set out guidance for Overseas Issuers. Guidance is now set out in new consolidated Guidance Letter [GL111-22](#). The HKEX will not issue any new Country Guides, but will continue with its practice of issuing guidance on a case-by-case basis if novel issues arise on the listing of Overseas Issuers.

## **HKEX's New Core Standards**

For details of the HKEX's new 14 Core Standards, the HKEX's rationale for their inclusion and when Existing Issuers need to amend their constitutional documents, please click [here](#).

## **Requirements for Overseas Listing Applicants**

As set out in the new Guidance Letter for Overseas Issuers (GL-111), an Overseas Issuer applying to list in Hong Kong will be required, at the time of submitting its listing application to the HKEX, to confirm that it conforms with the Core Standards and the requirements of GL-111 with an appropriate legal opinion. If an Overseas Issuer is from a jurisdiction where securities have not been previously admitted into CCASS for trading on the HKEX or the Overseas Issuer's legal advisers identify any shortfalls in compliance with the Core Standards, the issuer is required to complete and submit the "[Information Required from Overseas Issuers](#)" checklist available on the HKEX's website. If the checklist is required to be completed, the Overseas Issuer may only submit its listing application after the HKEX and the SFC have confirmed that they have no further comment on the level of shareholder protection standards in the Overseas Issuer's jurisdiction of incorporation.

Overseas Issuers are also required by the new guidance letter to disclose in their listing documents:

- the major differences between the shareholder protection standards that apply to it under the laws and regulations of its jurisdiction of incorporation and its constitutional documents (Domestic Standards) and the Core Standards together with details of the measures that have been or will be taken to address the differences; and
- the risk that the extent to which Hong Kong courts may be used as an avenue for aggrieved shareholders of non-Hong Kong issuers is subject to certain limitations concerning, for example, the enforcement of a Hong Kong judgment against the overseas assets, operations and/or directors of a non-Hong Kong company listed on the HKEX and enforcement of an overseas judgment in the Hong Kong courts.

## **Requirements for Existing Overseas Issuers**

Existing Issuers are required to ascertain that they are in full compliance with the Core Standards and must, at the earliest opportunity, inform the HKEX of any material changes in the overseas laws, rules and market practices set out in applicable HKEX guidance that would affect their compliance with the Core Standards and other HKEX Listing Rules. Existing Issuers need to compare their constitutional documents against the Core Standards and make appropriate amendments unless they can demonstrate that the laws, rules and regulations of their jurisdiction of incorporation provide the same level of protection.

As a transitional arrangement, issuers listed on the HKEX as at 31 December 2021 will have until their second annual general meeting following 1 January 2022 (i.e. the effective date of the reforms) to make any necessary amendments to their constitutional documents to conform to the Core Standards. A new applicant which has submitted a listing application is not required to re-submit the relevant checklists, forms or templates but needs to confirm compliance with the Core Standards. Please see FAQ 3 of [HKEX's Frequently Asked Questions \(Series 25\)](#) for details.

The introduction of the Core Standards will not normally affect waivers already granted to existing HKEX-listed issuers.

## **HKEX's Secondary Listing Regime Extended**

Previously, the HKEX offered two routes to secondary listing under the Joint Policy Statement and Chapter 19C of the HKEX Listing Rules. Each route had

different eligibility and suitability requirements. Importantly, issuers with their “centre of gravity” in Greater China were prohibited from listing under the Joint Policy Statement, while Chapter 19C allowed for the secondary listing of issuers (including Greater China Issuers) in innovative sectors<sup>4</sup> with a primary listing on one of three Qualifying Exchanges (the New York Stock Exchange, NASDAQ, or the premium segment of the Main Market of the London Stock Exchange). The HKEX Listing Rules define a Greater China Issuer as a Qualifying Issuer (i.e. a company that is primary listed on a Qualifying Exchange) with its “centre of gravity” in Greater China. The additional requirements applicable to other Overseas Issuers seeking a secondary listing on the HKEX were previously set on in the second half of Chapter 19 of the HKEX Listing Rules.

The HKEX has consolidated and codified the requirements for secondary listings in Chapter 19C of the HKEX Listing Rules. Chapter 19 now applies only to primary listings of Overseas Issuers.

## **Revised Quantitative Eligibility Requirements for HKEX Secondary Listing Applicants**

The HKEX has consolidated and codified the secondary listing eligibility requirements for Overseas Issuers.

An Overseas Issuer without a WVR structure (including issuers with a centre of gravity in Greater China) will be required to meet one of the following two sets of quantitative eligibility requirements (new Listing Rule 19C.05A):

*Criteria A:*

- a. a track record of good regulatory compliance of at least five full financial years:
  - i. on a Qualifying Exchange; or
  - ii. on any Recognised Stock Exchange – only if it is an Overseas Issuer without a centre of gravity in Greater China. Applications from issuers with a centre of gravity in Greater China that are primary listed on a Recognised Stock Exchange (other than a Qualifying Exchange) will be considered only in exceptional circumstances; and
- b. a market capitalisation at the time of secondary listing of at least HK\$3 billion.

