

Practice area	Country	Firm	Title	Summary	Contact person
Capital Markets	China/ Hong Kong	Charltons	HKEx Streamlines Procedures for Listing Overseas Companies	The Stock Exchange of Hong Kong Limited (the Exchange) has issued guidance on the vetting practices it has adopted to facilitate the listing of overseas companies on the Exchange in the form of its HKEx Guidance Letter HKEx-GL12-09.	Julia Charlton legalink@charltonslaw.com .

Introduction

The Stock Exchange of Hong Kong Limited (the **Exchange**) has issued guidance on the vetting practices it has adopted to facilitate the listing of overseas companies on the Exchange in the form of its HKEx Guidance Letter HKEx-GL12-09.

Attracting companies from more overseas jurisdictions to list on the Exchange was one of the Exchange's key initiatives included in its Strategic Plan for 2007-2009. A significant first step in realising this objective was the joint publication by the Exchange and the SFC of a policy statement regarding the listing of overseas companies in March 2007 (**Joint Policy Statement**). This set out under five key headings the areas of shareholder protection as to which an overseas issuer needs to demonstrate equivalence in its home jurisdiction with the Hong Kong standards in order to meet the Listing Rules' requirement that the overseas issuer's jurisdiction of incorporation (and, in the case of a secondary listing on the Main Board, the exchange of the issuer's primary listing) provides equivalent standards of shareholder protection to those provided in Hong Kong.

9 New Accepted Jurisdictions of Incorporation

The Exchange has accepted nine overseas jurisdictions of incorporation for overseas listing applicants in addition to the four jurisdictions already recognised under the Listing Rules (Hong Kong, the People's Republic of China, Bermuda and the Cayman Islands). The newly accepted jurisdictions are Australia, Canada (British Columbia), Canada (Ontario), Cyprus, Germany, Jersey, Luxembourg, Singapore and the United Kingdom.

The Exchange is apparently also considering the jurisdictions of the British Virgin Islands, Israel and Russia.

A List of Acceptable Overseas Jurisdictions is now available on the Exchange's website at http://www.hkex.com.hk/listing/suppmat/list_of_aoj.htm which will be updated from time to time.

The latest available figures from the Exchange show some success in attracting overseas companies to Hong Kong. As at 30 September 2009, a total of 118 overseas companies were listed on the Exchange, accounting for 9% of listed companies by number and 18% of the total market capitalisation¹. A breakdown by jurisdiction is set out in Annex 1. It is worth noting that these jurisdictions do not match exactly the newly approved jurisdictions of incorporation. This disparity is due to the fact that the assets to be listed are often carved out of the overseas entity and held, directly or indirectly, by a Bermuda or Cayman Islands company which becomes the listed entity. For example, the Hong Kong IPOs of the Macau assets of U.S. casino companies Wynn Resorts and Las Vegas Sands Corporations were IPOs of shares in Cayman Islands incorporated companies Wynn Macau Limited and Sands China Ltd.

ACCEPTABILITY OF NEW OVERSEAS JURISDICTIONS

Listing Rule Requirements

The basis for acceptance of new jurisdictions of incorporation set out in Main Board Rule 19.05(1)(b) and GEM 24.05(1)(b) is that the Exchange must be satisfied that the standards of shareholder protection provided by the issuer's jurisdiction of incorporation are equivalent to those provided in Hong Kong. In the case of an applicant seeking a secondary listing on the Main Board, the Exchange must additionally be satisfied as to the shareholder protection standards provided by the primary listing exchange (Main Board Rule 19.30(1)(b)). The Exchange will allow an overseas listing applicant to amend its constitutional documents to provide equivalent shareholder protection where there is any deficiency under the laws of its home jurisdiction.

THE JOINT POLICY STATEMENT

As already mentioned, the Joint Policy Statement published in 2007 sets out in a table included in an attachment the key areas of shareholder protection as to which an overseas applicant is required to establish equivalence. In practice, a listing applicant from a non-approved jurisdiction is required to submit a comparison table containing a line-by-line comparison of the protection measures identified in the Joint Policy Statement with those provided by the laws of its home jurisdiction.

In addition, the listing applicant must be incorporated in a jurisdiction whose securities regulator has a reasonable level of regulatory cooperation with the Hong Kong Securities and Futures Commission (SFC), as evidenced either by being a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning

¹ Source: the Hong Kong Stock Exchange Limited.

Consultation and Cooperation and the Exchange of Information or a separate bilateral information exchange agreement with the SFC. Finally, the Exchange also expects to see a reasonable nexus between the applicant's place of incorporation and its operations.

