香港董事學會
The Hong Kong Institute of Directors
FOUNDED 1997

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The Exchange's Consultation Paper

Listing Regime for Overseas Issuers (March 2021)

In relation to the captioned consultation paper, The Hong Kong Institute of Directors has the following views and comments.

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General comments

The present consultation concerns proposals to reform and consolidate requirements as applicable to applicants who seek dual primary listing or secondary listing on the Exchange.

Some of the proposals concern situations when dual listed Overseas Issuers have a majority of the trading of their shares migrate to the Exchange or de-list from the overseas exchange on which they primary list. This could affect whether and how the dual listed Overseas Issuers can continue to enjoy the Listing Rule waivers they may have been granted, or as applicable whether they can retain their non-compliant WVR structures or VIE structures.

In conjunction with this reform and consolidation, certain Core Standards for shareholder protection are to be promulgated.

For purpose of the Consultation, "Overseas Issuers" are those incorporated in neither Hong Kong nor the PRC. The Core Standards, however, are meant to be applicable to all issuers.

To spur market development

The Exchanges considers the streamlining and consolidation of rules to be one ingredient to the fulfilment of its Strategic Plan 2019-2021, that of fostering the Hong Kong Market as one listing and capital raising hub for major global and regional companies on either a primary or secondary basis, thereby attracting global investments seeking exposure to Asia Pacific companies and Mainland investors seeking international exposure. Consultation Paper para 5.

HKIoD supports the market development goal. We should do no harm to get ourselves ready for more Overseas Issuers, whether they be US-listed Greater China Issuers seeking "homecoming" secondary listings, or new faces along the "One Belt, One Road" brought on by the Belt-Road Initiative.

Streamlining rules to reduce complexity

Requirements applicable to Overseas Issuers are scattered in various places in the Exchange's library of Listing Rules, policy statements and guidance.

With the proposals, the two routes to secondary listing will be consolidated into one, with the requirements that originated from the Joint Policy Statement route codified into a re-purposed Listing Rules Chapter 19C dedicated to secondary listing of Overseas Issuers. Listing Rules Chapter 19 will be re-purposed into one dedicated to primary listing of Overseas Issuers. HKIoD supports this consolidation.

Waivers and exemptions for Overseas Issuers

With the proposals, the policy rationale for granting waivers to applicants seeking dual primary listing or secondary listing will get codified. Some of the Common Waivers that had been available to Overseas Issuers may no longer be, however. Given that Common Waivers had been made available before, we wonder if we can just codify them all, allowing Overseas Issuers to apply by demonstrating the need and that prescribed conditions can be met. If investors have sufficient opportunity to know and be reminded of the existence of Common Waivers with respect to a particular Overseas Issuer, such would not be particularly unfair.

De-listing from the overseas exchange would dis-apply waivers and exemptions that the Overseas Issuer may have been granted. The policy is to require such issuers to use the best endeavours to comply with all the Listing Rules as applicable to other primary issuers. There would be some mechanism for such affected issuers to apply to retain the waivers or exemptions. The Exchange would have discretion to grant waivers (or to stipulate grace periods) on a case-by-case basis. From what we can gather from the Consultation Paper, aspects that are rarely waived for primary listed issuers will not be waived (or given grace periods). Consultation Paper para 225-234. Reasonable, yet we would recommend the Exchange to remain flexible and pragmatic. To the extent investors have known about the existence of certain waivers or exemptions, to have those continue to be in place would not be particularly unfair.

Core Standards of shareholder protection rights

To go along with market development, the Exchange is mindful of maintaining some baseline level of shareholder protection. The proposal is to have a set of 14 Core Standards deemed important to preserve shareholder rights. Along with the promulgation would be the repeal of a number of current shareholder protection provisions which are now considered outdated, unnecessary or superfluous, or which duplicate (or are consistent with) Listing Rule requirements. Consultation Paper para 70 and Schedule C.

The proposals would pave the way for the removal of the concepts of “Recognised Jurisdiction” and “Acceptable Jurisdictions”. We tend to agree. The Consultation Paper also points to the repeal of the “Equivalence Requirement”. We consider, however, that the promulgation of the Core Standards not a repeal of the Equivalence Requirement but rather an augmented application of it.