### *Criteria B:*

- a. a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
- b. a market capitalisation at the time of secondary listing of at least HK\$10 billion.

These requirements are designed to consolidate the previous two secondary listing routes by codifying the former Joint Policy Statement's requirements for listed companies without WVR structures (now Criteria A) and the requirements of former Chapter 19C (now Criteria B).

## **Removal of the “innovative company” requirement for non-WVR issuers**

The revised requirements relax the listing eligibility requirements for issuers with a centre of gravity in Greater China, which previously could only secondary list under the Chapter 19C route if they were “innovative companies”. Under the revised Listing Rules, issuers with a centre of gravity in Greater China not having a WVR structure can list under either Criteria A or Criteria B. The “innovative company” requirement has been removed for all non-WVR secondary listings.

Overseas Issuers with a WVR structure remain subject to the same quantitative eligibility requirements under Listing Rules 19C.04 and 19C.05:

- a. a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
- b. either:
  - i. a market capitalisation of at least HK\$40 billion at the time of secondary listing; or
  - ii. a market capitalisation of at least HK\$10 billion at the time of secondary listing and revenue at least HK\$1 billion for the most recent audited financial year.

Overseas Issuers with a WVR structure are also required to be innovative companies in order to secondary list under Chapter 19C.

## **Secondary listing without a listing compliance record**

The HKEX has introduced an exemption under which it will not require a listing compliance record for either Criteria A or Criteria B for secondary listing applicants without a WVR structure if the applicant is well-established and has a market capitalisation at listing that is significantly larger than HK\$10 billion (i.e. the minimum market capitalisation required to secondary list under Criteria B). The exemption will be applied on a case-by-case basis.

## **HKEX's discretion to reject secondary listing applications to address regulatory arbitrage risk**

New Listing Rule 19C.02A(1)(d)) gives the HKEX the right, in its absolute discretion, to refuse an Overseas Issuer's listing if, in its opinion, the application constitutes an attempt to avoid rules that apply to a primary listing on the HKEX. For these purposes, the HKEX will apply the test for a reverse takeover (an RTO) under Listing Rule 14.06B to determine whether the company conducted an RTO on its primary listing exchange. If a material part of the applicant's business was listed on its primary exchange by way of an RTO, the HKEX will normally consider its application for secondary listing to be an attempt to avoid rules that apply to primary listing.

## **Listing applicant to be subject to the regulatory requirements of its primary listing market**

New Listing Rule 19C.02A(1)(c)) gives the HKEX the right to refuse an Overseas Issuer's secondary listing application if the Overseas Issuer has received waivers from, or is exempt from, regulatory requirements that result in it being subject to regulatory requirements that are materially less stringent than those that generally apply to entities of its nature listed on its primary market.

## **Change of HKEX Listing Status from Secondary to Dual-primary or Primary Listing**

### **Definition of dual-primary listing**

The HKEX has defined "dual primary listing" in HKEX Listing Rule 1.01 as a primary listing on the HKEX where the issuer either: (i) also has a primary listing on one or more overseas stock exchange(s); or (ii) is simultaneously applying to list on the HKEX and one or more overseas stock exchange(s).



## **HKEX Trading Migration Requirement extended to all secondary listed companies**

The Listing Rules previously provided that if the majority of trading in a Greater China Issuer's secondary listed shares migrates permanently to the HKEX (i.e. when 55% or more of the total worldwide trading volume, by dollar value, of those shares over the issuer's most recent financial year, takes place on the HKEX's markets), the HKEX will regard the issuer as having a dual-primary listing on the HKEX and the automatic waivers granted to the issuer will cease to have effect (the **HKEX Trading Migration Requirement**). Under note 2 to Listing Rule 19C.13, issuers have a grace period of 12 months to re-comply with the applicable Listing Rules (**Migration Grace Period**), ending at midnight on the anniversary of the date of the HKEX's written notice of its decision that the majority of trading in the issuer's listed shares has migrated permanently to the HKEX's markets.

To reduce the complexity of the HKEX's requirements and to ensure consistency of the principles on which automatic waivers are granted, the HKEX has amended Listing Rule 19C.13 to extend the HKEX Trading Migration Requirement to all Overseas Issuers with a secondary listing on the HKEX. This will include Overseas Issuers that secondary listed before the introduction of Chapter 19C of the HKEX Listing Rules. The HKEX will also extend the HKEX Trading Migration Requirement so that when an issuer is regarded as having a dual-primary listing, common waivers and waivers based on its secondary listing (in addition to automatic waivers) will no longer apply to the issuer.

