

CHARLTONS
易周律師行

Hong Kong Stock Exchange's New Listing Regime for Overseas Issuers

May 2022

General Introduction to the Hong Kong Stock Exchange's New Listing Regime for Overseas Issuers

- Simplification and streamlining of the listing regime for Overseas Issuers
- Overseas Issuers: issuers that are neither Hong Kong issuers nor PRC issuers
- Extension of opportunities for Chinese homecoming secondary listings on the Hong Kong Stock Exchange
- 14 core shareholder protection standards required of *all* companies
- The Stock Exchange's "Consultation Conclusions on the Listing Regime for Overseas Issuers" (November 2021) and "Consultation Paper on the Listing Regime for Overseas Issuers" (March 2021)

General Introduction to the Hong Kong Stock Exchange's New Listing Regime for Overseas Issuers (cont.)

Key changes

- Revised Appendix 3 to the Listing Rules sets out a core set of 14 shareholder protection standards (the “Core Standards”) which *all* companies applying to list in Hong Kong are required to provide
- Including listing applicants incorporated in Hong Kong, Bermuda, the Cayman Islands, the PRC and applicants for secondary listing
- Extension of the secondary listing regime – for overseas listed Greater China Issuers
- A Greater China Issuer without a weighted voting rights (“WVR”) structure with a primary listing on one of three Qualifying Exchanges is allowed to secondary list on the Hong Kong Stock Exchange, even if it is not an “innovative company”

General Introduction to the Hong Kong Stock Exchange's New Listing Regime for Overseas Issuers (cont.)

Key changes (cont.)

- Introduction of a dual-primary listing option for Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or variable interest entity (VIE) structures
- Amendments relating to change of companies' listing status from secondary listing to dual-primary or primary listing on the Hong Kong Stock Exchange
- Consolidation and codification of waivers for dual-primary and secondary listing applicants and listed companies
- Various housekeeping and other changes

General Introduction to the Hong Kong Stock Exchange's New Listing Regime for Overseas Issuers (cont.)

New guidance materials (effective 1 January 2022):

- New Guidance Letter GL111-22 (which provides guidance for overseas companies on matters including listing applicants' compliance with the Core Standards and the admission of their shares into CCASS)
- New Guidance Letter GL112-22 (which contains guidance for secondary listed companies on changing their Hong Kong listing status from secondary listing to dual-primary or primary listing, either voluntarily or when they are required to do so because the majority of trading in their shares has migrated to the Hong Kong Stock Exchange)
- FAQ Series 25 (covering various aspects of the new regime for listing overseas companies)
- Listing Rule references will be to the Main Board Listing Rules
- Certain changes apply equally to the GEM Listing Rules, e.g. the new 14 Core Standards
- Secondary listing is only possible on the Main Board

Revised shareholder protection standards requirements

- Removal of LR 19.05(1)(b) – i.e. the requirement for overseas companies to provide shareholder protection standards equivalent to those provided in Hong Kong

Repeal of the Stock Exchange and SFC “Joint policy statement regarding the listing of overseas companies”, which was generally referred to as the **Joint Policy Statement**, and which set out the key shareholder protection standards required of overseas companies incorporated in jurisdictions other than Hong Kong, Bermuda, the Cayman Islands and the PRC

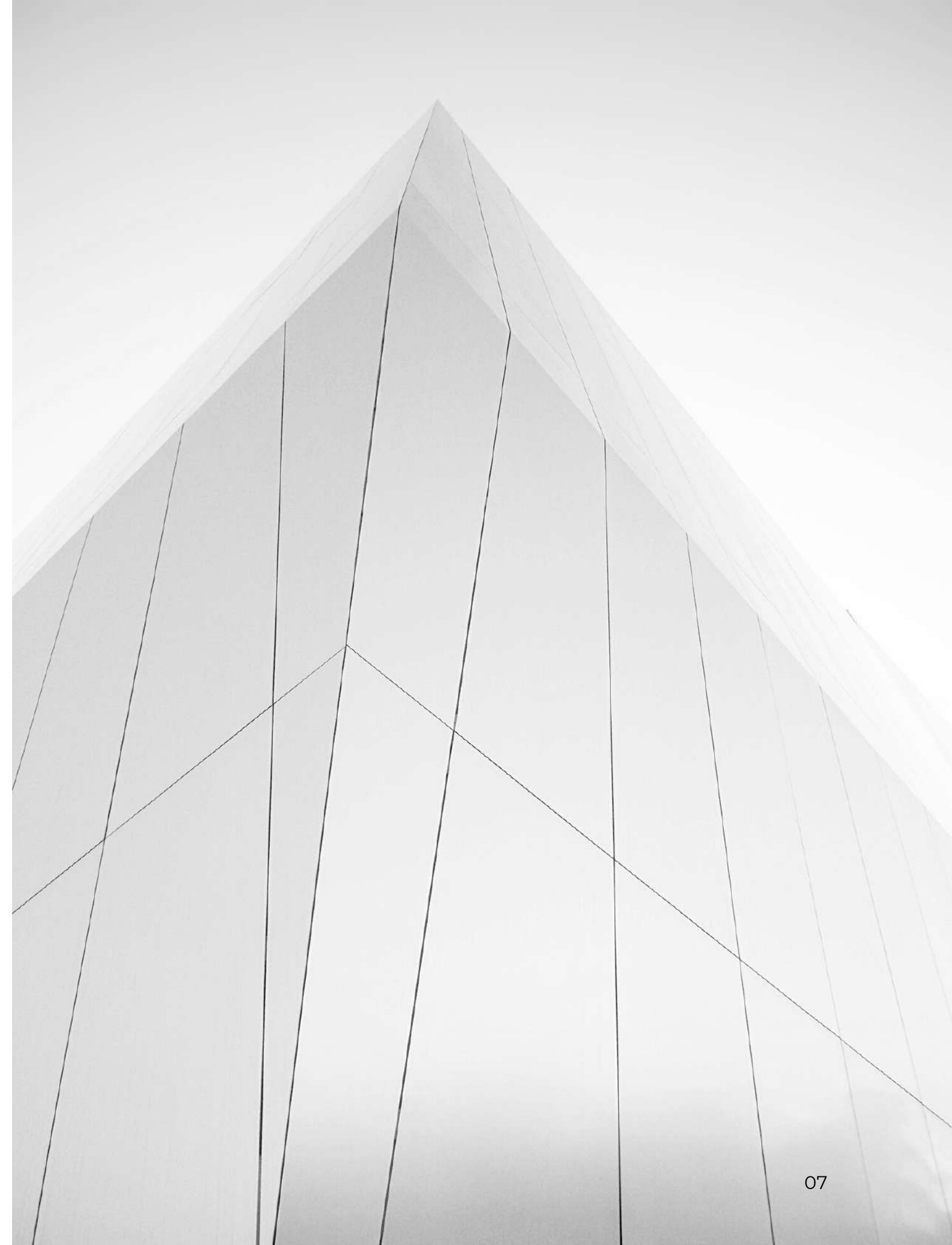
Revised shareholder protection standards requirements (cont.)

