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Hong Kong Initial Public Offerings

An Issuer's Guide

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Chapter 1

Introduction

For most companies and their owners, an initial public offering (**IPO**) is a "once-in-a-lifetime" event that represents the culmination of many years of hard work and personal investment. While an IPO is no doubt one of the most important milestones in the corporate evolution of a company, it also brings with it significant changes to the way the company operates and conducts itself. The legal and compliance obligations imposed on a public company and its ongoing compliance challenges need to be fully understood.

This guide provides an overview of some of the key issues with which we believe all directors, members of senior management, general counsel and other key decision makers of a potential IPO candidate should be familiar, and focuses on a listing on The Stock Exchange of Hong Kong Limited (**HKEx**).

However, this guide is neither intended to be a comprehensive treatment of the subject matter or of all matters relevant to an IPO, nor as a substitute for legal advice. We encourage readers to reach out to the authors of this guide or any of the other key members of our Asian Equity Capital Markets Practice before taking any action.

Getting Ready for an IPO

Prior to going public, the owners and management of a potential IPO candidate, in consultation with their advisers, must implement a corporate governance structure and other internal procedures and guidelines that are suitable for its life as a public company. Key steps in getting ready for an IPO may include:

- Simplifying the company's capital structure.
- Moving assets out of or into the entity or group that will be listed.
- Intra-group restructuring to make the company operate in a more tax-efficient manner.
- Formalising and properly documenting any existing relationships and commercial dealings between the company and its owners.
- Addressing internal "housekeeping" matters, such as reviewing and amending the company's constitutional documents, committee charters or other organisational documents.

- Putting in place a corporate governance structure suitable for a public company, including a board of directors with independent members and various committees necessary for a public company.
- Reviewing and organising the company's financial records.
- Establishing or reviewing, together with its auditors, the company's internal controls and creating procedures to support the ongoing public reporting of a public company.
- Reviewing, amending and implementing appropriate compensation, (equity) incentive and pension arrangements.
- Considering the need of getting pre-IPO investments.
- Reviewing the company's policies for corporate communications and establishing a formal investor relations programme.
- Creating, reviewing and updating a website suitable for a public company.

ANALYSING AND SIMPLIFYING THE EXISTING CAPITAL STRUCTURE

Many potential IPO candidates may have raised capital in the past from private equity or venture capital investors for more than one funding round. As a result, it is not uncommon to find IPO candidates with highly complex share capital structures that may comprise multiple classes of ordinary and preferred shares. The existence of options, warrants, or convertible bonds can further complicate matters. It may therefore be necessary to simplify significantly the share capital structure of the IPO candidate and, ideally, convert or collapse the different classes of shares into a single class of ordinary shares on or before the IPO date. See "Special Considerations – Listing with a WVR Structure" below.

During the pre-IPO reorganization, individual shareholders of the IPO candidate may also consider the need for setting up a family trust for the purpose of holding shares in the listing vehicle, which is considered to be the most common and advantageous structure for families and business owners. There are various benefits of using a trust structure. For example, a family can safeguard against losing its control of the business in the future through events like third party creditors' claims and a trust structure also can enable succession planning, tax efficiency and risk mitigation.

REVISITING RELATIONSHIP WITH KEY SHAREHOLDERS AND OTHER RELATED PARTIES

An IPO candidate and its key shareholders are often parties to a shareholders' agreement that governs their relationship (for example, how corporate decisions are made; who has a right to nominate or appoint directors; under what circumstances shareholders can sell their shares or their actions be restricted). Again, it may be necessary to terminate or substantially revise them on or prior to the IPO date. If there will continue to be a "controlling shareholder" after the IPO, applicable listing rules and market expectations may require that this relationship be formalised, and appropriate protections for non-controlling/minority shareholders be put in place.

Key shareholders of an IPO candidate and their associates may also be significant customers or suppliers of the company or they may have other significant relationships. For example, the founder or controlling shareholder, rather than the company itself, may be the legal owner of key operating assets or intellectual property rights that the IPO candidate relies on to operate its business. Formalising and properly documenting these connected transactions and commercial arrangements among the IPO candidate and its owners on arm's-length terms and properly describing them in the IPO prospectus can be crucial for the success of the IPO. This may involve entering into formal, long-term, purchase, supply or licensing agreements with or transferring key assets to the IPO candidate.