### **De-listing and waivers**

New HKEX Listing Rule 19C.13A provides that if an Overseas Issuer's shares (or depositary receipts issued on its shares) cease to be listed on the Recognised Stock Exchange of its primary listing, the HKEX will regard the issuer as having a primary listing in Hong Kong. As a result, the Chapter 19C Listing Rules on automatic waivers, common waivers and waivers based on its secondary listing, will no longer apply to the issuer.

A note to new HKEX Listing Rule 19C.13A provides that if an Overseas Issuer is expected to be involuntarily de-listed from the Recognised Stock Exchange on which it is primary listed, the HKEX is prepared to allow an exemption for any continuing transaction that will continue after the effective date of the involuntary de-listing, if the transaction is entered into before the issuer's notification to the HKEX about the expected involuntary de-listing. The transaction will continue to be exempt for a period of three years from the date of the notification. However if the transaction is subsequently amended or renewed before the expiry of the three-year period, the Overseas Issuer must comply with the relevant requirements under the HKEX Listing Rules at such time.

As discussed further below under “Auditing and financial reporting standards for Overseas Issuers”, the HKEX has:

i. codified into the HKEX Listing Rules the requirement of the Joint Policy Statement that a listed company which has adopted one of the accepted alternative financial reporting standards must adopt Hong Kong Financial Reporting Standards (**HKFRS**) or International Reporting Standards (**IFRS**) if it de-lists from the jurisdiction of the alternative financial reporting standard adopted (if applicable) (Note 4 to Listing Rule 19C.23); and

ii. introduced an automatic grace period for the adoption of HKFRS or IFRS, which will end on the first anniversary of the company’s de-listing.

## **Overseas De-Listing, Migration and Primary Conversion Guidance Letter**

The HKEX has issued new Guidance Letter 112-22 on “Change of listing status from secondary listing to dual-primary or primary listing on the Main Board” (the Guidance Letter on Change of Listing Status) which provides further details and guidance on:

i. voluntary or involuntary de-listing of an Overseas Issuers’ shares (or depositary receipts issued on their shares) from the Recognised Stock Exchange on which they are primary listed (Overseas De-Listing);

ii. the migration of the majority of trading in an Overseas Issuers’ listed shares to the HKEX’s market under HKEX Listing Rule 19C.13 (Migration); and

iii. voluntary conversion to dual-primary listing on the HKEX (**Primary Conversion**).

Relevant Overseas Issuers are referred to as:

i. a “De-listing Issuer”: an issuer that starts to plan a voluntary de-listing, or that reasonably expects that it may be de-listed involuntarily, from its Recognised Stock Exchange of primary listing;

ii. a “Migration Issuer”: an issuer falling within Listing Rule 19C.13; and

iii. a “Conversion Issuer”: an issuer seeking a Primary Conversion.

The Guidance Letter on Change of Listing Status clarifies that an Overseas Issuer will be regarded as having: (i) a primary listing on the HKEX upon the effective date

of its Overseas De-Listing; and (ii) a dual-primary listing on the HKEX upon the expiry of the Migration Grace Period or the effective date of Primary Conversion (**Change of Listing Status**).

Upon a Change of Listing Status, all exceptions, waivers and exemptions available to the Overseas Issuer which were granted on the basis of, or conditional upon, its secondary listing status will cease to apply, except as provided under the “Applicability of Listing Rules to transactions entered into before the Change of Listing Status” in the Appendix to the new guidance letter. If an issuer wishes to retain a waiver or apply for a new waiver, it should make a waiver application (with reasons) at the earliest opportunity.

Upon a Change of Listing Status, the Overseas Issuer should ensure that: (i) all changes to its corporate and organisational structure have been implemented so that it is fully compliant with the relevant corporate governance requirements under the HKEX Listing Rules; and (ii) it has put in place all necessary internal control systems to monitor its ongoing compliance with the other relevant HKEX Listing Rules (compliance with which are generally event-driven and/or time-based in nature).

Normally, the stock marker “S” will be retained until the Change of Listing Status. If any grace period as a time-relief waiver is granted to a Conversion Issuer or a De-listing Issuer, the HKEX may require the issuer to have a stock short name that ends with the stock marker “TP” while the issuer is under transitional arrangements to enable it to fully comply with all applicable Listing Rules.

All secondary listed Overseas Issuers will be required to monitor their compliance with Listing Rule 19C.13 (the HKEX Trading Migration Requirement) from the start of their first full financial year after secondary listing, and to notify the HKEX of their trading volume in accordance with the Guidance Letter on Change of Listing Status.

## **Overseas De-Listing**

An Overseas Issuer that plans a voluntary de-listing, or reasonably expects that it may be de-listed involuntarily, from its primary listing exchange should notify the HKEX of this possibility in writing stating whether the de-listing is voluntary or involuntary as soon as practicable.