14 Core Standards

- All companies listed on the Exchange are required to provide the 14 Core Standards set out in revised Appendix 3 to the Listing Rules
- Including companies incorporated in Hong Kong, the PRC, Bermuda and the Cayman Islands
- Companies are required to demonstrate how the laws, regulations and rules of their home jurisdiction and their constitutional documents, together, provide the Core Standards

Once listed, companies need to:

- Monitor their on-going compliance with the Core Standards
- Notify the Stock Exchange if they become unable to comply with any of them



Revised shareholder protection standards requirements (cont.)

Repeal of Joint Policy Statement

- Repeal of the Joint Policy Statement – previously set out guidance for Overseas Issuers incorporated in jurisdictions other than Hong Kong, the PRC, Bermuda and the Cayman Islands
- New Guidance Letter GL111-22
- Provides guidance for Overseas Issuers on compliance with the Core Standards and other matters
- Various guidance previously included in the Joint Policy Statement
- Removal of the concept of Acceptable Jurisdiction
- No new Country Guides
- The Exchange will issue guidance on a case-by-case basis if novel issues arise on the listing of overseas companies

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards

(1) Casual vacancy appointments (paragraph 4(2) of Appendix 3 to the Listing Rules)

“That any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the first annual general meeting of the issuer after his appointment, and shall then be eligible for re-election.

Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.”

Revised shareholder protection standards requirements (cont.)

- Greater China Issuer: a Qualifying Issuer with its “centre of gravity” in Greater China
- Qualifying Issuer: an Overseas Issuer primary listed on one of three Qualifying Exchanges (i.e. the New York Stock Exchange, NASDAQ, or the premium segment of the Main Market of the London Stock Exchange)
- Grandfathered Greater China Issuers: Greater China Issuers primary listed on a Qualifying Exchange on or before 15 December 2017
- And the definition has been expanded to include Greater China Issuers controlled by corporate WVR beneficiaries
- Repeal of the “comply or explain” provision on casual vacancy appointments previously set out in Code Provision A.4.2 of the Corporate Governance Code to avoid duplication

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(2) Removal of directors (paragraph 4(3) of Appendix 3 to the Listing Rules)

“That, where not otherwise provided by law, members in general meeting shall have the power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his term of office.

Note: In respect of Grandfathered Greater China Issuers and Non-Greater China Issuers that are permitted to have a WVR structure that does not comply with Chapter 8A of these Exchange Listing Rules, the Exchange will consider the applicability of this requirement on a case-by-case basis based on the circumstances of each individual case.”

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(3) Timing of annual general meetings (paragraph 14(1) of Appendix 3 to the Listing Rules)

“That an issuer must hold a general meeting for each financial year as its annual general meeting.

Note: Generally, a listed company is required to hold its annual general meeting within six months after the end of its financial year.”

- The Stock Exchange's Consultation Paper and Consultation Conclusions: companies incorporated in Bermuda, the Cayman Islands and Acceptable Jurisdictions were required to hold an AGM each year generally within 15 months of the previous AGM under the now-appealed shareholder protection standards
- The Stock Exchange would regard listed companies previously subject to that requirement as compliant with the new Core Standard if they comply with the relevant requirement that applied to them at listing

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(4) Notice of annual general meeting (paragraph 14(2) of Appendix 3 to the Listing Rules)

“That an issuer must give its members reasonable written notice of its general meetings.

Note: “Reasonable written notice” normally means at least 21 days for an annual general meeting and at least 14 days for other general meetings. This is unless it can be demonstrated that reasonable written notice can be given in less time.”

- Repeal of the “comply or explain” provision for 20 clear business days’ notice for an AGM in former Code Provision E.1.3 of the Corporate Governance Code

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(5) Right to speak and vote at general meetings (paragraph 14(3) of Appendix 3 to the Listing Rules)

“That members must have the right to (a) speak at a general meeting; and (b) vote at a general meeting except where a member is required, by these Exchange Listing Rules, to abstain from voting to approve the matter under consideration.”

Revised shareholder protection standards requirements (cont.)

Notes:

1. *An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.*
2. *If an listed company is subject to a foreign law or regulation that prevents the restriction of a member's right to speak and/or vote at general meetings, the company can provide an undertaking to the Stock Exchange to put in place measures that achieve the same outcome as the restriction under this paragraph (e.g. any votes cast by or on behalf of a member in contravention of the restriction must not be counted towards the resolution)."*
 - This requirement did not previously extend explicitly to companies incorporated in Bermuda, the Cayman Islands, Hong Kong or the PRC

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(6) Restriction on shareholder voting (paragraph 14(4) of Appendix 3 to the Listing Rules)

“That, where any shareholder is, under these Exchange Listing Rules, required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.”

- The Hong Kong Stock Exchange's Consultation Paper: where a listed company can demonstrate that it can achieve the same effect as the Core Standard through alternative arrangements, e.g. a two-tier voting arrangement, the Exchange may consider it to be in compliance with this Core Standard.

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(7) Right to convene an extraordinary general meeting (paragraph 14(5) of Appendix 3 to the Listing Rules)

“That members holding a minority stake in the total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the issuer.”

- Cayman Islands issuers: not previously a requirement for companies incorporated in the Cayman Islands, and no equivalent provision in Cayman Islands' company law
- Listed Cayman Islands' companies have however incorporated this provision in their constitutional documents

Revised shareholder protection standards requirements (cont.)

Stock Exchange's New Core Standards (cont.)

(8) Variation of class rights (paragraph 15 of Appendix 3 to the Listing Rules)

"That a super-majority vote of the issuer's members of the class to which the rights are attached shall be required to approve a change to those rights.

Revised shareholder protection standards requirements (cont.)

