

# The Hong Kong Institute of Chartered Secretaries

## Online Submission:

### Hong Kong Exchanges and Clearing Ltd (HKEX) Consultation Paper on Listing Regime for Overseas Issuers (2021)

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## HKEX Consultation Paper on Listing Regime for Overseas Issuers (2021) (Consultation Paper)

### About HKICS

The Hong Kong Institute of Chartered Secretaries (the Institute) is an independent professional institute representing Chartered Secretaries and Chartered Governance Professionals as governance professionals in Hong Kong and the Mainland of China (the Mainland) with over 6,000 members and 3,200 students. The Institute originates from The Chartered Governance Institute in the United Kingdom with nine (9) divisions and over 30,000 members and 10,000 students internationally. The Institute is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising fourteen (14) national member organisations to promote good governance globally.

**Question 1** Do you agree that the Equivalence Requirement and the concept of "Recognised Jurisdictions" and "Acceptable Jurisdictions" should be replaced with one common set of Core Standards for all issuers? Please give reasons for your views.

Yes

As set out in paragraph 7 of the Consultation Paper, over the years, the requirements that apply to the Overseas Issuer regime, under the Rules, the JPS and Country Guides, have become fragmented, complex and difficult to navigate. We therefore support a common set of Core Standards. This would assist with compliance, and to make the Hong Kong listing regime more appealing and less burdensome to prospective applicants. From the applied governance perspective, we agree, in accordance with paragraph 22 of the Consultation Paper, that the Core Standards should be developed from shareholder protection laws of leading jurisdictions.

**Question 2** If your answer to Question 1 is "Yes", do you agree: (a) with the proposed Core Standards set out in paragraphs 79 to 137; and (b) that the existing shareholder protection standards set out in Schedule C should be repealed? Please give reasons for your views.

Answer 2(a)

Yes

We support:

1. Paragraph 79 of the Consultation Paper, requiring members in general meetings to have the right to remove any directors, subject to a case-by-case consideration for those with grandfathered WVRs for Greater China Issuers or Non-Greater China Issuers that does not comply with Chapter 8A
2. Paragraph 82 of the Consultation Paper for limiting directors' filling of casual vacancies to the next following annual general meeting of the issuer, subject to a case-by-case consideration of those with grandfathered WVRs for Greater China Issuers or Non-Greater China Issuers, that does not comply with Chapter 8A

3. Paragraph 90 of the Consultation Paper, for requiring an issuer to give reasonable notice of its general meetings, with some flexibility for PRC Issuers, as set out under paragraph 95, along with the related repeal of Code Provision E1.3 of the CG Code
4. Paragraph 97 of the Consultation Paper, for members to have the right to speak and vote at general meeting, unless required to abstain under the Listing Rules
5. Paragraph 100 of the Consultation Paper, for shareholder votes contrary to the Listing Rules not to be counted
6. Paragraph 102 of the Consultation Paper, for the ceiling for calling an extraordinary general meeting and to add resolutions to meeting agenda at not more than 10% based on one-share-one vote
7. Paragraph 105 of the Consultation Paper, requiring, in respect of variation of class rights, a super-majority vote of three-fourths of the class, or two-third for PRC Issuers
8. Paragraph 112 of the Consultation Paper, requiring a super-majority of vote for changes to an issuer's constitutional documents
9. Paragraph 120 of the Consultation Paper, requiring the appointment, removal and remuneration of auditors, to be approved by majority members, or a body, independent of the board of directors, for example, the supervisory board
10. Paragraph 123 of the Consultation Paper, requiring the right to appoint a non-member as proxy, and for a corporate shareholder, a corporate representative
11. Paragraph 126 of the Consultation Paper, for HKSCC to have right to appoint proxies and corporate representatives for general and creditor meetings. **Please clarify if it is intended that there should be three only, namely, for, abstain, or against. This goes to administrative planning for the running of meetings, which is part of applied governance**
12. Paragraph 129 of the Consultation Paper, in respect of inspection and opening and closing of branch registers comparable to section 632 of the Companies Ordinance, and
13. Paragraph 131 of the Consultation Paper, requiring a super-majority vote for voluntary winding up.

Answer 2(b)

Yes

As explained under Schedule C.

**Question 3** Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards? Please give reasons for your views.

Yes

It is in good governance to be transparent as to the applicable requirements.

**Question 4** Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C, should be added or repealed? Please provide these other standards with reasons for your views.

Unanswered

These would appear to be the major protections. The nature of applied governance is that there could be certain events that require us to ponder is the core protections to shareholders, and there, including, where appropriate, minority shareholder protections should be expanded, with evolving governance concerns. For now, the Core Standards are appropriate.