In addition, an IPO candidate must be capable of carrying on its business independently of its controlling shareholder(s) (including any close associate of such controlling shareholder(s)) after listing. The IPO candidate will usually need to demonstrate its independence from the controlling shareholder(s) from financial, operational and management aspects. Where the degree of dependence on its controlling shareholder(s) is excessive, it may raise concerns about the IPO candidate's suitability for listing.

DESIGNING THE RIGHT CORPORATE GOVERNANCE STRUCTURE

Corporate governance structures that may be appropriate, and may even have proven to be highly effective for a particular company in the pre-IPO world, may be unsuitable for a company once its shares are publicly listed. The IPO candidate and its owners, with support from their financial and

legal advisers, will therefore need to review carefully and, in all likelihood, supplement or possibly even completely replace, existing corporate governance structures in preparation for a proposed IPO.

The board of directors. At the very least, a company proposing to list its shares on a regulated stock exchange should have an appropriate mix of executive and non-executive directors on its board. These directors must have the right skills and suitable personal and professional backgrounds to run a listed company. As well as board members with relevant industry and geographic expertise, the company and its owners are likely to want to appoint a minimum number of directors who have served on the boards of other public companies, are financially literate, and have experience with public company reporting. Other considerations such as the ethnic, gender and age diversity of the board may also be factors in determining the perfect balance for a particular company.

INEDs. Public companies are usually required to appoint a minimum number of independent non-executive directors (**INEDs**). Under the Listing Rules (as defined below), there must be at least three INEDs representing at least one-third of the board. This is to avoid potential conflicts of interest and to ensure that the board can exercise its supervisory role properly. "Independence" means that the relevant director, other than his or her role as a director, must not have any material relationship with the company or its management, including:

- Other employment or consulting relationships with the company.
- Ownership or an executive role at a (significant) customer or supplier of the company.
- Family ties with senior members of company management.

The process of identifying and recruiting the right director candidates can take considerable time and effort, and should start as soon as a decision to conduct an IPO has been made. In addition to specialist search companies, the IPO's sponsors can often assist with introducing possible candidates to the company.

Board Committees. The applicable corporate governance regime may also require that various board committees be established prior to the IPO, if they do not exist already. These may include a remuneration committee, a

nomination committee and an audit committee. Depending on the industry in which the company operates, additional committees may be required or appropriate, including risk, investment, environmental or technology/R&D committees. The terms of reference and composition of these committees should be considered, and the company's legal advisers should work with the company and its other advisers to agree on their scope and content.

MOTIVATING EMPLOYEES

One of the many advantages of an IPO is that it enables efficient employee participation in the financial performance of the company. Most IPO candidates will therefore consider putting in place, effective as of the IPO date, long-term equity incentive plans for certain groups of senior employees. If properly structured, these plans align the interests of the company with its employees and serve as an important tool to recruit and retain top talent. Of course, these plans need to be structured to comply with applicable local laws in those jurisdictions where particular participating employees reside.

Employee equity incentive plans typically involve offerings of restricted shares that cannot be on-sold until the expiration of a (multi-year) restricted period — either for free or at a discount to the public offering price — or share options which can be exercised after listing (usually vested and exercisable in tranches) at an exercise price usually at a discount to the public offering price. In addition to existing employees, employee equity incentive plans are sometimes also extended to former and retired employees.

PRE-IPO INVESTMENTS

Pre-IPO investments play an important role during IPO preparation as they can provide capital to the company prior to listing and enhance market confidence of further institutional and public investors in investing in the company at listing.

In particular, pre-IPO investments have vital importance for companies with a weighted voting rights structure and biotech companies seeking for listing under Chapter 8A and Chapter 18A of the Listing Rules, respectively, as it is one of the listing requirements that such companies must have previously received meaningful third party investment from at least one

"sophisticated investor" at least six months before the date of the proposed listing (which must remain at listing). See "Special Considerations — Listing with a WVR Structure" and "Special Considerations — Listing of Biotech Companies" below.

DETERMINING THE APPROPRIATE OFFERING STRUCTURE

Many decisions about the offering, in particular its structure, can be, and typically are, taken relatively late in the IPO process when the issuer and the underwriters understand the then prevailing market conditions better. However, making an offering eligible for offers and sales pursuant to Rule 144A under the United States Securities Act of 1933, as amended (**US Securities Act**), at a later stage of the IPO process could result in significant delays and additional expenses. The question should therefore be answered at the outset of the IPO process if possible. See our discussion on "Listing in Hong Kong — Structure of the Offering — International Offering as Exempt Offering under the US Securities Law" below.