Note:

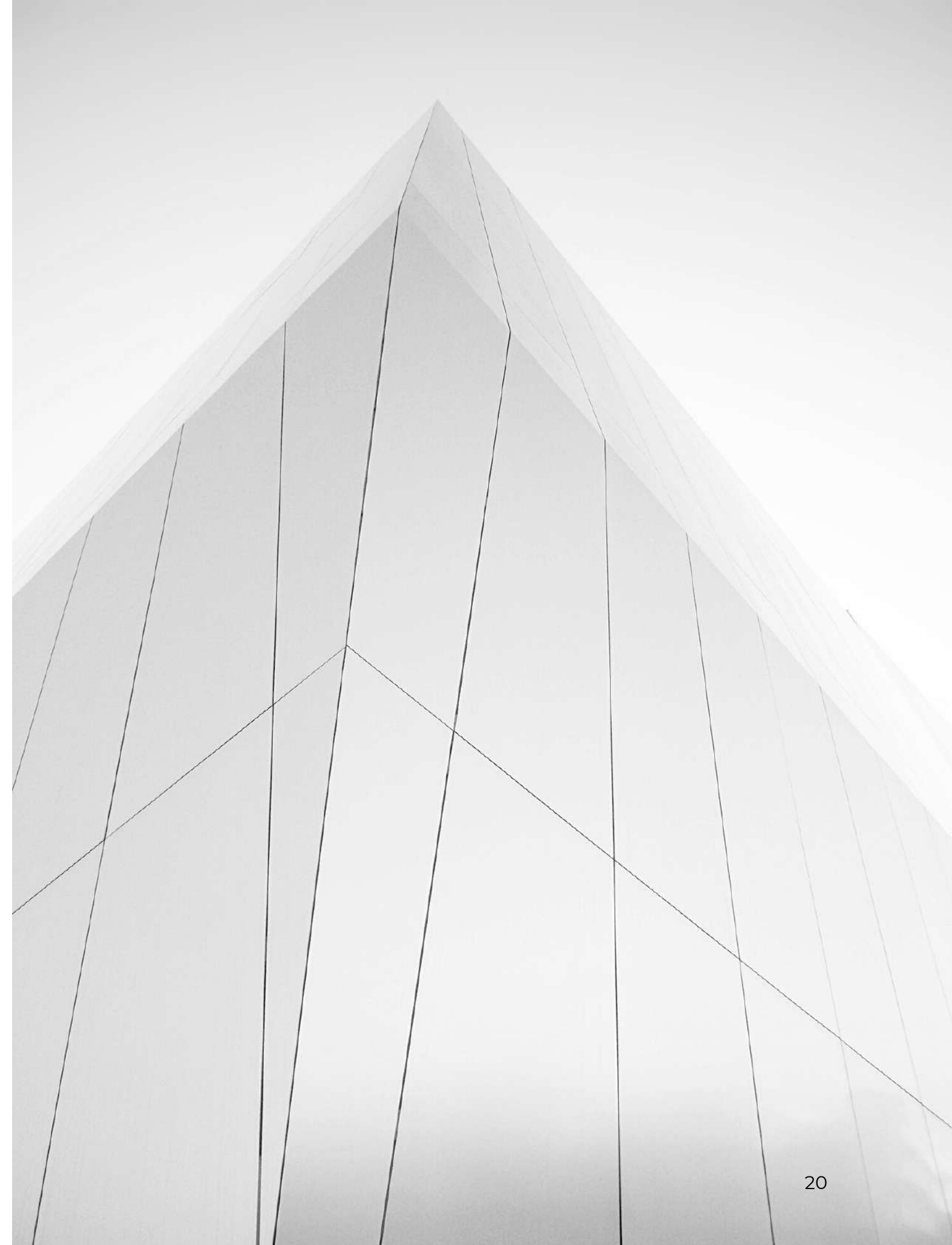
1. A “super-majority vote” means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold and in such case a “super-majority vote” is deemed to be achieved.
 2. For PRC issuers, the Stock Exchange will consider a resolution passed by members representing at least two-thirds of the voting rights of the members who present at the class members’ meeting having voting rights to amend class rights as satisfying the threshold of a “super-majority”.
- The Stock Exchange’s Consultation Conclusions: companies already listed when the revised Listing Rules took effect that were previously subject to the Joint Policy Statement’s definition of “super-majority vote” as a “two-thirds majority”, the Exchange will regard them as compliant with this Core Standard if they comply with the requirement that applied to them on listing

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(9) Amendments of constitutional documents (revised paragraph 16 of Appendix 3 to the Listing Rules)

“That a super-majority vote of the issuer’s members in a general meeting shall be required to approve changes to an issuer’s constitutional documents, however framed.”



Revised shareholder protection standards requirements (cont.)

Notes:

1. A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. a simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.

2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.

- The Stock Exchange’s Consultation Conclusions: companies incorporated in Acceptable Jurisdictions that were subject previously to the “two-thirds majority” definition of “super-majority vote” will be considered to be compliant with this Core Standard if they comply with the requirement that applied to them at listing.

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(10) Appointment, removal and remuneration of auditors (paragraph 17 of Appendix 3 to the Listing Rules)

“That the appointment, removal and remuneration of auditors must be approved by a majority of the issuer’s members or other body that is independent of the board of directors.

Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.”

- Cayman Islands companies: not previously a requirement for Cayman Islands companies, and no equivalent provision in Cayman Islands’ company law
- Listed companies incorporated in the Cayman Islands may need to amend their constitutional documents to ensure compliance

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(11) Proxies and corporate representatives (paragraph 18 of Appendix 3 to the Listing Rules)

“That every member shall be entitled to appoint a proxy who needs not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend and vote at any general meeting of the issuer and, where a corporation is so represented, it shall be treated as being present at any meeting in person. A corporation may execute a form of proxy under the hand of a duly authorised officer.”

- Listed companies incorporated in Acceptable Jurisdictions, secondary-listed Grandfathered Greater China Issuers and Non-Greater China Issuers may need to amend their constitutional documents to ensure compliance with this Core Standard

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(12) HKSCC's right to appoint proxies or corporate representatives (paragraph 19 of Appendix 3 to the Listing Rules)

"That HKSCC ["Hong Kong Securities Clearing Company Limited"] must be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors meetings and those proxies or corporate representatives must enjoy rights equivalent to the rights of other shareholders, including the right to speak and vote.

Revised shareholder protection standards requirements (cont.)