De-listing Issuers are required to announce their forthcoming Overseas De-listing under the general disclosure obligation of Listing Rule 13.09. This announcement must be published no later than when this information is announced on the Recognised Stock Exchange of its primary listing and must include the following information:

- i. the intention and/or reasons for the Overseas De-listing;
- ii. the expected or estimated date of the Overseas De-listing (for voluntary De-listing Issuers, the date on which they will comply with all Listing Rules applicable to a primary listed issuer (unless waived or exempted; and for involuntary De-listing issuers, the date on which the overseas regulator will cancel their listing status and they will become primary-listed on the HKEX);
- iii. its obligations to make necessary arrangements to enable it to comply with all applicable Listing Rules after the Overseas De-listing; the potential consequences of it failing to comply with these obligations after its Overseas De-listing; and the potential consequences of the withdrawal of any specific waiver from strict compliance with any Listing Rules granted by the HKEX on an individual basis on the effectiveness of the Overseas De-listing;
- iv. any application(s) made to the HKEX for waiver(s) and exemption(s) from strict compliance with the Listing Rules after the Overseas De-listing and the HKEX may or may not grant those waiver(s) and exemption(s);
- v. the potential impact on shareholders and potential investors of any transitional measures to be put in place before the Overseas De-listing takes effect.

A De-listing Issuer is expected to comply with all the HKEX Listing Rules applicable to other primary listed overseas listed companies upon de-listing. The HKEX may grant a grace period in exceptional circumstances on a case-by-case basis.

Where a voluntary De-listing Issuer is unable to fully comply with an applicable Listing Rule before its Overseas De-listing (and no waiver is granted), the HKEX may request the issuer to delay the effective date of the voluntary Overseas De-listing.

Where an involuntary De-listing Issuer is unable to fully comply with an applicable Listing Rule upon its Overseas De-listing (or the end of any grace period granted under any time-relief waiver), the HKEX may, on a case-by-case basis, extend the grace period, suspend the issuer's trading or impose other measures as it considers necessary.

## **Migration**

Secondary listed Overseas Issuers are required to notify the HKEX in writing:

- i. within five business days of the end of the third quarter of their

financial year, as to whether or not the trading volume of their shares, by dollar value, in Hong Kong has exceeded 50% of the total worldwide trading volume by dollar value (including the trading volume in depositary receipts issued on those shares) based on the trading volume over that nine-month period; and

ii. within five business days of the end of their financial year, as to whether or not the trading volume of their shares, by dollar value, in Hong Kong has exceeded 55% of the total worldwide trading volume by dollar value (including the trading volume in depositary receipts issued on those shares) based on the trading volume over that financial year.

Migration Issuers have a 12-month Migration Grace Period within which to comply with applicable HKEX Listing Rules. During the Migration Grace Period, Migration Issuers should provide the HKEX with monthly update reports on their progress towards compliance with the Listing Rules that will apply to them when the Migration Grace Period ends.

The Exchange will issue a Migration Exchange Notice to the Overseas Issuer if it decides that the majority of trading in the Overseas Issuer's listed shares has migrated permanently to the HKEX's markets under Listing Rule 19C.13 and it will regard the Migration Issuer as having a dual-primary (rather than secondary) listing status on the HKEX when the Migration Grace Period ends. The Migration Exchange Notice will also inform the Migration Issuer that the stock marker "S" in the stock short name will be dis-applied only when the Migration Issuer can fully comply with all Listing Rules applicable to a dual primary listed issuer.

A Migration Issuer is required to publish an announcement as soon as practicable after receiving a Migration Exchange Notice containing details of the consequences of the Migration Exchange Notice and details of the Migration Grace Period. A further announcement is required on the expiration of the Migration Grace Period.

Where a Migration Issuer is unable to fully comply with an applicable Listing Rule upon the expiration of the Migration Grace Period, the HKEX may, on a case-by-case basis, extend a grace period, suspend the issuer's trading or impose other measures as it considers necessary.

## **Primary Conversion**

A Conversion Issuer should apply to the HKEX in writing in respect of its plan to carry out a Primary Conversion at the earliest opportunity. Generally, a Conversion Issuer is expected to submit the application only when it believes that it would be in a position to fully comply with the applicable Listing Rules upon the Primary Conversion becoming effective.

An application for a grace period will be considered by the HKEX on a case-by-case basis, and will not usually be granted unless it is justified by a compelling reason. Where a grace period is granted and the Conversion Issuer is unable to fully comply with an applicable Listing Rule upon the expiry of the grace period, the HKEX may, on a case-by-case basis, extend the grace period, suspend the issuer's trading and/or impose other measures as it considers necessary.

The HKEX will issue an acknowledgement of the primary conversion application and the Conversion Issuer is then required to publish an announcement setting out the information required by paragraph 3.29 of the Guidance Letter on Change of Listing Status. A further announcement is required on or before the effective date of the Primary Conversion.