As regards the total offering size, that requires careful consideration of a number of factors, most of which are of a non-legal nature, including:

- The current and anticipated future funding needs of the company and plans to issue additional shares, including in connection with employee incentive plans or as potential acquisition currency for future merger or acquisition transactions.
- Any target proceeds from the IPO for the selling shareholders, if any.
- Any minimum offering size and public float imposed by applicable rules and regulations.
- The short and mid-term target/minimum ownership percentage of the selling shareholders/current owners of the company, following the IPO.

ENGAGING INVESTORS

One of the benefits of being a private company is that there is rarely any need to engage with any public outsiders and there are no public reporting obligations. The approach to investor relations will change once the company has formally announced its intention to go public, and certainly once the company's shares are listed and publicly traded on a stock exchange.

In particular, the company becomes subject to ongoing reporting obligations, requiring it to publish formal annual and interim reports and publicly announce material developments that may affect the price of the company's shares on a real-time basis. Any material misstatements or omissions in these reports or announcements, delays in publishing any required reports or delays in making required announcements, or inaccurate, unapproved or selective disclosure of material, non-public information may render the company in breach of the listing rules and securities laws and may expose the company and its directors to civil and criminal liability. Disclosure of information by unauthorised employees or even ad hoc statements by senior management in response to questions from investors, analysts or journalists – possibly even in a social context – can have a significant impact on the company's share price. These disclosures can also damage a company's reputation and expose both it and the individuals involved to potential civil and criminal liability for securities fraud, market abuse, insider trading or other offences.

The IPO candidate must begin to review the company's policies for corporate communications in the initial stages of the IPO process, establishing a formal investor relations programme and creating or updating a website suitable for a public company. Many companies also find it helpful to engage the services of a specialist public relations firm during and after the IPO process to assist the company with press releases, presentations, question and answer briefings, the creation of a dedicated investor relations website and arranging press interviews and coverage.

The need for effective communication with the company's investors and other stakeholders does not end on the date of the IPO, but many would argue it only begins. Strong communications can engage investors and keep them updated about the company's strategy and progress in executing its plans, as well as ensuring that they are not surprised by any unexpected developments. It is therefore important that, post-IPO, the company maintains an effective investor relations programme. This involves:

- Implementing best practices regarding disclosure policies and procedures.
- Establishing and maintaining close relationships with investors and the media.

- Organising investor roadshows, even in a non-deal context.
- Developing processes for earnings and key announcements and reports.

In the early days as a public company, an issuer is likely to consult more frequently with its legal advisers to determine what announcements are required, when they should be made and what they should contain. It is also likely to require enhanced assistance from its legal advisers and investor relations consultants in the preparation of the initial regulatory filings such as annual and interim reports.

Key Parties

The following discussion provides a brief overview of the various parties involved in an IPO.

LISTING APPLICANT

The listing applicant is the legal entity whose shares are offered to investors and subsequently listed and traded on the relevant stock exchange. It may appear convenient for the existing holding company to serve as the listing applicant, but there may be various factors that weigh against using the existing entity:

- It may not be possible to list the shares of the current entity on a foreign stock exchange without also listing on a local exchange.
- Using an entity incorporated outside the jurisdiction of the stock exchange upon which the shares will be listed may make it difficult for the issuer to be included in any indices – there are advantages of being eligible for indexation.
- Tax considerations may make it more tax efficient for shareholders to hold shares in an entity incorporated in another jurisdiction.
- The existing entity may be incorporated in a jurisdiction with a corporate law regime that is unfamiliar to investors, which could adversely impact interest in purchasing the shares.

A further consideration is to what extent, if any, the jurisdiction of incorporation will have an impact on the regulatory burden that will apply to the legislative and regulatory framework of the company. The company and its owners may therefore need to explore available options for a potential

pre-IPO reorganisation or re-domiciliation, with the support of their legal, tax and financial advisers. See also "Getting Ready for an IPO" above.

SELLING SHAREHOLDERS

Existing shareholders of a listing applicant may use the IPO as a liquidity event to sell some or all of their shareholding. If this is the case, these shareholders are commonly referred to as "selling shareholders".

