

HKEx Finalizes New Rules on Listings for Overseas Issuers

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Following a consultation process conducted earlier in 2021, the Stock Exchange of Hong Kong Limited (HKEx) has announced amended listing rules for overseas companies undertaking dual-primary or secondary listings in Hong Kong.

The new rules provide additional flexibility and are expected to facilitate more companies listing on HKEx, in addition to clarifying the various routes for converting a secondary listing to a primary listing.

The new rules will take effect from 1 January 2022, and also will apply to companies that have already submitted listing applications prior to (but expect to be listed after) that date.

Dual Primary Listings

Under the previous rules, a Grandfathered Greater China Issuer with weighted voting right (WVR) (dual class share) structures or variable interest entity (VIE) arrangements that did not comply with HKEx rules could only undertake a secondary listing in Hong Kong.

For these purposes, a “Grandfathered Greater China Issuer” is defined as a company with its “center of gravity” in Greater China and that is:

- listed on the New York Stock Exchange, Nasdaq or London Stock Exchange (a “Qualifying Exchange”) on or before 15 December 2017; or
- for companies with WVR shares controlled by a corporate shareholder, listed on one of the Qualifying Exchanges on or before 30 October 2020.

Under the new rules, Grandfathered Greater China Issuers and Non-Greater China Issuers with noncompliant WVR and/or VIE structures can now apply for a dual-primary listing in Hong Kong.

In order for such companies to qualify for a dual-primary listing, they must:

- demonstrate that they are an “innovative company” (*i.e.*, operating an internet or other high-tech business);
- have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
- have (i) a market capitalisation of at least HK\$40 billion; or (ii) a market capitalisation of at least HK\$10 billion and revenue of at least HK\$1 billion for the most recent financial year.

Corporate WVR Beneficiaries

When HKEx first introduced its WVR regime in 2018, it required that WVR shares only be controlled by natural persons as WVR beneficiaries, who must be directors and key contributors to the success of the company. Corporate WVR beneficiaries were not permitted (except where the company concerned was undertaking a secondary listing).

Following a subsequent market consultation exercise regarding corporate WVR beneficiaries that was conducted in 2020, HKEx concluded that it would, as an interim measure, permit Greater China Issuers that were already listed on a Qualifying Exchange and controlled by a corporate WVR beneficiary on or before 30 October 2020 to be treated as Grandfathered Greater China Issuers for the purposes of listing in Hong Kong, and thus could undertake a listing on HKEx without changing their WVR arrangements. This position has now been formalized in the amended Listing Rules.

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Secondary Listings

Under the previous rules, a Greater China Issuer could only undertake a secondary listing in Hong Kong if the company qualified as an “innovative company.” Accordingly, Greater China companies operating in traditional industries were required to undertake a primary listing.

The new rules now permit any overseas company, including Greater China Issuers, to conduct a secondary listing in Hong Kong regardless of whether their business is considered “innovative” by HKEx.

Any such overseas company *without a WVR structure* will be permitted to undertake a secondary listing on HKEx if they meet one of the following two tests:

- a HK\$3 billion market capitalisation with a track record of good regulatory compliance for five full financial years on a Qualifying Exchange (for Greater China Issuers) or on a wider range of recognized overseas exchanges (for non-Greater China Issuers); or
- a HK\$10 billion market capitalisation with a track record of good regulatory compliance for two full financial years on a Qualifying Exchange.

The compliance track record requirements may be waived if the company is “well-established” and has a market capitalisation significantly larger than HK\$10 billion. By way of example, the major mining company Glencore was previously granted such a waiver, as it had a market capitalization of HK\$468 billion at the time of its listing.

Companies *with a WVR structure* will still be required to meet the existing “innovative company” requirements under Chapter 19C, as well as the same compliance track record and market capitalisation/revenue tests as those required for a dual-primary listing that are set out above.

Converting From Secondary Listing to Primary Listing

HKEx has not previously had a clear set of rules regarding the process for, and consequences of, the conversion of a secondary listing to a primary listing.

The new rules now establish three ways by which secondary-listed companies may have their listing converted to a primary listing:

- **Voluntary conversion:** A company may voluntarily choose to upgrade their secondary listing into a dual-primary listing. A new HKEx guidance letter sets out a clear process for this, which involves an application to the HKEx and required announcements.
- **Overseas delisting:** If a secondary-listed company delists from the overseas exchange where it had its primary listing (voluntarily or involuntarily), it will be automatically treated as primary-listed in Hong Kong.
- **Trading migration:** If 55% or more of the trading volume by dollar value in the shares of a secondary-listed company takes place on HKEx over the most recent financial year, the company will be required to convert its listing to a primary listing.

The above rules apply to all overseas issuers, including Greater China issuers.

In all such cases, the company will lose the benefit of the automatic Listing Rules waivers granted to secondary-listed companies, and will be required to reapply for any waivers needed going forward. Waivers which were not expressly conditional on secondary listing status will continue to apply.

Companies choosing the voluntary conversion path or undertaking an overseas delisting will generally not be given any grace period and will be required to comply with the applicable Listing Rules from the date of conversion (unless exceptional circumstances apply). In the case of a conversion as a result of trading migration, the company will be given a grace period of 12 months to comply. Certain additional exemptions are available to issuers subject to a trading migration or involuntary delisting that involve notifiable or connected transactions entered into with third parties prior to their change in listing status.

Companies that had been permitted to secondary-list with noncompliant WVR or VIE structures will be permitted to retain those structures even after their conversion to a primary listing.

Financial Reporting Standards

Finally, HKEx has amended its rules regarding the financial reporting standards that may be adopted by dual-primary and secondary-listed companies. The new rules represent a more stringent position than the original requirements, particularly regarding issuers listed in the U.S. that are adopting U.S. generally accepted accounting principles (GAAP).

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Under the new rules:

- Companies may only adopt financial reporting standards other than Hong Financial Reporting Standards (HKFRS) or International Financial Reporting Standards (IFRS) based on a connection to their place of incorporation or listing. Accordingly, U.S. GAAP may only be adopted by issuers with a primary listing in the U.S. and a dual-primary or secondary listing on HKEx. For other jurisdictions, only issuers with a primary listing in the same jurisdictions as the financial reporting standard setter may adopt alternative reporting standards.
- All overseas issuers that prepare their financial statements using any alternative standard (other than HKFRS or IFRS) are required to include a reconciliation statement to HKFRS or IFRS in their accountants' reports and annual and interim reports.
- Secondary-listed issuers with a primary listing in the U.S. and adopting U.S. GAAP will be required to include a reconciliation statement to HKFRS or IFRS in their annual financial statements commencing from the first full financial year starting on or after 1 January 2022 (*i.e.*, for the year ending 31 December 2022 for those existing secondary-listed issuers with a 31 December financial year-end).
- U.S.-listed issuers that submit a listing application on or after 1 January 2023 for secondary listing in Hong Kong are required to include a reconciliation statement to HKFRS or IFRS in their accountants' reports in the prospectus.
- Secondary or dual-primary issuers with a U.S. listing and adopting U.S. GAAP that subsequently delist from the U.S. are required to cease using U.S. GAAP and adopt HKFRS or IFRS for any annual or interim financial statements that are published 12 months following delisting from the U.S. (a similar requirement applies for other overseas issuers adopting alternative financial reporting standards).

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