Note: Where the laws of an overseas jurisdiction prohibit HKSCC from appointing proxies or corporate representatives enjoying the rights described by this paragraph, the listed company must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the right to vote, attend in person or by proxy and speak at general meetings.”

- No previous Listing Rule requirement for companies incorporated in Hong Kong or the PRC to comply with this standard
- In practice, listed companies incorporated in Hong Kong and the PRC comply with this standard

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(13) Inspection of Hong Kong branch register (paragraph 20 of Appendix 3 to the Listing Rules)

“That the branch register of members in Hong Kong shall be open for inspection by members but the issuer may be permitted to close the register on terms equivalent to section 632 of the Companies Ordinance.”

- Listed companies incorporated in Acceptable Jurisdictions, secondary-listed Non-Greater China Issuers and Grandfathered Greater China Issuers may need to amend their constitutional documents to ensure compliance with this Core Standard

Revised shareholder protection standards requirements (cont.)

The Stock Exchange's New Core Standards (cont.)

(14) Voluntary winding up (paragraph 21 of Appendix 3 to the Listing Rules)

“A super-majority vote of the issuer’s members in a general meeting shall be required to approve a voluntary winding up of an issuer.”

Revised shareholder protection standards requirements (cont.)

Notes:

1. A “super-majority vote” means at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.
 2. For PRC issuers, the Exchange will consider a resolution passed by members representing at least two-thirds of the total voting rights of the members present and voting in person or by proxy at the meeting as satisfying the threshold of a “super-majority”.
- Companies incorporated in Bermuda and the Cayman Islands were not previously required to comply with this standard
 - The Stock Exchange’s Consultation Conclusions: companies incorporated in Acceptable Jurisdictions already listed when the revised Listing Rules took effect that were previously subject to the requirement for approval of winding up by a two-thirds majority will be regarded as complying with this Core Standard if they comply with the requirement that applied to them at listing

Revised shareholder protection standards requirements (cont.)

Application of Core Standards to PRC Issuers:

- The requirements of Part D of Appendix 13 relating to PRC issuers remain
- PRC issuers are required to comply with the Stock Exchange Core Standards – certain exceptions for PRC issuers due to the requirements of the PRC Company Law:
 - a 20 day notice period for AGMs and 15 days for other general meetings (c.f. 21 and 14 days, respectively under the Core Standards); and
 - 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 (c.f. a three-fourths majority under the Core Standards).

Revised shareholder protection standards requirements (cont.)

Requirements for Overseas Listing Applicants:

- At listing application submission, an Overseas Issuer should confirm that it conforms with the Core Standards and the requirements of GL-111 with an appropriate legal opinion
- May need to submit the “Information Required from Overseas Issuers” checklist prior to listing application submission
- Listing document disclosures:
 - The major differences between (i) the shareholder protection standards that apply to the issuer under laws/regulations/constitutional documents and (ii) the Core Standards, and details of the measures taken to address the differences
 - 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

Revised shareholder protection standards requirements (cont.)

Requirements for Existing Overseas Issuers:

- Existing Issuers must:
- Ascertain that they are in full compliance with the Core Standards
- Inform the Stock Exchange of any material changes in the overseas laws, rules and market practices set out in applicable Stock Exchange guidance that would affect their compliance with the Core Standards and other Listing Rules
- Compare their constitutional documents against the Core Standards and make appropriate amendments – unless applicable laws, regulations and rules provide the same level of protection

Revised shareholder protection standards requirements (cont.)

Requirements for Existing Overseas Issuers: (cont.)

- Transitional arrangements:
- Companies already listed on the Stock Exchange on the 31st of December 2021 have until their second AGM following 1 January 2022 to make any necessary amendments to their constitutional documents to conform to the Core Standards
- A new applicant which had submitted a listing application before the Listing Rule changes took effect is not required to re-submit the relevant checklists, forms or templates
- But needs to confirm compliance with the Core Standards – may need to make amendments to its constitutional documents
- Waivers already granted not normally affected by the introduction of the Core Standards

Extension of the Stock Exchange's secondary listing regime

Previously:

- Two routes to secondary listing under (i) the Joint Policy Statement and (ii) Chapter 19C of the Listing Rules
- Each route had different eligibility and suitability requirements
- Prohibition on Greater China Issuers from secondary listing under the Joint Policy Statement
- Chapter 19C allowed the secondary listing of companies, including Greater China Issuers, in innovative sectors with a primary listing on a Qualifying Exchange
- Second half of Chapter 19 of the Listing Rules: additional requirements applicable to other Overseas Issuers seeking a secondary listing on the Main Board

Extension of the Stock Exchange's secondary listing regime (cont.)

Revisions:

- Consolidation and codification of the requirements for secondary listings in Chapter 19C of the Listing Rules
- Chapter 19 only covers primary listings of Overseas Issuers

Extension of the Stock Exchange's secondary listing regime (cont.)

Revised Quantitative Eligibility Requirements for Secondary Listing Applicants

- Consolidation and codification of the secondary listing eligibility requirements for Overseas Issuers

New secondary listing eligibility requirements:

- An Overseas Issuer without a WVR structure (including an issuer with a centre of gravity in Greater China) must meet one of two sets of quantitative eligibility requirements – either Criteria A or Criteria B (new LR 19C.05A)

Extension of the Stock Exchange's secondary listing regime (cont.)

Revised Quantitative Eligibility Requirements for Secondary Listing Applicants (cont.)

Criteria A:

- a. A market capitalisation at the time of secondary listing \geq HK\$3 billion; and
 - b. A track record of good regulatory compliance \geq 5 full financial years:
 - i. on a Qualifying Exchange
- OR
- ii. on any Recognised Stock Exchange
 - Only for Overseas Issuers without a centre of gravity in Greater China
 - Applications from listing applicants with a centre of gravity in Greater China that are primary listed on a Recognised Stock Exchange (other than a Qualifying Exchange) will only be considered in exceptional circumstance

Extension of the Stock Exchange's secondary listing regime (cont.)

Revised Quantitative Eligibility Requirements for Secondary Listing Applicants (cont.)

Criteria B:

- a. A track record of good regulatory compliance \geq 2 full financial years on a Qualifying Exchange; and
- b. A market capitalisation at the time of secondary listing \geq HK\$10 billion
 - Consolidation of the secondary listing eligibility requirements for non-WVR issuers under the previous two secondary listing routes:
 - Criteria A: former Joint Policy Statement
 - Criteria B: former Chapter 19C

Extension of the Stock Exchange's secondary listing regime (cont.)