We do not disagree with the stipulation of some Core Standards as an objectively agreeable measure of good protection of shareholder rights. We can understand the rationale for requiring some base line level of shareholder protection, that is at least equivalent to those of Hong Kong. The proposals will drive at some uniformity, but we surmise uniformity does not always guarantee governance.

Could it be sufficient that certain Core Standards are held out as “norm” or expectations, but we still allow issuers local or overseas to have room and freedom to design their own governance. If investors have enough opportunities to know and be reminded of deviations, that they have sufficient information to base their decisions accordingly, such would not be particularly unfair.

In a number of instances, the Exchange would consider the Core Standards requirement to have been met despite known, major deviations. For example, the Core Standards would stipulate “three-fourths” but would recognise “two-thirds super-majority” that many PRC issuers may be following. Consultation Paper para 110, 119, 132. Such would be a pragmatic approach, and it means the Exchange would have to recognise jurisdictional differences. And as such, there could indeed be the possibility and practicality to adopt some form of block exemptions (or borrow the “comply or explain” approach still) for Overseas Issuers to design their own scheme to fit their circumstances. If

the fact of a deviation from the Core Standard is known to investors, it is not particular unfair. A deviation from the Core Standard is not always automatically detrimental to governance.

Informing and reminding investors of deviations from Core Standards
The Exchange would require Overseas Issuers to disclose in their Prospectuses or Listing Documents information pertaining to the salient differences between the Hong Kong requirement and the overseas requirements to which Overseas Issuers are subject. With the proposals, the Exchange would also require Overseas Issuers to publish such information on Company Information Sheets. These are standalone documents that would be posted on a dedicated section of the HKEX website. Investors seeking information would be able to have a quick grasp of such information without the need to go over the original Listing Documents.

Information should be at hand, literally, when investors make decisions. Given that some blocks of issuers will operate on thresholds differing from the Core Standards proposed (e.g., super majority threshold for PRC issuers), and given that we are for more freedom and leeway for issuers to design their own scheme to fit their circumstances, the significance and implication of such deviation would be most pertinent to investors when that aspect of shareholder right is triggered or at play.

So, for example, if an issuer is permitted to list with a shorter notice period (see Consultation Paper para 95), the Exchange may consider requiring the issuer to flag the fact that its notice period requirement is shorter than what would be under the Core Standard. The Exchange could consider requiring the same treatment in announcements or circulars when aspects of shareholder rights are triggered or at play (e.g., super-majority threshold for voting). Such could be a more useful (and timely) reminder to investors than to expect investors to have committed things to memory, or to have to check the Company Information Sheets each time.

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<u>Consultation questions</u>
Subject to the general comments above, we state below our response to specific questions as set out in the Consultation Paper.

Core Shareholder Protection Standards

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.

HKIoD response

- AGREE with reservations
    - We do not disagree with the stipulation of some Core Standards as an objectively agreeable measure of good protection of shareholder rights. We however consider the promulgation of Core Standards not in effect a repeal of the Equivalence Requirement concept but an augmented application of it. Could it be sufficient that certain Core Standards are held out as "norm" or expectations, but we still allow issuers local or overseas to have room and freedom to design their own governance. If investors have enough opportunities to know and be reminded of deviations, that they have sufficient information to base their decisions accordingly, such would not

necessarily be unfair. For some aspects of the Core Standards, we should ask if enforcing a uniform requirement necessarily means better governance.

- We do not disagree with the fading out of the "Recognised Jurisdictions" and "Acceptable Jurisdictions" concept.

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.