**Question 5** Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.

Yes

These are of fundamental importance to investor protection.

**Question 6** If your answer to Question 5 is "Yes", do you agree that: (a) existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards; and (b) the application of the Core Standards will not cause existing listed issuers undue burden? Please give reasons for your views.

Answer 6(a)

Yes

From the practical governance perspective, the timeframe is appropriate.

Answer 6(b)

Yes

From the practical governance perspective, the timeframe is appropriate. We welcome the position that where there are issues, the Exchange can be consulted.

**Question 7** Do you agree with the principles set out in paragraph 155 for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong? Please give reasons for your views.

Yes

We see that from the applied governance point of view, the Exchange should articulate the underlying principle as to how Common Waivers are granted. That is in the interest of transparency. We also agree that the issuer, from the policy perspective, should demonstrate strict compliance with both the relevant Listing Rules and the overseas regulations, unless this would be unduly burdensome or unnecessary, for the grant of the Common Waivers.

**Question 8** Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158? Please give reasons for your views.

Yes

Please see the answer to question 7. We also agree that the proposal will help manage expectation and assessment of regulatory compliance requirement, which in turn improves market confidence, primary or dual primary listings, market liquidity and diversity.

**Question 9** Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures should be able to apply for dual primary listing directly on the Exchange as long as they can meet the relevant suitability and eligibility requirements under Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure? Please give reasons for your views.

Yes

The current situation does allow this, and from the applied governance perspective, we have to consider why should this be dependent on there being two steps instead of a direct route. In fact, the proposal does require issuers to be subject to the full set of the Listing Rules, which is in good governance.

We also have no issue with Grandfathered Greater China Issuers, nor Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures that apply for a dual primary listing to be assessed in the same way as those that apply for a secondary listing.

**Question 10** Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 above be allowed to retain their Non-compliant WVR and/ or VIE Structures (subsisting at the time of their dual primary listing in Hong Kong) even if, after their listing in Hong Kong, they are delisted from the Qualifying Exchange on which they are primary listed? Please give reasons for your views.

Yes

The Exchange will no doubt retain its discretion, and needs to make a holistic assessment as to whether there are any issues that may have arisen since the dual primary listing to the primary listing application. We have no issue with empowering the Exchange to be the gatekeeper from the governance perspective.

**Question 11** Do you agree with our proposal to codify requirements (with the amendments set out in this paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only? Please give reasons for your views.

Yes

The current situation is illustrated in paragraph 181. It is confusing and not consistent with good governance. There is the potential for regulatory arbitrage. Policy decisions may also not appear to be clear, consistent and transparent. We welcome the codification, and rationalisation, which are in good governance.

**Question 12** Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 for all Overseas Issuers without a WVR structure (including those with a centre of gravity in Greater China) seeking to secondary list on the Exchange? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants in formulating the final proposal.

**Question 13** Do you agree that an exemption from the listing compliance record requirement be introduced, similar to the current JPS exemption, to cater for secondary listing applicants without a WVR structure that are well-established and have an expected market capitalisation at listing that is significantly larger than HK\$10 billion? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants in formulating the final proposal.

**Question 14** Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an "Innovative Company"? Please give reasons for your views.

Yes

We accept the Exchange's assertion that the current position exceeds the regulatory intention, and should be realigned with the focus to ring-fence against WVR companies from being commonplace in Hong Kong which is the policy issue.

**Question 15** Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.

Yes

This is no more than a reminder and it is helpful to be transparent as to policy considerations, which is in good governance.

**Question 16** Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210, if the Exchange suspects that an issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.

Yes

This is an important governance issue, and the applicable provisions under Chapter 14 of the Listing Rules should be applied.

**Question 17** Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing? Please give reasons for your views.

Yes

This reduces complexity, and clarify the applicable rules, and is conducive to good governance.

**Question 18** In your opinion, will the extension of the Trading Migration Requirement to all secondary listed issuers be unduly burdensome for those that are not currently subject to this requirement? Please give reasons for your views.

Unanswered

We have no issue with applying governance standards to those that are already listed, which ensures a level playing field and market integrity, which are in good governance.

**Question 19** Do you agree with the codification of the principles set out in paragraph 215 on which exemptions/ waivers are granted to secondary listed issuers? Please give reasons for your views.

Yes

This is to consolidate and articulate the regulatory practice, and the transparency, which will result in clarity and certainty, and in good governance.

**Question 20** Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing? Please give reasons for your views.

Yes

This is to consolidate and articulate the current regulatory practice, and the transparency, which will result in clarity and certainty, and in good governance.