Greater China Issuers and the removal of the “innovative company” requirement for non-WVR issuers

- Previously, Greater China companies could only secondary list if they were “innovative companies”
- Now, Greater China Issuers (without a WVR structure) can list under either Criteria A or Criteria B
- Removal of the “innovative company” requirement for all non-WVR secondary listings, enabling Greater China companies in traditional industries to secondary list in Hong Kong

Extension of the Stock Exchange's secondary listing regime (cont.)

Quantitative Eligibility Requirements for Secondary Listing Applicants with WVR structures

- Overseas Issuers with a WVR structure remain subject to the same quantitative eligibility requirements: (LRs 19C.04 and 19C.05)
 - a. A track record of good regulatory compliance \geq 2 full financial years on a Qualifying Exchange; and
 - b. either:
 - i. A market capitalisation \geq HK\$40 billion at the time of secondary listing;

OR

 - ii. A market capitalisation \geq HK\$10 billion at the time of secondary listing and revenue \geq HK\$1 billion for the most recent audited financial year
 - Overseas Issuers with a WVR structure are required to be innovative companies

Extension of the Stock Exchange's secondary listing regime (cont.)

Secondary listing without a listing compliance record

- Introduction of an exemption to be applied on a case-by-case basis
- No requirement for a listing compliance record for either Criteria A or B for non-WVR secondary listing applicants if the listing applicant:
 - is well-established; and
 - has a market capitalisation at listing that is significantly > HK\$10 billion

Extension of the Stock Exchange's secondary listing regime (cont.)

Stock Exchange's discretion to reject secondary listing applications to address regulatory arbitrage risk

- New LR 19C.02A(1)(d):
- The Stock Exchange reserves 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 Stock Exchange
- The Stock Exchange may apply the test for a reverse takeover (an "RTO") under LR 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 Stock Exchange will normally consider its application for secondary listing to be an attempt to avoid rules that apply to primary listing

Extension of the Stock Exchange's secondary listing regime (cont.)

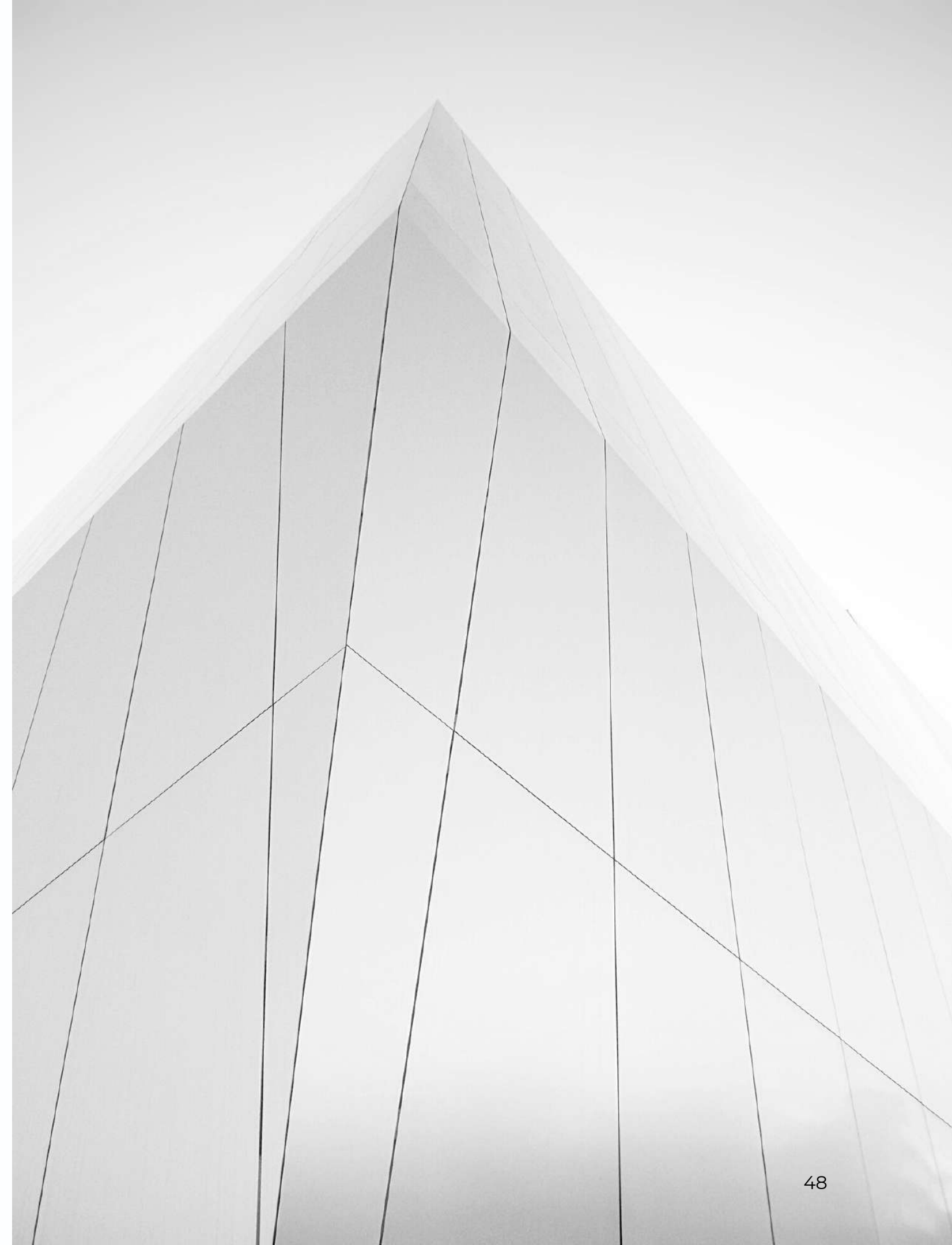
Listing applicant to be subject to the regulatory requirements of its primary listing market

- New LR 19C.02A(1)(c):
- The Stock Exchange reserves 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 Stock Exchange listing status from secondary to dual-primary or primary listing

Definition of dual-primary listing

- Definition of “dual primary listing” in Listing Rule 1.01:
- Where a Hong Kong-listed company: (i) also has a primary listing on one or more overseas stock exchange(s) or (ii) where a company applies to list on both the Hong Kong Stock Exchange and one or more overseas stock exchanges.



Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Stock Exchange Trading Migration Requirement extended to all secondary listed companies

Previous Stock Exchange Trading Migration Requirement under LR 19C.13:

- Where the majority of trading in a Greater China Issuer's secondary listed shares migrates permanently to the Hong Kong Stock Exchange, the issuer will be regarded as having a dual-primary listing on the Hong Kong Stock Exchange and the automatic waivers previously granted to the issuer will cease to have effect
- Migration Grace Period under note 2 to LR 19C.13:
- 12-month period to re-comply with the applicable Listing Rules

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Revised LR 19C.13:

- Extension of the Stock Exchange Trading Migration Requirement to all Overseas Issuers with a secondary listing on the Stock Exchange
- Including Overseas Issuers if secondary listed before the introduction of Chapter 19C
- Extension of the Stock Exchange 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 – as well as automatic waivers – cease to apply to the issuer

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

De-listing and waivers

- New LR 19C.13A:
- 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 Hong Kong Stock Exchange 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

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

De-listing and waivers (cont.)

- A note to new LR 19C.13A:
- If an Overseas Issuer is expected to be involuntarily de-listed from the Recognised Stock Exchange, the Hong Kong Stock Exchange is prepared to allow an exemption for any continuing transaction
- Only if the transaction is entered into before the issuer's notification to the Stock Exchange about the expected involuntary de-listing
- The transaction will continue to be exempt for three years from the notification
- Unless the transaction is subsequently amended or renewed before the three-year period expiry

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

<p>"Overseas De-Listing": the voluntary or involuntary de-listing of an Overseas Issuer's shares (or depositary receipts issued on their shares) from the Recognised Stock Exchange on which they are primary listed</p>	<p>"De-listing Issuer": an Overseas 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</p>	<p>Change of Listing Status: a <u>primary listing</u> on the Hong Kong Stock Exchange upon the effective date of its de-listing from the overseas exchange of its primary listing</p>
<p>"Migration": the migration of the majority of trading in an Overseas Issuers' listed shares to the Hong Kong Stock Exchange's market under LR 19C.13</p>	<p>"Migration Issuer": an issuer falling within LR 19C.13</p>	<p>Change of Listing Status: a <u>dual-primary listing in Hong Kong</u> on the expiry of the grace period for compliance with the Listing Rules for dual-primary listed companies following the migration of trading in a majority of its listed shares to the Hong Kong market</p>
<p>"Primary Conversion": the voluntary conversion to dual-primary listing on the Stock Exchange</p>	<p>"Conversion Issuer": an issuer seeking a Primary Conversion</p>	<p>Change of Listing Status: a <u>dual-primary listing</u></p>

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Overseas De-Listing, Migration and Primary Conversion Guidance Letter (cont.)

Upon a Change of Listing Status:

- All exceptions/waivers/exemptions available to the Overseas Issuer which were granted on the basis of, or conditional upon, its secondary listing status will cease to apply
- Exceptions: “Applicability of Listing Rules to transactions entered into before the Change of Listing Status” in the Appendix to GL12-22
- Make a new waiver application
- All changes to corporate and organisational structure have been implemented so that the issuer is fully compliant with Listing Rules’ corporate governance requirements
- All necessary internal control systems in place to monitor ongoing compliance with the other relevant Listing Rules

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Overseas De-Listing, Migration and Primary Conversion Guidance Letter (cont.)

- Normally, the stock marker “S” will be retained until the Change of Listing Status
- Stock marker “TP”: may be required by the Stock Exchange if any grace period as a time-relief waiver is granted to a Conversion Issuer or a De-listing Issuer
- All secondary listed Overseas Issuers will be required to monitor their LR 19C.13 compliance from the start of their first full financial year after secondary listing
- Notify the Stock Exchange of their trading volume in accordance with GL112-22

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Overseas De-Listing, Migration and Primary Conversion Guidance Letter (cont.)

De-Listing from the overseas primary listing exchange:

- An overseas company that plans to voluntarily de-list, or reasonably expects that it to be de-listed involuntarily, from its primary listing exchange – written notification to the Hong Kong Stock Exchange of this possibility as soon as practicable
- Announcement under the LR 13.09's general disclosure obligation
- Published no later than announcement on the Recognised Stock Exchange
- Also include specified information including the company's intended delisting or reasons for it being de-listed
- Must comply with the Listing Rules applicable to other primary listed overseas companies – grace period for compliance may be granted in exceptional circumstances on a case-by-case basis

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

- If cannot fully comply with the Hong Kong Stock Exchange Listing Rules:
- Before de-listing – the Hong Kong Stock Exchange may request the company to delay its de-listing from its primary listing exchange if it is not willing to grant a waiver of the Listing Rule(s) which the company will not comply with
- On overseas de-listing – the Stock Exchange may extend the grace period, suspend trading in the company's shares or impose such other measures as it considers necessary

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Overseas De-Listing, Migration and Primary Conversion Guidance Letter (cont.)

Migration of a majority of trading in a secondary listed company to the Hong Kong market:

- Overseas companies that are secondary listed on the Hong Kong Stock Exchange are required to notify the Stock Exchange in writing within five business days of the end of the third quarter of their financial year:
- Whether or not the trading volume of their shares, by dollar value, in Hong Kong > 50% of the total worldwide trading volume by dollar value based on the trading volume over that nine-month period
- Written notification to the Hong Kong Stock Exchange within five business days of the end of their financial year: > 55%
- During the grace period, the company should provide the Stock Exchange with monthly update reports on its progress towards compliance with the Hong Kong Listing Rules that will apply to them when the grace period ends

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

- The Hong Kong Stock Exchange Migration Exchange Notice to a secondary-listed overseas company if it determines that the majority of trading in its listed shares has migrated permanently to the Hong Kong market under Listing Rule 19C.13
- Stock marker “S”, which signifies a secondary listing, in its stock short name will be dis-applied only when the company can fully comply with all Listing Rules applicable to a dual-primary listed company
- Announcements: (i) after receiving a Migration Exchange Notice; and (ii) on the expiration of the grace period
- If cannot fully comply with an applicable Listing Rule when the grace period ends, the Stock Exchange may extend the grace period, suspend trading in the company’s shares, or impose other measures as it considers necessary

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

Overseas De-Listing, Migration and Primary Conversion Guidance Letter (cont.)