HKIoD response

- AGREE with reservations
  - <u>Removal of directors</u>
    - We agree with the proposal to change the reference from "the issuer" to "members" to clarify the source of the power to remove any director.
    - Given that we permit WVR structures, we recommend that the WVR structures already disclosed and which is in place at listing should be given deference.
  - <u>Casual vacancy appointments</u>
    - We agree with the approach to preserve shareholders' rights to elect directors after a casual vacancy has arisen. As it happens, most issuers would normally have only one general meeting a year (being the annual general meeting) and as such, a casual vacancy appointment is more often confirmed (elected) on that occasion. But we believe that, for purpose of the Core Standards, the election should be stipulated to take place at the next general meeting, since there could indeed be one to take place before the next annual general meeting. This would actually be consistent with the current Code Provision A.4.2. There should be good reasons to stipulate the earliest possible time for shareholders to either confirm the casual vacancy appointment, or to elect a different person. We would not object if an issuer is still given leeway to not confirm a casual vacancy appointment until the next annual general meeting, if that plan is adequately disclosed and explained to shareholders.
  - <u>Timing of annual general meeting</u>
    - We agree with the proposal to stipulate that annual general meeting should take place within six months after the end of a financial year. For purpose of the Core Standards, stipulating the timing of annual general meeting by reference to the financial year end could be more meaningful to shareholders and stakeholders.
    - Some Overseas Issuers are subject to a requirement that no more than 15 months should elapse between two annual general meetings, and the Exchange will consider them to have met the Core Standard requirement. This is a pragmatic approach.
  - <u>Notice of annual general meeting</u>
    - We can agree that "at least 21 days" for annual general meetings and "at least 14 days" for other general meetings should be long enough notice periods for stipulation in the Core Standards.
    - Given the advances in communication methods and given the increasing possibility of shareholders to attend and participate in general meetings with

much less burden or obstacles arising from the need to travel, we question if we can make things even simpler by stipulating the same length (e.g., "at least 14 days", or even consider a yet shorter period) for all general meetings. Issuers will have more freedom to design their own scheme to fit their circumstances, so long as some minimal reasonable notice period is observed.

- We note that some issuers have been allowed to list with a shorter notice period, and the Exchange will consider them to have met the Core Standard requirement. This is a pragmatic approach. But it does also suggest that there could be room and leeway for issuers to design their own scheme to fit their circumstances. We do not believe investors are particularly at a disadvantage just because the notice period is different from what is stipulated in the Core Standard. The premise of course is for investors to have known about the scheme.
- Uniformity in length of notice periods does not by itself mean better governance; substance of the meetings is more important (e.g., agenda setting, order of issues to be voted on, etc.)

- Right to speak and vote at general meetings
  - We agree with the proposal to stipulate in the Core Standards a member's right to speak and vote in general meetings.
  - The proposed wording is rather clear that a member would not have a right to vote on matters where the member is required by the Listing Rules to abstain from voting to approve the matter under consideration. What is not as clear is whether that member would still have the right to speak on such matter. We think so, but the wording could make this clearer.
- Restriction on shareholder voting
  - We agree with the concept, to stipulate in the Core Standards that a vote shall not count if the shareholder would have been required to abstain or otherwise restricted from voting.
  - Some issuers may have two-tier voting arrangements or other arrangements in place to achieve the same effect, and the Exchange may consider them have met the Core Standard requirement. This is a pragmatic approach.
- Right to convene an extraordinary general meeting
  - We agree with the concept. The Hong Kong Companies Ordinance would only require a 5% threshold to call a meeting, but we can agree that the 10% threshold proposed for stipulation in the Core Standard is reasonable even if it means a higher threshold to meet. That threshold may already be a Hong Kong norm. We can see that the higher threshold may not be too unfair for investors in listed companies (versus private company shareholders, for instance) as such can arguably be somewhat balanced out by availability of company information made possible through disclosure obligations so to give them better means or opportunities to either enforce rights or to exit.
- Variation of Class Rights
  - We agree with the stipulation of a super-majority vote requirement to alter class rights. Our issue is what threshold to stipulate as Core Standard. The proposal is for "three-fourths".
  - A "three-fourths supermajority" is what the Hong Kong market have been accustomed to, and it is not an unreasonably high threshold. Yet a block of PRC issuers may be operating on "two-thirds super-majority" and the Exchange will consider them to have met the Core Standard requirement. This

is a pragmatic approach. But it does also suggest that the Exchange recongises and accepts that some issuers from some jurisdictions will by law or custom in their place of incorporation to have been operating on a different threshold for super-majority. There could indeed be the possibility and practicality to adopt some form of block exemptions for these issuers. If the fact of a deviation from the Core Standard is known to investors, it is not particular unfair. A deviation from the Core Standard is not always automatically detrimental to governance.

- The proposed wording also leaves room for a super-majority to be deemed achieved still, with a lower voting threshold but higher quorum requirement. This again points to the possibility and practicality to leave more room for issuers to design their own scheme to fit their circumstances.