**Question 21** Do you agree with the removal of the current condition for granting a waiver from the shareholders' consent requirement relating to further issues of share capital for secondary listed issuers as described in paragraphs 218 and 219? Please give reasons for your views.

Yes

This is consistent with the aim to simplify and standardise the Listing Rules for all Overseas Issuers and in good governance.

**Question 22** Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223)? Please give reasons for your views.

Yes

The position of our Institute is that we support diversity to avoid group think, and welcome the consistent applications to all listed issuers.

**Question 23** Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of this paper? Please give reasons for your views.

Yes

While we have no issue, the Exchange should listen to the views of market participants in formulating the final proposal.

**Question 24** Do you agree that the Exchange should codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242) into Chapter 8 of the Listing Rules for all issuers? Please give reasons for your views.

Yes

This will ensure that the applicable rules apply to all listed issuers, which is in good governance.

**Question 25** Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 that can be used to audit the financial statements of Overseas Issuers? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants, especially in the audit profession, in formulating the final proposal.



**Question 26** Do you agree to codify the JPS requirement that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between that body of standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the standards with IFRS? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants, especially in the audit profession, in formulating the final proposal. Please also consider whether the exception under paragraph 255 for there being no reconciliation statement for US GAAP for secondary listing should be removed, as there could be potential material differences between US GAAP and IFRS in respect of certain accounting matters and policies.

**Question 27** Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7(see Schedule E)? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants, especially in the audit profession in formulating the final proposal.

**Question 28** Do you agree to codify the JPS requirement that a dual primary or secondary listed issuer that adopts a body of alternative financial reporting standards for its financial statements (other than issuers incorporated in an EU member state which adopted EU-IFRS) must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative standards? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants, especially in the audit profession, in formulating the final proposal.

**Question 29** Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should: (a) be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS; and (b) that this grace period should end on the issuer's first anniversary of its de-listing? Please give reasons for your views.

Unanswered

While we have no issue, the Exchange should listen to the views of market participants, especially in the audit profession in formulating the final proposal.

**Question 30** Do you agree that, for the sake of consistency of approach, an issuer must demonstrate a reason for adopting US GAAP for the preparation of its financial statements (including annual financial statements and the financial statements included in its accountants' reports) and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it delists from a US exchange)? Please give reasons for your views.

Yes

There could be material differences between US GAAP and HKFRS or IFRS. For market integrity the proposal is appropriate.

**Question 31** Do you agree that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements must include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS? Please give reasons for your views.

Yes

There could be material differences between US GAAP and HKFRS or IFRS. For market integrity the proposal is appropriate.

**Question 32** Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules? Please give reasons for your views.

Yes

These are in line with international accounting developments, including PIE Engagements and related ethical rules. Accordingly, the proposal is consistent with the position of Hong Kong as an international financial centre.

**Question 33** Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO? Please give reasons for your views.

Yes

These are in line with international accounting developments, including PIE Engagements and related ethical rules. Accordingly, the proposal is consistent with the position of Hong Kong as an international financial centre.

**Question 34** Do you agree to amend the Listing Rules to allow Overseas Issuers to appoint an audit firm that is not qualified under the PAO (but it is a Recognized PIE Auditor of that issuer under the FRCO) for

PIE Engagements to prepare an accountants' report for a reverse takeover or a very substantial acquisition circular relating to the acquisition of an overseas company? Please give reasons for your views.

Unanswered

The Exchange should listen to the views of market participants in formulating the final proposal.

**Question 35** Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271? Please give reasons for your views.

Unanswered

We agree with the characteristics described in paragraph 271. However, the Exchange should listen to the views of market participants in formulating the final proposal.

**Question 36** Do you agree to amend the Listing Rules to codify the amendments to the FRCO on the collection of levies by the Exchange on behalf of the FRC as described in paragraphs 280 and 281? Please give reasons for your views.

Unanswered

The Exchange should listen to the views of market participants in formulating the final proposal.

**Question 37** Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288? Please give reasons for your views.

Yes

This is in good governance especially for Hong Kong investors that may be unfamiliar with overseas laws and regulations.

**Question 38** Do you agree that the Company Information Sheet requirement should be applied to: (a) secondary listed issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors? Please give reasons for your views.

Yes

This is in good governance especially for Hong Kong investors that may be unfamiliar with overseas laws and regulations.

**Question 39** Do you agree to amalgamate the guidance described in paragraphs 289 and 290 into one combined guidance letter for Overseas Issuers (see Schedule E)? Please give reasons for your views.

Yes

This is in good governance, and serves as a good resource for market participants and for investor information.