Voluntary conversion from secondary to dual primary listing:

- Written application to the Hong Kong Stock Exchange regarding their plans to convert to a dual primary listing at the earliest opportunity
- Generally, the application should be submitted only when the company believes that it would be in a position to fully comply with the applicable Listing Rules upon its dual primary listing becoming effective
- Grace period will not usually be granted (unless justified by a compelling reason)
- If cannot fully comply with an applicable Listing Rule on the expiry of the grace period granted, the Stock Exchange may extend the grace period, suspend the trading in the company's shares and/or impose other measures as it considers necessary

Change of Stock Exchange listing status from secondary to dual-primary or primary listing (cont.)

- Announcements: (i) following the Stock Exchange's acknowledgement of the application for conversion to a dual primary listing; and (ii) on or before the dual primary listing of the company takes effect
- If unable to fully comply with an applicable Listing Rule on its conversion to a dual primary listed company, the Stock Exchange may request the company to delay the effective date of its conversion to dual primary listing status

Amendments relating to Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures

Allowing Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to dual-primary list

Previous position:

- Grandfathered Greater China Issuers and Non-Greater China Issuers listed on Qualifying Exchanges with non-compliant WVR structures and/or non-compliant VIE structures were able to secondary list on the Hong Kong Stock Exchange
- But not dual-primary list on the Hong Kong Stock Exchange

Non-Compliant Structures:

- **Non-compliant WVR structure:** a WVR structure that does not comply with the requirements for WVR structures under Chapter 8A of the Listing Rules
- **Non-compliant VIE structure:** a VIE structure that does not comply with the relevant requirements under Stock Exchange Listing Decision LD43-3

Amendments relating to Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures

Allowing Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to dual-primary list (cont.)

New regime:

- Grandfathered Greater China Issuers and Non-Greater China Issuers may dual-primary list directly on the Stock Exchange while retaining their Non-Compliant Structures, provided that certain requirements are satisfied
- Dual primary list with non-compliant WVR structures: companies must satisfy the suitability and eligibility requirements of Chapter 19C of the Listing Rules for Qualifying Issuers seeking a secondary listing with a WVR structure
- Codification in new LR 8A.46 of the ability to dual-primary list (and secondary list) with non-compliant WVR structures
- The Stock Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas company if its WVR structure represents an extreme case of non-conformance with corporate governance norms
- The LR 8A.46 exemption is only applicable to the WVR structure in effect at the time of the company's dual-primary listing or secondary listing on the Hong Kong Stock Exchange

Amendments relating to Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures

Allowing Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to dual-primary list (cont.)

New regime – Guidance Letter GL94-18:

- Update of 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)
- Grandfathered Greater China Issuers with VIE structures applying for a dual-primary or secondary listing in Hong Kong must provide the Stock Exchange with a legal opinion that their contractual arrangements comply with PRC laws, regulations and rules
- Generally, in assessing suitability, the Stock Exchange will take various factors into account. These include: (i) the extent to which the company's existing contractual arrangements depart from the standard contractual arrangements contemplated under LD43-3; (ii) the materiality of the operations conducted through the contractual arrangements; and (iii) the reasons for their adoption
- Companies allowed to adopt non-compliant VIE structures are still required to comply with the LD43-3 disclosure requirements

Amendments relating to Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures (cont.)

Non-Compliant Structures to Continue after Delisting from Qualifying Exchange

- *Grandfathered Greater China Issuers and Non-Greater China Issuers with dual-primary or secondary listings on the Hong Kong Stock Exchange to retain their Non-Compliant Structures if they are subsequently de-listed from the Qualifying Exchange of their primary listing*
- *Structures in effect at the time of their listing in Hong Kong*
- *Subject to the same disclosure requirements as other listed companies*

Amendments relating to Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures (cont.)

Codification of the Special Concession for Greater China Issuers Controlled by Corporate WVR beneficiaries

- Expansion of the Listing Rules definition of “Grandfathered Greater China Issuers” – codification of the special concession for Greater China Issuers controlled by corporate WVR beneficiaries as set out in the Stock Exchange’s “Consultation Conclusions on Corporate WVR Beneficiaries” (October 2020)
- **“Grandfathered Greater China Issuer”**: “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”
- **“Controlled by corporate WVR beneficiaries”**: “a single corporate WVR beneficiary (or a group of corporate WVR beneficiaries acting in concert) holds 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”

Consolidation and codification of waivers and related principles for dual-primary and secondary listing applicants and listed companies

Consolidation and codification of automatic waivers

Previous position:

- Companies with/seeking a secondary listing enjoyed automatic waivers from compliance with certain Listing Rules set out in:
 - The Joint Policy Statement for companies listing under the Joint Policy Statement Route
 - Chapter 19C for companies listing under the Chapter 19C route

Revised regime:

- Consolidation and codification into Chapter 19C of the automatic waivers for all companies with/seeking a secondary listing

Consolidation and codification of waivers and related principles for dual-primary and secondary listing applicants and listed companies

Codification of conditional waivers

- Codification of the common waivers and the relevant conditions which the Stock Exchange considers when granting these waivers for companies with/seeking a dual-primary or a secondary listing
- Companies must apply for common waivers (c.f. automatic waivers)

New note to LR 2.04:

- Full disclosure of details of any waivers/modifications to the Listing Rules granted by the Stock Exchange in their listing documents (or in announcements or circulars, if appropriate)
- The Stock Exchange reserves the right to revoke/modify any waivers/modifications granted if there are any material changes in the information provided or circumstances

Consolidation and codification of waivers and related principles for dual-primary and secondary listing applicants and listed companies

Codification of the principles for granting exemptions/waivers for companies with or seeking a secondary listing

New LR 19C.11A:

- Sets out the underlying principles based on which the Stock Exchange may exercise its LR 2.04 power to waive/modify/not require compliance with the Listing Rules for Overseas Issuers that with/seeking a secondary listing:
- that the overseas company is primary listed on a Recognised Stock Exchange and so reliance can be placed upon: (i) the shareholder protection standards of the regulatory regime to which overseas companies listed on the exchange are subject and (ii) the enforcement of those standards by the regulatory authorities of that regime
- that a regulatory cooperation agreement must be in place between the statutory securities regulator in the relevant jurisdiction and with the SFC
- that the majority of trading in the overseas company's listed shares is not expected to migrate, or has not yet migrated, to the Hong Kong Stock Exchange's markets on a permanent basis
- that the overseas company can demonstrate that strict compliance with both the relevant Listing Rules and the overseas regulations would be unduly burdensome or unnecessary, and that the Stock Exchange's granting of these waivers will not prejudice the interest of the investing public

Accounting and auditing-related changes

Qualifications of Auditors and Reporting Accountants

- The Listing Rules have been revised to reflect amendments to the Financial Reporting Council Ordinance (FRCO) which established the Financial Reporting Council (the 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 a reverse takeover (that is an RTO) conducted by a listed company.
- The Listing Rules now provide that where the preparation of an accountants' report constitutes a PIE Engagement under the FRCO (that is, where an accountants' report is required to be included in a listing document or in a circular for an RTO or VSA), the listed company 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 company incorporated outside Hong Kong relating to the acquisition of an overseas company, the Stock Exchange 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 company under the FRCO.