Legal Opinions and Sponsor's Confirmation

The Exchange requires that the formal application for listing should be submitted with:

- i. a confirmation from the sponsor that all material areas regarding shareholder protection have been considered and reviewed by the sponsor in connection with its due diligence review pursuant to Practice Note 21 to the Listing Rules and that it is independently satisfied with the conclusion that the shareholder protection offered by a company incorporated in the issuer's home jurisdiction is at least equivalent to that in Hong Kong; and
- ii. a legal opinion from the listing applicant's legal advisers and a confirmation from the sponsor that the proposed constitutional documents of the listing applicant would be consistent with the requirements of the Listing Rules, the Securities and Futures Ordinance – Disclosure of Interests, Code on Takeovers and Mergers and Code on Share Repurchases, and that execution of company affairs pursuant thereto will not violate the aforementioned Rules, Ordinance and Codes².

CROSS-BENCHMARKING TO OTHER ACCEPTED JURISDICTIONS

The Exchange will also allow a listing applicant from a new jurisdiction to show that its standards of shareholder protection are comparable to the standards of any one of the recognised or accepted jurisdictions, rather than comparing them directly to the Hong Kong standards. Thus a European Union country could choose to compare its corporate laws with those of Luxembourg or Germany.

EARLY CONSULTATION WITH THE EXCHANGE

The Exchange encourages overseas companies considering a listing in Hong Kong and their advisers to consult the Exchange early on the acceptability of the company's jurisdiction of incorporation. They suggest that consultation takes place before submission of the formal listing application. The Exchange will then accept listing applications after consulting the Listing Committee on the jurisdiction acceptance issue.

² HKEX-LD65-1 – Listing Decision in respect of the acceptability of Singapore which was the first decision to apply the principles under the Joint Policy Statement.

Simplified Procedures for Applicants from Accepted Jurisdictions

The listing procedures are simpler for listing applicants from jurisdictions already accepted by the Exchange. The streamlined procedures, set out in the listing decision on the acceptance of Germany (HKEx-LD71-1), provide that future applicants from an accepted jurisdiction will not need to complete a detailed line-by-line comparison of the shareholder protection matters set out in the Joint Policy Statement. Instead, the Exchange will accept an application for vetting, if the applicant, before filing its application, confirms that it has taken steps similar to those taken by the issuer already approved from that jurisdiction to address the differences in shareholder protection matters. In doing so, the new applicant must consider its own constitutional documents to determine whether any additional amendments are necessary or other means are available to address the differences in shareholder protection standards.

PURPOSIVE INTERPRETATION OF SHAREHOLDER PROTECTION EQUIVALENCE REQUIREMENT

The Exchange adopts a purposive interpretation of the requirement for “equivalence” to Hong Kong shareholder protection standards and does not require textual equivalence. For example, under Hong Kong law, a three-quarter majority vote of shareholders is required for certain resolution, whereas a two-third majority may be sufficient under the corresponding law of an overseas jurisdiction. The Exchange still considers this to be acceptable notwithstanding that it is not strictly equivalent to the Hong Kong requirement. However, the differences must be disclosed in the issuer’s prospectus.

CHANGES TO CONSTITUTIONAL DOCUMENTS NOT ALWAYS REQUIRED

There are circumstances in which the Exchange will not insist upon amendments to the issuer’s constitutional documents to provide standards of shareholder protection equivalent to those provided in Hong Kong. It recognises that amending constitutional provisions is sometimes not permitted under the laws of the issuer’s jurisdiction of incorporation or may prove too burdensome for the applicant. In those circumstances, the Exchange will allow a listing applicant to demonstrate equivalence through alternative means, e.g. by showing that compliance with the rules of the exchange on which it is listed would provide the same shareholder protection.

SUBSEQUENT CHANGES TO LAWS OF HOME JURISDICTION

Once a new jurisdiction of incorporation has been accepted, the Exchange does not expect the issuer to review the laws of its home jurisdiction and report on compliance with the Joint Policy Statement on a regular basis. However, an issuer is expected to inform the market of any change in the laws of its home jurisdiction which is price sensitive in accordance with its reporting obligations under Main Board Rule 13.09 or GEM Rule 17.10. For example, the Exchange would expect an issuer to inform the market of a change in the local law which significantly lowered shareholder protection standards.

This note provides a summary only of the requirements of the Hong Kong Stock Exchange in relation to the acceptance of overseas listing applicants for listing on the Exchange. Specific advice should be sought in relation to any particular situation.

ANNEX 1
OVERSEAS COMPANIES LISTED ON THE EXCHANGE AS AT 30.09.2009

	Country	Number of Companies
North America: 8		
	Canada	4
	United States	4
Europe: 13		
	United Kingdom	7
	Netherlands	2
	Germany	1
	Luxembourg	1
	Portugal	1
	Switzerland	1
Asia Pacific: 97		
	Taiwan	49
	Malaysia	16
	Indonesia	8

For further information on this topic please contact Julia Charlton at legalink@charltonslaw.com.