

## The 14 Core Standards of Shareholder Protection under Appendix 3 to the HKEX Listing Rules

The new 14 core standards of shareholder protection which all companies listed on the Hong Kong Stock Exchange are required to provide under their constitutional documents and the laws of their jurisdiction of incorporation are set out below in *italics* with a brief summary of the HKEX's rationale for their inclusion and when companies already listed at 31 December 2021 (**Existing Issuers**) will be required to amend their constitutional documents.

### (1) **Casual vacancy appointments (revised paragraph 4(2) of Appendix 3 to the HKEX 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.”*

The HKEX considers that this Core Standard should apply to all HKEX-listed companies to preserve shareholders' ability to elect directors after a casual vacancy arises. The wording proposed in the consultation paper *“next following annual general meeting”* has been replaced with *“the first annual general meeting after appointment”* to maintain consistency with Code Provision B.2.2 of Appendix 14 to the HKEX Main Board Listing Rules (the **HKEX Corporate Governance Code**).

In the case of Grandfathered Greater China Issuers and Non-Greater China Issuers that are allowed to have non-compliant WVR structures, the permitted WVR structure may allow the WVR beneficiaries to appoint directors. The applicability of this standard to these issuers will therefore be reviewed by the HKEX on a case-by-case basis.

The HKEX will repeal the “comply or explain” provision on casual vacancy appointments set out in Code Provision A.4.2 of the HKEX Corporate Governance Code.

### (2) **Removal of directors (revised paragraph 4(3) of Appendix 3 to the HKEX 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.”*

The HKEX considers shareholders' ability to remove a director by ordinary resolution to be fundamental to shareholder protection and effective corporate governance. The HKEX will assess the applicability of this Core Standard to Grandfathered Greater China Issuers and Non-Greater China Issuers allowed to have non-compliant WVR structures on a case-by-case basis. This is because non-WVR shareholders' right to remove directors might otherwise undermine the effectiveness of the permitted WVR structure.

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

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

*Note: Generally, an issuer must hold its annual general meeting within six months after the end of its financial year.”*

This Core Standard is based on the requirements of the Companies Ordinance (Cap. 622) (the **Hong Kong Companies Ordinance**) and the Mandatory Provisions which require an AGM to be held within six months of the end of the accounting reference period and preceding financial year, respectively.

Appendix 13 to the HKEX Listing Rules (Part A (Bermuda) and Part B (the Cayman Islands)) and the shareholder protection standards for Acceptable Jurisdictions set out in section 1 of the Joint Policy Statement (the **JPS Key Shareholder Protection Standards**) previously required relevant companies to hold an AGM each year generally within 15 months of the previous AGM (the **15 Month Rule**). The HKEX’s Consultation Paper stated that listed issuers previously subject to the 15 Month Rule would be considered by the HKEX to be compliant with this Core Standard if they complied with the relevant requirements that applied to them at listing. The HKEX’s Consultation Conclusions note that the requirement for Existing Issuers to make any necessary changes to the constitutional documents to conform them to the Core Standards is subject to the exceptions set out in the Consultation Paper. This is not however made explicit in the revised Appendix 3.

**(4) Notice of annual general meeting (revised paragraph 14(2) of Appendix 3 to the HKEX 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.”*

This Core Standard reflects the requirements under the Hong Kong Companies Ordinance and the previous requirements for Bermuda and Cayman Islands issuers under Appendix 13. As noted above, PRC issuers are allowed a 20 day notice period for AGMs and 15 days for other general meetings. The HKEX has repealed the “comply or explain” provision for 20 clear business days’ notice for an AGM in Code Provision E.1.3 of the HKEX Corporate Governance Code.