Accounting and auditing-related changes

- In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by a company incorporated outside Hong Kong, the Stock Exchange may provide a statement of no objection to that company appointing an overseas firm of practising accountants to carry out a PIE Engagement for that listed company.
- The Stock Exchange has codified in the Listing Rules the previous Joint Policy Statement provision which requires overseas audit firms to meet certain characteristics when preparing accountants' reports in relation to PIE Engagements and notifiable transactions. The characteristics are that the audit firm must:
 - 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 Listing Rules also stipulate that annual accounts must be audited by a person, firm or company who must be: (1) qualified under the Professional Accountants Ordinance 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 company under the FRCO.

The Use of US GAAP for Secondary Listings

Previous position:

- No Listing Rule requirement for companies with secondary listings to (i) demonstrate their need to adopt US GAAP or (ii) include a reconciliation statement in financial statements

Revised regime:

- Companies which adopt US GAAP for the preparation of their financial statements (including annual financial statements and the financial statements included in accountants' reports) must demonstrate a reason for adopting this standard (specifically, they should have a primary listing on a US exchange)
- Listing Rule requirement to adopt IFRS or HKFRS if the circumstances for the reason change that is, if the company de-lists from the US exchange
- Listing Rule requirement for a company which adopts US GAAP for the preparation of its annual financial statements to include a reconciliation statement
- Reconciliation statement sets out the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS
- GL111-22 provides further guidance on the reconciliation statement

The Use of US GAAP for Secondary Listings

- The Listing Rules provide that in respect of US-listed companies with a secondary listing on the Hong Kong Stock Exchange that have adopted US GAAP, the reconciliation statement requirement applies to the first annual financial statements for the financial year commencing on or after 1 January 2022 and subsequent interim and annual financial statements
- e.g. For a company already listed on 31 December 2021 with a December year-end (that is, its financial year begins on 1 January 2022), the first financial reports in respect of which a reconciliation statement will be required are the annual report for the year ended 31 December 2022, and the interim report for the six months ended 30 June 2023
- The Stock Exchange's Consultation Conclusions: may consider a grace period on a case-specific basis if the company encounters difficulty in complying with the requirement in time

Other miscellaneous changes

Extension of the Regulatory Cooperation Requirement to all Stock Exchange Listing Applicants

New LR 8.02A:

- Codification of the regulatory cooperation requirement previously in the Joint Policy Statement:
- The statutory securities regulator in both an overseas issuer's jurisdiction of incorporation and place of central management and control (if different) must be a full signatory to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the IOSCO MMOU)
- No codification of the ability to meet this requirement through the existence of a bilateral agreement with the SFC under the Joint Policy Statement
- Extension of the regulatory cooperation requirement to all listing applicants
- Previously did not apply to companies incorporated in Hong Kong, the PRC, Bermuda or the Cayman Islands

Other miscellaneous changes (cont.)

Extension of the Regulatory Cooperation Requirement to all Stock Exchange Listing Applicants (cont.)

New LR 8.02B:

- The Stock Exchange may grant a waiver from LR 8.02A on an individual case basis with the SFC's explicit consent
- The Stock Exchange will have regard to whether adequate arrangements exist to enable the SFC to access financial and operational information (e.g. books and records) on a company's business in the relevant place of incorporation and place of central management and control for its investigation and enforcement purposes

Other miscellaneous changes (cont.)

Collection of FRC levies

- Under FRCO amendments, the Stock Exchange is responsible for collecting two new FRC levies on behalf of the FRC
- The amended Listing Rules:
- Include new definitions of “SFC Transaction Levy” and “FRC Transaction Levy” to distinguish the two transaction levies to be collected
- Clarify the arrangements for the Stock Exchange’s collection of the FRC levies

Company Information Sheet requirements

- The Joint Policy Statement previously required certain overseas companies listed on the Stock Exchange to make additional disclosures in Company Information Sheets, which the Stock Exchange posts on its website
- These requirements have been codified in the Listing Rules, which provides that Company Information Sheets are required to be published by three categories of overseas companies
- These are overseas companies which are secondary listed on the Hong Kong Stock Exchange, overseas companies with a primary listing or dual-primary listing if any of the criteria set out in Listing Rule 19.60 applies or the Stock Exchange is of the view that publication of a Company Information Sheet would be informative to investors
- The circumstances under Listing Rule 19.60 requiring publication of a Company Information Statement include where novel waiver(s) have been granted to the company; where the laws of the company's home jurisdiction and primary listing market differ materially on three specified shareholder protection issues from those of Hong Kong; and where the company is subject to withholding tax on distributions or any other tax on shareholders

Implementation

The reforms and changes to the Listing Rules and the Stock Exchange's new Guidance Letters came into effect on 1 January 2022.

The Stock Exchange has amended various checklists, forms and templates, including M105, M106, M108, G105, G106 and G108. These are all available on the website of the Hong Kong Stock Exchange.

The Stock Exchange has also amended various guidance letters, including:

- GL102-19 (Accounting policies and stock-taking procedures performed by reporting accountants);
- GL94-18 ((A) Suitability for Grandfathered Greater China Issuers and Non-Greater China Issuers meeting the conditions of Listing Rule 8A.46 to list with WVR structures; and (B) the Contractual Arrangements of Grandfathered Greater China Issuers and Non-Greater China Issuers);
- GL93-18 (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);
- GL86-16 (Producing simplified listing documents for new applications for equity securities);
- GL57-13 (Logistical arrangements for submitting Application Proofs, PHIPs and related materials on the Stock Exchange website);
- GL56-13 (Disclosure requirements for substantially complete Application Proofs and publication of Application Proofs and PHIPs on the Stock Exchange website); and
- GL55-13 (Documentary requirements and administrative matters for new listing applicants (equity)).

Implementation

The listing decisions listed below were also revised:

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