Where a Conversion Issuer is unable to fully comply with an applicable Listing Rule (and no waiver has been granted) upon its Primary Conversion, the HKEX may request the Conversion Issuer to delay the effective date of the Primary Conversion.

## **Allowing Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to dual-primary list and to retain the non-compliant Structures if they are de-listed from their Qualifying Exchange**

Previously, 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 listed on Qualifying Exchanges with non-compliant WVR structures (a WVR structure that does not comply with the requirements for WVR structures under Chapter 8A of the HKEX Listing Rules) and/or non-compliant VIE structures (a VIE structure that does not comply with the relevant requirements under HKEX Listing Decision LD43-3) were able to secondary list, but not dual-primary list, on the HKEX.

The revised HKEX Listing Rules allow Grandfathered Greater China Issuers and Non-Greater China Issuers to dual-primary list directly on the HKEX while retaining their non-compliant WVR and/or VIE structures (**Non-Compliant Structures**), if these companies meet the suitability and eligibility requirements of Chapter 19C of the HKEX Listing Rules for Qualifying Issuers seeking a secondary listing with a WVR structure. The HKEX clarified in its Consultation Conclusions that issuers without a WVR structure are not subject to the "innovative company" requirement.

The HKEX does not consider that this reduces the level of shareholder protection provided, as these companies could already become primary listed through a "two-

step” route – i.e. secondary list with Non-Compliant Structures and subsequently become dual-primary listed with the Non-Compliant Structures in place. Instead, the HKEX considers that the Rule change will encourage these companies to directly dual-primary list in Hong Kong.

All listed companies with VIE structures (including Grandfathered Greater China Issuers and Non-Greater China Issuers) applying for a dual-primary listing in Hong Kong will be required to provide the HKEX with a legal opinion that their contractual arrangements (as defined in Listing Decision LD43-3) comply with the applicable domestic laws, rules and regulations. Listed companies allowed to adopt non-compliant VIE structures are still required to comply with the disclosure requirements set out in the Listing Decision LD43-3.

The ability to dual-primary list (and secondary list) with Non-Compliant Structures has been codified in new HKEX Listing Rule 8A.46. A note to HKEX Listing Rule 8A.46 also gives the HKEX the right, in its absolute discretion, to refuse a listing of securities of an Overseas Issuer, for example, if its WVR structure represents an extreme case of non-conformance with corporate governance norms. A second note provides that the exemption under HKEX Listing Rule 8A.46 is only applicable to the WVR structure in effect at the time of the issuer’s dual-primary listing or secondary listing on the HKEX. The HKEX has also updated its [Guidance Letter GL94-18](#) (Suitability for Grandfathered Greater China Issuers that meet the conditions of Listing Rule 8A.46 to list with WVR structures and the Contractual Arrangements of Grandfathered Greater China Issuers and Non-Greater China Issuers) and Listing Decision [LD43-3](#).

## **Non-Compliant Structures to Continue after Delisting from Qualifying Exchange**

The HKEX will also allow Grandfathered Greater China Issuers and Non-Greater China Issuers with dual-primary or secondary listings on the HKEX to retain their Non-Compliant Structures (as in effect at the time of their listing in Hong Kong) if they are subsequently de-listed from the Qualifying Exchange of their primary listing. These issuers will be subject to the same disclosure requirements under Chapter 8A of the HKEX Listing Rules and Listing Decision LD43-3 as other issuers.

The HKEX will also expand the definition of “Grandfathered Greater China Issuers” in the HKEX Listing Rules to codify the special concession for Greater China Issuers controlled by corporate WVR beneficiaries as set out in the HKEX’s October 2020 [Consultation Conclusions on Corporate WVR Beneficiaries](#)<sup>5</sup>. Please see [Charltons’ November 2020 newsletter](#) for information on the corporate WVR beneficiary consultation conclusions.

As set out in the November 2021 Consultation Conclusions, a “Grandfathered Greater China Issuer” has been defined in the HKEX Listing Rules as “a Greater China Issuer that was: (a) primary listed on a Qualifying Exchange on or before 15 December 2017; or (b) primary listed on a Qualifying Exchange after 15 December 2017, but on or before 30 October 2020 and controlled by corporate WVR beneficiaries as at 30 October 2020”. The term “controlled by corporate WVR beneficiaries” is defined as “a single corporate WVR beneficiary (or a group of corporate WVR beneficiaries acting in concert) holding the largest share of the voting power in the listed issuer, which must amount to at least 30% of shareholders’ votes carried by the issuer’s share capital”.

## **Codification of waivers and principles**

### *Consolidation and codification of automatic waivers*

Previously, issuers with, or seeking, a secondary listing enjoyed automatic waivers from compliance with certain HKEX Listing Rules, as set out in the Joint Policy Statement and in Chapter 19C for issuers listing under the Chapter 19C route. The HKEX has consolidated and codified into Chapter 19C the automatic waivers for all issuers with, or seeking, a secondary listing.