- Amendment of Constitutional Documents
  - On the threshold of super-majority, see our response under "Variation of Class Rights" above.
- Appointment of auditors
  - We agree with the approach, to stipulate in the Core Standards the source of power to appoint, remove and remunerate auditors. We agree this power should go with the members (or another body independent of the board of directors such as the supervisory board in a two-tier structure). The board of directors can still have a meaningful role to play, in sourcing and recommending audit firms for consideration.
  - A block of Cayman issuers on the Exchange (up to 58%) may not be meeting this Core Standard. We can see some reasons for giving Cayman issuers an exemption or waiver en masse on this Core Standard. We can rationally argue that shareholders would have known about this aspect when they put their investment in, and that the audit firms would still be guided and bounded by accounting standards and norms of professional practices. Yet we are less in favour of yielding for Cayman issuers on this Core Standard.
  - As an alternative, we ask if the Exchange would offer Cayman issuers a choice: follow the Core Standard or (self-)enforce an audit partner/audit firm rotation under some meaningful schedule. The latter could be achieved without constitutional amendments, but still offer a credible level of protection for shareholders.
- Proxies and corporate representatives
  - We agree with the approach. We do think all Overseas Issuers should provide a means for its members to appoint a proxy (corporate representative) to be present at general meetings and to speak and vote to the fullest extent permitted.
- HKSCC's right to appoint proxies or corporate representatives
  - We agree with the approach, so to put the rights of shareholders whose shares are deposited with HKSCC on equal footings.
  - Some Overseas Issuers may run into a situation where the laws of their place of incorporation may operate to prevent HKSCC from appointing proxies/representatives. The proposal is for such Overseas Issuers to make necessary arrangements with HKSCC to ensure shareholders holding shares through HKSCC to still enjoy the right to attend, speak and vote at general meetings.
- Inspection of Hong Kong Branch Register

- We agree with the proposal to stipulate in Core Standards a right to inspect branch registers of members in Hong Kong, so shareholders can ascertain their legal ownership. We do think all Overseas Issuers should provide a means for shareholder to ascertain ownership, but we would recommend the Exchange to remain flexible and pragmatic as to how that can be achieved.
- For HDRs, that there would be a Hong Kong share registrar to maintain a register of holders of the depositary receipts should be sufficient. Consultation Paper note 99.

- Voluntary Winding up
  - On the threshold of super-majority, see our response under "Variation of Class Rights" above.

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.

HKIoD response

- AGREE
  - Requiring all issuers to amend their constitutional documents to conform to the Core Standards could be too burdensome and that might contravene certain domestic laws under which the issuers were incorporated. The current practice of allowing issuers to demonstrate how its constitutional documents, in combination with domestic laws, rules and regulations to which the issuer is subject, provides the relevant shareholder protection required under the Core Standards would allow the spirits of the Core Standards to be followed while affording issuers some flexibility.
  - In appropriate situations, issuers should continue to be allowed to demonstrate that equivalent shareholder protection is in place by providing an undertaking to the Exchange.

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.

HKIoD response

- The Core Standards tend to focus on shareholder rights. If we are to consider additions to Core Standards, perhaps we could turn focus to aspects of board governance.

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

HKIoD response

- AGREE
  - It is reasonable to have the Core Standards applied to all existing listed issuers, but we do believe in appropriate situations issuers should be given room and leeway to design their own governance.

- We understand the majority of existing issuers should be able to comply. Consultation Paper para 140.

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.

HKIoD response

- As to (a), AGREE
  - The transition period of 2 annual general meeting cycles should be sufficient for issuers to seek advice from their legal advisers and taking necessary steps to conform with the Core Standards.
- As to (b), AGREE
  - We surmise the application would not be too onerous on existing issuers, but we do believe in appropriate situations issuers should be given room and leeway to design their own governance.

Dual Primary Listing

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.

HKIoD response

- AGREE
  - For dual primary listing, the general principle of granting waiver when strict compliance with both the relevant Listing Rules and the overseas regulations would be unduly burdensome or unnecessary is appropriate.
  - The Exchange reserves the right to revoke the exemptions/waivers granted to dual primary listed issuers if the circumstances underpinning the justifications cease to exist or apply (e.g., de-listed from the overseas exchange). Consultation Paper para 156.

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.