**(5) Right to speak and vote at general meetings (revised paragraph 14(3) of Appendix 3 to the HKEX 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.*

*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 issuer 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 issuer can enter into an undertaking with the 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 rule restriction must not be counted towards the resolution).”*

Shareholders' right to speak at general meetings was previously required for issuers incorporated in Acceptable Jurisdictions, Non-Greater China Issuers and Grandfathered Greater China Issuers under the Joint Policy Statement and Chapter 19C of the Listing Rules. This requirement did not however extend explicitly to issuers incorporated in Bermuda, the Cayman Islands, Hong Kong or the PRC. Since the HKEX Corporate Governance Code requires HKEX-listed companies to ensure that the chairman attends general meetings to answer shareholders' questions and that non-executive directors attend general meetings to gain an understanding of shareholders' views, the HKEX considered that there is an expectation in the HKEX Listing Rules that all HKEX listed companies should provide members with a right to speak.

**(6) Restriction on shareholder voting (paragraph 14(4) of Appendix 3 to the HKEX 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."*

This Core Standard was previously included in Appendix 3 (Applicable to companies incorporated in Bermuda, the Cayman Islands and the PRC) to the Listing Rules and in the Joint Policy Statement's requirements for companies incorporated in Acceptable Jurisdictions and Non-Greater China Issuers and Grandfathered Greater China Issuers. The Hong Kong Companies Ordinance also contains a similar requirement. The HKEX also noted in the Consultation Paper that where an HKEX-listed company can demonstrate that it can achieve the same effect as the Core Standard through alternative arrangements (such as a two-tier voting arrangement), the HKEX may consider it to be in compliance with this Core Standard.

**(7) Right to convene an extraordinary general meeting (revised paragraph 14(5) of Appendix 3 to the HKEX 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."*

This Core Standard was previously required under the Joint Policy Statement for companies incorporated in Acceptable Jurisdictions and under Chapter 19C for Non-Greater China Issuers and Grandfathered Greater China Issuers. It was not previously a requirement for issuers incorporated in Bermuda, the Cayman Islands or the PRC although the company laws of Bermuda and the Mandatory Provisions have equivalent provisions. Cayman Islands' company law has no equivalent provision, although existing Cayman Islands' issuers have incorporated this provision in their constitutional documents. Under the Hong Kong Companies Ordinance, shareholders representing at least 5% of the total voting rights of all members can request the directors to call a general meeting.

**(8) Variation of class rights (revised paragraph 15 of Appendix 3 to the HKEX 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."*

Notes:

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 (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 voting rights of the members who are present at the classified members’ meeting and have voting rights to amend class rights as satisfying the threshold of a ‘supermajority’.*

This Core Standard applies to all HKEX-listed companies except for PRC issuers where the standards set out in the Mandatory Provisions apply (i.e. a two-thirds majority vote of the members who are present and have voting rights to amend class rights).

The HKEX sets out in its Consultation Conclusions that for Existing Issuers that were previously subject to the JPS Key Shareholder Protection Standards which define “super-majority vote” as a “two-thirds majority”, the HKEX will consider them to be compliant with this Core Standard if they comply with the requirement that applied to them on listing.

**(9) Amendments of constitutional documents (revised paragraph 16 of Appendix 3 to the HKEX 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.*

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’.*

The Joint Policy Statement’s Key Shareholder Protection Standards (applicable to companies incorporated in Acceptable Jurisdictions) and the requirements of Chapter 19C applicable to Non-Greater China Issuers and Grandfathered Greater China Issuers, previously defined a super-majority vote as a “two-thirds majority vote”. PRC issuers are also required by the Mandatory Provisions to obtain the approval of a two-thirds majority of shareholders present for changes to their constitutional documents. Issuers incorporated in Bermuda and the Cayman Islands were required by Appendix 13 to require a three-fourths majority vote for changes to their constitutional documents. The Hong Kong Companies Ordinance similarly requires changes to a company’s article to be approved by 75% of shareholders.

The 75% shareholder approval requirement will apply to all issuers, with the exception of PRC issuers to whom the Mandatory Provisions two-thirds majority requirement continues to apply.