## **Codification of conditional waivers**

The HKEX has codified the common waivers (and the relevant conditions which the HKEX considers when granting these waivers) for issuers with, or seeking, a dual-primary or a secondary listing. Relevant waiver conditions are now set out directly in the relevant HKEX Listing Rules, rather than listed in Chapters 19 and 19C of the HKEX Listing Rules as proposed in the Consultation Paper.

The HKEX considers codification will improve the transparency of its listing regime and allow Overseas Issuers to better assess the regulatory compliance requirements for Hong Kong listing.

A new note to HKEX Listing Rule 2.04 requires issuers to fully disclose details of any waivers or modifications to the HKEX Listing Rules granted by the HKEX in their listing documents (or in other announcements or circulars where the HKEX considers it appropriate). The new note also stipulates that the HKEX reserves the right to revoke or modify any waivers or modifications granted if there are any material changes in the information provided or circumstances thereunder.



## **Codification of the principles for granting exemptions/waivers for issuers with or seeking a secondary listing**

The HKEX has set out the underlying principles based on which it may exercise its power under HKEX Listing Rule 2.04 to waive, modify or not require compliance with the HKEX Listing Rules for Overseas Issuers that have or are applying for a secondary listing on a case-by-case basis. The underlying principles, as stipulated in new HKEX Listing Rule 19C.11A, are that:

- a. the Overseas Issuer is primary listed on a Recognised Stock Exchange and so reliance can be placed upon: (a) the standards of shareholder protection of the regulatory regime to which Overseas Issuers listed on that exchange are subject; and (b) the enforcement of those standards by the regulatory authorities of that regime;
- b. regulatory cooperation agreements are in place with the SFC, as required under Chapter 8 of the HKEX Listing Rules;
- c. the majority of trading in the Overseas Issuer's listed shares is not expected to migrate, or has not yet migrated, to the HKEX's markets on a permanent basis ; and
- d. the Overseas Issuer can demonstrate that strict compliance with both the relevant HKEX Listing Rules and the overseas regulations would be unduly burdensome or unnecessary, and that the HKEX's granting of these waivers will not prejudice the interest of the investing public.

## **Extension of the Regulatory Cooperation Requirement to all HKEX Listing Applicants**

New Main Board Listing Rule 8.02A and GEM Listing Rule 11.05A have codified the requirement previously included in the Joint Policy Statement that the statutory securities regulator of an Overseas Issuer's jurisdiction of incorporation and place of central management and control (if different) should be a full signatory of the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the **IOSCO MMOU**). The ability to meet the regulatory cooperation requirement through the existence of a bilateral agreement with the SFC under the Joint Policy Statement has not been codified in the Listing Rules. This regulatory cooperation requirement previously did not apply to Hong Kong issuers, PRC issuers nor Bermuda and Cayman Islands companies but now applies to them under the revised listing requirement.

The HKEX may grant a waiver from this requirement on an individual case basis with the SFC's explicit consent having regard to whether there are adequate arrangements to enable the SFC to access financial and operational information (such as books and records) on an issuer's business in the relevant place of incorporation and place of central management and control for its investigation and enforcement purposes.

## Qualifications of Auditors and Reporting Accountants

The HKEX Listing Rules have been revised to reflect amendments to the Financial Reporting Council Ordinance (Cap. 588) (the **FRCO**) which established the Financial Reporting Council (**FRC**) as Hong Kong's independent regulator of listed company auditors. The changes to the FRCO included the adoption of a system of registration or recognition for audit firms which prepare auditors' reports or accountants' reports for a listing document, a listed company's annual financial statements, a very substantial acquisition (a **VSA**) or an RTO conducted by a listed company.

The HKEX Listing Rules now provide that where the preparation of an accountants' report constitutes a PIE Engagement under the FRCO (i.e. an accountants' report is required to be included in a listing document or in a circular for an RTO or VSA), the issuer must normally appoint a firm of practising accountants that is qualified under the Professional Accountants Ordinance (Cap. 50) (the **PAO**) and is a Registered PIE Auditor under the FRCO. For a PIE Engagement that is an RTO or a VSA circular issued by a listed issuer incorporated outside Hong Kong relating to the acquisition of an overseas company, the HKEX may be prepared to accept the appointment of an overseas firm of practising accountants that is not qualified under the PAO but is a Recognised PIE Auditor of that issuer under the FRCO.

In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an issuer incorporated outside Hong Kong, the HKEX may provide a statement of no objection to that issuer appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer.

The HKEX has codified in the Listing Rules the previous Joint Policy Statement provision which requires overseas audit firms to meet the following characteristics when preparing accountants' reports in relation to PIE Engagements and notifiable transactions:

- a. have an international name and reputation;
- b. be a member of a recognised body of accountants; and

c. be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU. The Listing Rules also provide that it would be acceptable if the relevant audit oversight body is not a signatory to the IOSCO MMOU but the securities regulator in the same jurisdiction is a full signatory to the IOSCO MMOU.