HKIoD response

- AGREE with reservations
  - The codification should make it easier for prospective applicants to assess the regulatory requirements for a listing in Hong Kong.
  - We note that the codification will not include the Common Waivers set out in the Joint Policy Statement. Consultation Paper para 158. Those concern or pertain to:
    - Listing Rules 3.28 (company secretary)
    - Listing Rules 8.12 (management presence in Hong Kong)

- Listing Rules 10.04 (restrictions on existing shareholders and new issues of shares)
- Listing Rules 10.07(1) (restriction on disposal of shares by a controlling shareholder after a new listing)
- Listing Rules 10.08 (restriction on further issues of securities within 6 months of listing)
- Listing Rules Appendix 6, paragraph 5(2) (restrictions on existing shareholders and new issues of shares)
- Listing Rules Appendix 3 (to conform Articles of Associations)

; we can understand the rationale for not codifying these Common Waivers. But given that these Common Waivers had been made available before, we wonder if we can just codify them all, allowing Overseas Issuers to apply by demonstrating the need and that prescribed conditions could be met. If investors have sufficient opportunities to know and be reminded of the existence of Common Waivers with respect to a particular Overseas Issuer, such would not be particularly unfair.

- The Exchange reserves the right to revoke the exemptions/waivers granted to dual primary listed issuers if the circumstances underpinning the justifications cease to exist or apply (e.g., de-listed from the overseas exchange). Consultation Paper para 156.

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.

HKIoD response

- AGREE
  - We see no harm in permitting these issuers to do in one step what they could otherwise achieve under the "two step route" upon trading migration to the Exchange. See Consultation Paper para 152 and 162. For these issuers to become dual primary listed should mean they are subject to the full set of Listing Rules (unless with waiver) and be so sooner.
  - The Exchange reserves the right to consider and reject applications on a case-by-case basis, on suitability grounds.

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 de-listed from the Qualifying Exchange on which they are primary listed? Please give reasons for your views.

HKIoD response

- AGREE
  - Such issuers had been granted dual primary status with their Non-compliant WVR and/ or VIE Structures noted and disclosed. De-listing from the Qualifying Exchange on which they are primary listed would normally not by itself alter the fact and nature

of such structures. To that extent, the basis for an investor's decision to buy or sell their shares has not changed.

Secondary Listing
– Consolidation of Requirements

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.

HKIoD response

- AGREE
  - The proposal is to codify (with certain amendments) Section 5 of the Joint Policy Statement into Listing Rule Chapter 19C, and to re-purpose Chapter 19C as one dedicated to secondary listing of Overseas Issuers. The consolidation would make the rules for Overseas Issuers easier to follow, with one relating to primary listings and one relating to secondary listings.

Secondary Listing without a Listing Compliance Record

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.

HKIoD response

- AGREE
  - Essentially, the purpose is to consolidate the two routes to secondary listing. Consultation Paper para 200.
  - Overseas Issuers can list with lower market cap (HK$3 billion) on the basis of a longer compliance record of five full financial years (Criteria A), or a higher market cap (HK$10 billion) if with only a track record of two full financial years (Criteria B).
  - We agree with the stipulation of "five full financial years" under Criteria A. The origin of this criteria could be found in the 2013 Joint Policy Statement para 90(b), but there the reference is to "five years" not financial years.
  - We can agree that a higher market cap requirement under Criteria B can in some way add to the credibility of the applicant seeking secondary listing.

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.

HKIoD response

- AGREE

- Essentially, well-established companies will be able to seek secondary listing without compliance record but with a significantly higher market cap.
- We can agree that a higher market cap requirement can in some way add to the credibility of the applicant. The Exchange may want to clarify what would be considered a high enough market cap for purpose of this exemption. The one example mentioned had at the time of listing a market capitalisation of HK$468 billion. Consultation Paper para 203.

Dis-applying the "Innovative Company" Requirement for Issuers without a WVR Structure

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.

HKIoD response

- AGREE
  - The origin of the "innovative company" requirement stems from a policy objective to ring-fence to new economy applicants with WVR structures who seek secondary listing under the Chapter 19C route. Mechanical application of this requirement will preclude issuers from the more traditional industries to become secondary listed in Hong Kong.

Proposals to Address Regulatory Arbitrage Risk

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.

HKIoD response

- AGREE
  - The purpose is to prevent regulatory arbitrage by way of orchestrating a secondary listing to avoid (or circumvent) the rules that would apply to a primary listing. More guidance on what is tantamount to an attempt to circumvent would be useful. Please also see our response to Question 16 below.