Similar to the variation of class rights Core Standard, the HKEX provides in its Consultation Conclusions that for Existing Issuers that were subject to the JPS Key Shareholder Protection Standards which defined “super-majority vote” as a “two-thirds majority”, the HKEX will consider them to be compliant with the new Core Standard if they comply with the requirement that applied to them on listing.

**(10) Appointment, removal and remuneration of auditors (revised paragraph 17 of Appendix 3 to the HKEX 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.”*

Equivalent protections were provided under the JPS Key Shareholder Protection Standards, Chapter 19C, the Hong Kong Companies Ordinance and the Mandatory Provisions. Bermuda company laws have similar provisions, except that two-thirds of the votes cast at a general meeting are required for removal of an auditor. However, Cayman company laws do not have equivalent protections.

The HKEX considers that this Core Standard should apply to all HKEX-listed companies as these shareholders’ powers are important for effective corporate governance and ensuring auditor independence. Existing Issuers incorporated in the Cayman Islands may need to amend their constitutional documents to ensure compliance.

**(11) Proxies and corporate representatives (revised paragraph 18 of Appendix 3 to the HKEX 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.”*

Previously, only Cayman Islands and PRC incorporated companies were subject to this requirement under the HKEX Listing Rules, while the company laws of Bermuda have an equivalent provision. This Core Standard is also consistent with the Hong Kong Companies Ordinance which provides that a member of a company is entitled to appoint a proxy. Existing Issuers incorporated in Acceptable Jurisdictions, Grandfathered Greater China Issuers and Non-Greater China Issuers may need to amend their constitutional documents to ensure compliance with this Core Standard.

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

*“That HKSCC 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.*

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

This standard previously applied to companies incorporated in Bermuda and the Cayman Islands under Appendix 13 to the HKEX Listing Rules. It was also a JPS Key Shareholder Protection Standard applicable to listed companies incorporated in Acceptable Jurisdictions and a shareholder protection standard applicable to Non-Greater China Issuers and Grandfathered Greater China Issuers under Chapter 19C of the Listing Rules. Although the HKEX Listing Rules did not previously require companies incorporated in Hong Kong or the PRC to comply with this standard, in practice, existing HKEX-listed companies incorporated in these jurisdictions comply with this standard.

**(13) Inspection of Hong Kong branch register (revised paragraph 20 of Appendix 3 to the HKEX 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.”*

This standard is consistent with the Hong Kong Companies Ordinance. Companies incorporated in the Cayman Islands were previously subject to this requirement under the Listing Rules and the company laws of Bermuda have equivalent provisions. For PRC issuers, the Mandatory Provisions also provide for shareholders’ rights to inspect the branch register.

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

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

*“That 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.*

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’.*

There was previously a misalignment between the requirements under the JPS Key Shareholder Protection Standards, Chapter 19C, the Mandatory Provisions and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (the **C(WUMP)O**).

The JPS Key Shareholder Protection Standards, the Chapter 19C shareholder protection standards for Non-Greater China Issuers/Grandfathered Greater China Issuers, and the Mandatory Provisions each required a two-thirds majority. The C(WUMP)O requires a voluntary winding-up resolution to be passed by a special resolution (i.e. passed by at least 75% of the total voting rights of all members who vote on the resolution, in person or by proxy). Companies incorporated in Bermuda and the Cayman Islands were not previously required to comply with this standard.

The HKEX now applies this Core Standard to all HKEX-listed companies, defining “super-majority vote” as at least a three-fourths majority. The standard is aligned with the requirements under the C(WUMP)O for Hong Kong-incorporated issuers. There will be an exception for PRC issuers: the requirement for a two-thirds majority under the Mandatory Provisions has been retained.

The HKEX provides in its Consultation Conclusions that Existing Issuers that were previously subject to the JPS Key Shareholder Protection Standards (which defines “super-majority vote” as 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.