The HKEX Listing Rules also stipulate that annual accounts must be audited by a person, firm or company who must be: (1) qualified under the PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or (2) an overseas firm of practising accountants that is a Recognised PIE Auditor of that issuer under the FRCO.

## **Auditing and financial reporting standards for Overseas Issuers**

### **Auditing standards**

The HKEX has retained, as guidance, a list of auditing standards that can be used to audit the financial statements of Overseas Issuers. The alternative auditing standards are:

- i. Australian Auditing Standards;
- ii. the Generally Accepted Auditing Standards of Canada;
- iii. professional auditing standards applicable in France in accordance with the French Commercial Code;
- iv. Italian Auditing Standards;
- v. Singapore Standards on Auditing;
- vi. International Standards on Auditing (UK); and
- vii. the US Public Company Accounting Oversight Board auditing standards.

A new note to HKEX Listing Rule 19.12 provides that a list of overseas alternative auditing standards that are considered comparable to the standards set out in HKEX Listing Rule 19.12 (i.e. standards comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants) is published on the HKEX's website.

## Financial reporting standards

The HKEX has codified certain provisions of the Joint Policy Statement with respect to the suitability of alternative financial reporting standards.

The Joint Policy Statement previously provided that the suitability of alternative financial reporting standards depended on whether there is any significant difference between the foreign financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the foreign financial reporting standards with IFRS. On this basis, the HKEX has accepted financial statements and accountants' reports prepared in accordance with various foreign financial reporting standards and subject to certain limitations as previously set out in the Joint Policy Statement, as summarised in the table below.

STANDARD	LIMITATIONS
IFRS as adopted by the European Union ( <b>EU-IFRS</b> )	For companies incorporated in an European Union member state
Generally Accepted Accounting Principles in the United States of America ( <b>US GAAP</b> )	For companies with, or seeking, a secondary listing or a dual-primary listing in the US and on the HKEX
The generally accepted accounting principles of Australia ( <b>Australian GAAP</b> )	Only companies with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual-primary listing or secondary listing on the HKEX
The generally accepted accounting principles in Canada ( <b>Canadian GAAP</b> )	
The Japanese Generally Accepted Accounting Principles ( <b>JGAAP</b> )	
Singapore Financial Reporting Standards	
The generally accepted accounting practice in the UK ( <b>UK GAAP</b> )	

The HKEX has codified into the Listing Rules the basis for determining the suitability of alternative financial reporting standards as previously set out in the Joint Statement. The list of acceptable alternative financial reporting standards (subject to the existing limitations) has been retained as guidance.

The requirement of the Joint Policy Statement that a listed company which has adopted one of the accepted alternative financial reporting standards must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative financial reporting standard has been codified. This requirement will not apply to listed companies incorporated in an EU member state which have adopted EU-IFRS. An automatic grace period (i.e. companies will be granted a waiver from compliance, without being required to make an application to the HKEX) applies for the adoption of HKFRS or IFRS, which ends on the first anniversary of the company's de-listing.

## The Use of US GAAP for Secondary Listings

HKEX-listed companies with or seeking a secondary listing can choose to adopt US GAAP for preparation of their financial statements. Previously, there was no HKEX Listing Rule requirement for issuers with secondary listings to demonstrate their need to adopt US GAAP or to include a reconciliation statement in their financial statements.

Under the revised Listing Rules, the HKEX requires companies who adopt US GAAP for the preparation of their financial statements (including annual financial statements and the financial statements included in their accountants' reports) to demonstrate a reason for adopting this standard (e.g. having a primary listing on a US exchange). The company will also be required to adopt IFRS or HKFRS if the circumstances for the reason change (e.g. if the company de-lists from the US exchange).

The HKEX will also require an issuer which adopts US GAAP for the preparation of its annual financial statements to include a reconciliation statement setting out the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS. The reconciliation statement should, at the minimum, include a line-by-line reconciliation of the company's financial information showing the material differences between its accounting policies under US GAAP and HKFRS/IFRS as well as explanations of the differences together with comparative information. This reconciliation requirement will continue to apply to issuers which have adopted financial reporting standards other than HKFRS, IFRS and CASBE.

The table below sets out the financial periods with respect to which a reconciliation statement will be required in the financial statements.

<b>Secondary listed companies</b>	<b>Annual report</b>	<b>Interim report</b>
Where the first full financial year commences on or after 1 January 2022	(includes a reconciliation statement)	
For example, for an existing listed issuer with a December year-end (i.e. its financial year begins on 1 January 2022), the first financial report in respect of which a reconciliation statement is required is:	Year ending 31 December 2022	Six months ending 30 June 2023

The HKEX may consider a grace period on a case-specific basis if the company encounters difficulty in complying with the requirement in time.