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.

HKIoD response

- AGREE
  - We agree that the Exchange should apply the test for a reverse takeover, as described in para 210.

- There may be many good reasons to explore if Special Purpose Acquisition Companies or similar prospects could be introduced to the Hong Kong IPO market. We take note that the concept is against the grain of our regulatory philosophy. That philosophy may change, can change, but it would not until all stakeholders concerned have considered and debated the pros and cons. For now, there are other markets which permit IPOs for SPACs. Investors who want to get in on the action do have channels, albeit the listing would not be in Hong Kong.
- Once a de-SPAC transaction has been consummated and assuming the company has been able to build a track record (or can meet criteria otherwise), they should be eligible for a secondary listing on the Exchange. It is on this count that we recommend the Exchange to remain flexible and pragmatic in applying the reverse takeover test to these applicants.

Applying Trading Migration Requirements to All Secondary Listed Issuers

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.

HKIoD response

- AGREE
  - The Trading Migration Requirement was initially designed to prevent Greater China Issuers to benefit from what would be a regulatory arbitrage, retaining Automatic Waivers granted through secondary listing to avoid the full rigour of rules for a primary listing while a majority of trading of shares has migrated to the Exchange.
  - Overseas Issuers, whether with a centre of gravity in Greater China or not, may also attempt regulatory arbitrage. Extending the Trading Migration Requirement to cover all issuers with a secondary listing would ensure consistent application of the rules.

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.

HKIoD response

- NO
  - There are two issuers with a centre of gravity outside Greater China that are currently secondary listed on the Exchange with low trading volumes. Consultation Paper note 124. We surmise an actual triggering of the Trading Migration Requirement on them would be slim.

Codification of the Principles for
Granting Exemptions / Waivers to Secondary Listed Issuers

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.

HKIoD response

- AGREE
  - This to codify the principles already in practice.
  - The principles concern or pertain to:
    - reliable regulatory and enforcement standards;
    - regulatory co-operation requirements in place;
    - majority of trading in the subject issuer's shares take place not on the Exchange; and
    - too burdensome if strict compliance with the Listing Rules is to be required.

Codification of the Automatic Waivers and Common Waivers for Secondary Listed Issuers

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.

HKIoD response

- AGREE with reservations
  - The codification should make it easier for prospective applicants to assess the regulatory requirements for a listing in Hong Kong.
  - We note that the codification will not include the Common Waivers set out in the Joint Policy Statement. Consultation Paper para 217, referring to para 158. Those concern or pertain to:
    - Listing Rules 3.28 (company secretary)
    - Listing Rules 8.12 (management presence in Hong Kong)
    - Listing Rules 10.04 (restrictions on existing shareholders and new issues of shares)
    - Listing Rules 10.07(1) (restriction on disposal of shares by a controlling shareholder after a new listing)
    - Listing Rules 10.08 (restriction on further issues of securities within 6 months of listing)
    - Listing Rules Appendix 6, paragraph 5(2) (restrictions on existing shareholders and new issues of shares)
    - Listing Rules Appendix 3 (to conform Articles of Associations)

    ; we can understand the rationale for not codifying these Common Waivers. But given that these Common Waivers had been made available before, we wonder if we can just codify them all, allowing Overseas Issuers to apply by demonstrating the need and that prescribed conditions could be met. If investors have sufficient opportunities to know and be reminded of the existence of Common Waivers with respect to a particular Overseas Issuer, such would not be particularly unfair.
  - The Exchange reserves the right to revoke the exemptions/waivers granted to secondary listed issuers if the circumstances underpinning the justifications cease to exist or apply (e.g., de-listed from the overseas exchange). Consultation Paper para 216.

Absence of Pre-emptive Rights Condition

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.

HKIoD response

- AGREE
  - Some secondary listed issuers will be subject to non-Listing Rule pre-emptive rights, but some are not. We agree with the Exchange that to continue to impose the condition would foster a discrepancy in terms of the consent required.
  - For those that are subject to pre-emptive rights outside of the Listing Rules, the waiver even if granted would not change the other pre-emptive rights that the issuer's shareholders have.

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.

HKIoD response

- AGREE
  - It is reasonable for secondary listed issuers to also comply with this requirement. This requirement is not too onerous.
  - We also agree that diversity is generally important in contributing to a board's effectiveness and quality of decisions in allowing different opinions to be presented. We do emphasise that it is a deeper level of diversity that we should be after, not diversity on the surface (e,g., tokens) nor compliance for the sake of compliance (e.g., quotas).

De-listing from an Overseas Exchange of Primary Listing

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.

HKIoD response

- YES
  - Paragraph 3.6 – We agree with the "as soon as practicable" requirement but suggest also a maximum of 3 business days during which the Overseas Issuer must publish an announcement regarding migration of the majority of the trading of its shares. The fact of migration is important information and there should have been enough time for the issuer to prepare the announcement. Please see below the suggested amendments.

    Issuer announcement

    As soon as practicable ^and in any event within 3 business days^ after receiving an Exchange Notice, the Overseas Issuer must publish an announcement stating that

the majority of the trading of its shares have migrated to the Exchange's markets on a permanent basis under Listing Rule 19C.13, including:
(a) details of the consequences of the Exchange Notice;
(b) details of the Grace Period;
(c) its obligation to make necessary arrangements to enable it to comply with applicable Listing Rules upon the end of the Grace Period; the potential consequence of its failure to comply with this obligation; the potential consequences of the withdrawal of any specific waivers from strict compliance with any Listing Rules granted by the Exchange on an individual basis; and
(d) the issuer's intention, if applicable, to apply to the Exchange for certain specific waivers and/ or exemptions to continue after the Grace Period ends.

Regulatory Co-operation Requirement

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

HKIoD response

- AGREE
  - The key criteria must be for our regulator the Securities and Futures Commission to have adequate arrangements to be able to access financial and operational information on an issuer's business in the relevant place of incorporation and central place of management and control for its investigation and enforcement purposes. Consultation Paper para 244.
  - Where the statutory securities regulator of the Overseas Issuer's jurisdiction is a full signatory of the IOSCO MMOU (concerning multilateral consultation and cooperation and the exchange of information for purpose of enforcement), there is no issue.
  - The modification, described in para 244, relates primarily to the removal of the reference to bi-lateral agreements, which would be one factor for assessing compliance with Regulatory Co-operation Requirement. As explained in para 242, in addition to the existence (and terms) of any bi-lateral agreement, the features of the relevant legal system and regulatory provisions that might affect cross-border regulatory co-operation must also be assessed.
  - The codified requirement, as modified, is to apply to "all issuers", not just Overseas Issuers. This is practical and necessary, since even Hong Kong incorporated issuers could in fact have core assets and operations in an overseas jurisdiction.

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.

HKIoD response

- AGREE
  - The key purpose is to ensure that an accountant's report of an Overseas Issuer will have been audited to a standard comparable to that required in Hong Kong. Seven

sets of alternative standards are currently deeded acceptable and recognised. We agree to their retention.

- Publishing the list of acceptable alternative standards as guidance would mean greater flexibility for the Exchange to add or delete in future, as and when needed.

Financial Reporting Standards

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.

HKIoD response

- AGREE
  - The key purpose is to ensure that the financial statements of Overseas Issuers are prepared and drawn up in conformity with recognised financial reporting standards.
  - To turn suitability of an alternative financial reporting standard on its similarity to (and convergence with) IFRS is a reasonable general approach.
  - Given that an Overseas Issuer will have to include a reconciliation statement showing the financial effect of any material differences, we would recommend the suitability assessment to be more liberally applied, enabling more foreign standards to be considered. To the extent the Overseas Issuer can provide financial statements drawn up with the foreign standard consistently applied to facilitate meaningful period to period comparison and trend analysis, there may still be sufficient information for investors to make their decisions accordingly.

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.

HKIoD response

- AGREE
  - Five sets of financial reporting standards are currently deemed acceptable and recognised. We agree to their retention.
  - Similar to the reasoning in our response to Question 25 above, publishing the list of acceptable alternative financial reporting standards as guidance would mean greater flexibility for the Exchange to add or delete in the future.

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.

HKIoD response

- AGREE

- Once a dual primary or secondary listed issuer is delisted from its overseas exchange, the majority of their shares would be traded in Hong Kong. It is therefore reasonable to require such issuers to adopt HKFRS or IFRS. We suspect many issuers in this situation will for cost reasons or otherwise simply make the switch.
- A contrarian view, however, would be to continue to permit those issuers to adopt a foreign financial reporting standard with inclusion of a reconciliation statement. There should still be sufficient information for investors to make their decisions.