## Collection of FRC levies

Under the amendments to the FRCO, the HKEX is responsible for collecting two new FRC levies on behalf of the FRC: (i) FRC transaction levies on qualifying securities transactions; and (ii) annual PIE levies.

The amended HKEX Listing Rules: (i) include new definitions of “SFC Transaction Levy” and “FRC Transaction Levy” to distinguish the two levies to be collected; and (ii) clarify the arrangements for the collection of the FRC transaction levy by the HKEX.

## Company Information Sheet requirements

The Joint Policy Statement previously required certain Overseas Issuers listed on the HKEX to make additional disclosures in Company Information Sheets, which the HKEX posts on its website. These requirements have been codified in the HKEX Listing Rules and require Company Information Sheets to be published by Overseas Issuers with:

- i. a secondary listing on the HKEX;
- ii. a primary listing or dual-primary listing if any of the criteria set out in the HKEX Listing Rules apply; and
- iii. a primary listing or dual-primary listing if the HKEX is of the view that it would be informative to investors.

## Implementation

The reforms and changes to the HKEX Listing Rules as set out in the Consultation Conclusions came into effect on 1 January 2022. The HKEX’s new Guidance Letters also came into effect on 1 January 2022.

The HKEX has also amended:

- the following HKEX checklists, forms and templates: [M105<sup>6</sup>](#), [M106<sup>7</sup>](#), [M108<sup>8</sup>](#), [G105<sup>9</sup>](#), [G106<sup>10</sup>](#) and [G108<sup>11</sup>](#);
- the following HKEX Guidance Letters:

Guidance Letter	Subject
<a href="#">GL102-19</a>	Accounting policies and stock-taking procedures performed by reporting accountants
<a href="#">GL94-18</a>	(A) Suitability for Grandfathered Greater China Issuers and Non-Greater China Issuers meeting the conditions of Rule 8A.46 to list with WVR structures; and (B) the Contractual Arrangements of Grandfathered Greater China Issuers and Non-Greater China Issuers

<a href="#">GL93-18</a>	Suitability for an applicant (other than Grandfathered Greater China Issuers or Non-Greater China Issuers with a WVR structure) applying to (i) dual primary list under Chapter 19 and meets the conditions set out in Rule 8A.46 or (ii) secondary list under Chapter 19C to list with a WVR structure in compliance with Chapter 8A
<a href="#">GL86-16</a>	Producing simplified listing documents for new applications for equity securities
<a href="#">GL57-13</a>	Logistical arrangements for submitting Application Proofs, PHIPs and related materials on the HKEX website
<a href="#">GL56-13</a>	Disclosure requirements for substantially complete Application Proofs and publication of Application Proofs and PHIPs on the HKEX website
<a href="#">GL55-13</a>	Documentary requirements and administrative matters for new listing applicants (equity)

- the following HKEX Listing Decisions:

<b>Listing Decision</b>	<b>Subject</b>
<a href="#">LD114-1</a>	Acceptability of a Luxembourg auditing firm under LR 19.20(2)
<a href="#">LD99-3</a>	Special rights available only to one investor under convertible bonds contravened the general principle of fair and equal treatment of shareholders under LR 2.03(4)
<a href="#">LD85-1</a>	Withdrawn (superseded by GL111-22)
<a href="#">LD74-1</a>	Grant of a waiver from the requirements for the accountants' report for an acquisition where alternative disclosure proposed
<a href="#">LD43-3</a>	Whether the use of VIE structures (i.e. contractual arrangements / structured contracts) make a listing applicant unsuitable for listing
<a href="#">LD28-2012</a>	Grant of a waiver from the requirements for the accountants' report for an acquisition of a company listed on the Toronto Stock Exchange

[1] HKEX "Consultation Conclusions: Listing Regime for Overseas Issuers" (November 2021) [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Conclusions-\(Nov-2021\)/cp202103cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Conclusions-(Nov-2021)/cp202103cc.pdf)

[2] HKEX "Consultation Paper: Listing Regime for Overseas Issuers" (March 2021) <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Consultation-Paper/cp202103.pdf>

[3] Mandatory Provisions for Companies Listing Overseas set out in Zheng Wei Fa (1994) No. 21 issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System

[4] As defined at paragraph 3.2 of HKEX Guidance Letter 94-18

[5] HKEX "Consultation Conclusions: Corporate WVR Beneficiaries" (October 2020) at [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-\(Oct-2020\)/cp202001cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/January-2020-Corporate-WVR/Conclusions-(Oct-2020)/cp202001cc.pdf)

[6] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/M105.doc?la=en>

[7] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/M106.doc?la=en>

[8] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/M108.doc?la=en>

[9] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/G105.doc?la=en>

[10] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/G106.doc?la=en>

[11] <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/G108.doc?la=en>



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