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.

HKIoD response

- AGREE
  - As to (a), we agree that the grace period ought to be given "automatic".
  - As to (b), we agree with the Exchange's reasoning that a one-year grace period is sufficient for making the change. Consultation Paper para 259. An issuer in this situation would normally have had time to plan for its de-listing from the foreign jurisdiction.
  - A contrarian view, however, would be to continue to permit those issuers to adopt a foreign financial reporting standard with inclusion of a reconciliation statement. There should still be sufficient information for investors to make their decisions.

Financial Reporting Standards
– the use of US GAAP for Secondary Listing

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 de-lists from a US exchange)? Please give reasons for your views.

HKIoD response

- AGREE
  - To require an issuer to demonstrate a reason for adopting US GAAP would be reasonable. Similar to the reasoning in our response to Question 26, we would recommend that the justification be more liberally considered. To the extent the Overseas Issuer can provide financial statements drawn up with US GAAP consistently applied to facilitate meaningful period to period comparison and trend analysis, there may still be sufficient information for investors to make their decisions accordingly. Overseas Issuer adopting US GAAP should have to include a reconciliation statement showing the financial effect of any material differences. See also our response to Question 31.
  - Similar to the reasoning in our response to Question 28, once the basis for adopting US GAAP has changed, it is reasonable to require such issuers to adopt HKFRS or IFRS.

- A contrarian view, however, would be to continue to permit those issuers to adopt US GAAP with inclusion of a reconciliation statement. There should still be sufficient information for investors to make their decisions.

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.

HKIoD response

- AGREE
  - Financial statements drawn up with US GAAP consistently applied could still facilitate meaningful period to period comparison and trend analysis. But to require reconciliation statement is not unreasonable and should offer investors additional information to make their decisions accordingly.

Qualification Requirements for Auditors and Reporting Accountants

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.

HKIoD response

- AGREE
  - This is to codify the statutory requirements set out in the Financial Reporting Council Ordinance for the recognition of non-Hong Kong audit firms which may have the occasion to carry out engagements for Public Interest Entities (listed companies, mutual funds, unit trusts, etc.).

Qualification Requirements for Accountant's Reports

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.

HKIoD response

- AGREE
  - This codification reflects the statutory requirement under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32) and is consistent with existing practice.

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.

HKIoD response

- AGREE
  - This amendment accommodates an exception to the general requirement per Question 33, that Overseas Issuers in the context of a reverse takeover or a very substantial acquisition circular relating to the acquisition of an overseas company may appoint an overseas audit firm meeting certain requirements. See also Question 35.

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.

HKIoD response

- AGREE
  - This is to codify the required threshold characteristics for non-Hong Kong audit firms to be recognised. Such firms must normally have an international name and reputation, be a member of a recognised body of accountants and be subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU.

Collection of FRC Levies

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.

HKIoD response

- AGREE
  - The levies are to support the operation of the Financial Reporting Council, which is slated to become self-financing as from 1 January 2022. The Exchange is to collect the levies on behalf of the FRC.

Company Information Sheets

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.

HKIoD response

- AGREE
  - Company Information Sheets are standalone documents that would be posted on a dedicated section of the HKEX website, and ones which would address the salient differences between the Hong Kong requirements and the overseas requirements to which Overseas Issuers are subject. Investors seeking information would be able to

have a quick grasp of such information without the need to go over the original Listing Documents.

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.

HKIoD response

- AGREE
  - Essentially, the proposal is to require all Overseas Issuers to publish Company Information Sheet. According to the Consultation Paper, only one secondary listed issuer has not published Company Information Sheet. Note 164.

One Combined Guidance Letter for Overseas Issuers

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.

HKIoD response

- AGREE
  - The guidance described in paragraphs 289 and 290 pertain to practical and operational matters for Overseas Issuers seeking to list in Hong Kong, on topics ranging from general advice on rules and regulations, eligibility, market operations to settlement and taxation. Others may focus on the circumstances of potential issuers from jurisdictions new to listing in Hong Kong.
  - We tend to agree that such materials are more suited to be preserved as guidance rather than codification into the Listing Rules. To amalgamate the materials into one combined guidance letter would avoid duplication.

<ENDS>