Depending on the size of their shareholding, selling shareholders may be required to be parties to the underwriting agreement and be asked to give comfort to the underwriters on certain issues in the form of representations, warranties and indemnities. For those who retain shares in the listing applicant, they may be requested to enter lock-up agreements to prevent them disposing of more shares in the after-market.

MANAGEMENT OF THE LISTING APPLICANT

The listing applicant's management — particularly the CEO and the CFO — will be heavily involved in the IPO process. Their active participation in the process, particularly in the due diligence review, drafting and verification of the prospectus, preparation of the financial statements and various financial models, is a key determinant in ensuring that the IPO is successful and is executed in accordance with the stipulated timeline.

To manage the IPO process efficiently, many companies appoint an internal project manager or "point person" responsible for its overall coordination both from an internal perspective and in terms of dealing with the various external advisers involved. The person appointed to this role not only needs to be intimately familiar with the company, its business and personnel, but must also have sufficient authority to make decisions and get others to respond to requests.

AUDITORS/REPORTING ACCOUNTANT OF THE LISTING APPLICANT

The listing applicant's auditors/reporting accountant must be independent. In an IPO process, they are responsible for assisting the listing applicant in preparing its financial statements and any *pro forma* financial information required. They are also required to provide various comfort letters to the sponsors and underwriters.

SPONSORS AND UNDERWRITERS

In a Hong Kong IPO, the Listing Rules (as defined below) require a sponsor to be engaged by the listing applicant. The listing applicant may appoint more than one sponsor with at least one sponsor to be independent of it. The sponsor represents the listing applicant in coordinating and making the listing application with the HKEx. The sponsor is normally an investment bank with the requisite licence under the SFO (as defined below) and recognised by the HKEx. Usually, the sponsor also acts as the IPO global coordinator for the marketing and offering process of the IPO together with a syndicate of underwriters. See "The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing the A1 Listing Application" for more details about sponsors

The sponsors and underwriters play a central role before and following the IPO. Their role goes far beyond the basic agreement to sell shares on either a "firm commitment" or "reasonable endeavours" basis (see also "Key Documents – Underwriting Agreement"). Among other things, the sponsors (usually also the lead underwriters) are also responsible for and assist with:

- Conducting due diligence sessions with management and the auditors.
- Recommending a particular listing venue.
- Drafting the prospectus and other marketing materials (for example, investor presentations) to address queries that investors may have.
- Attending to queries the regulators may have about the listing applicant's listing application and the draft prospectus.
- Developing the "equity story" with the listing applicant's management and positioning the company in the market.
- Providing advice on market conditions and on the timing of the IPO
- Coordinating and organising roadshow meetings.
- Advising on the optimum allocation of shares.
- Recommending the offer price range.

Following completion of the IPO, the underwriters further assist in maintaining an orderly market in the newly listed shares, including by using "stabilisation" techniques.

The global coordinators responsible for overseeing the entire offering and for coordinating the activities of the other underwriters are sometimes called lead managers. Other investment banks with less prominent roles in the IPO process and a smaller economic stake in the IPO may be referred to as "co-managers". Practices and descriptions of roles can vary considerably depending on factors such as the size of the IPO, the specific nature of the offering and the involvement of a particular investment bank in different aspects or portions of the offering.

LEGAL ADVISERS

Separate legal advisers are appointed for each of the listing applicant and the sponsors and underwriters. Depending on the jurisdiction of incorporation of the issuer, the jurisdiction(s) at which the issuer conducts its business operation and proposed listing venue, there may also be separate local counsel to each of the issuer and the sponsors and underwriters.

The legal advisers assist their respective clients in the preparation of the prospectus, manage relationships with securities regulators and stock exchanges, draft and negotiate the underwriting agreement and ensure the smooth execution of the transaction. Although, any company of sufficient size to consider an IPO will previously have engaged external lawyers for general corporate and commercial matters, potential IPO candidates may often have to find new counsel with the relevant experience and expertise for advice on the IPO.

OTHER PARTIES

Other parties that will often be involved in an IPO may include, for example, a registrar to administer the issuer's share register following the IPO, send circulars to shareholders, count votes at shareholder meetings, deal with shareholder proxies and corporate representatives who attend meetings, arrange payment of dividends and deal with other corporate actions; and a printer experienced in the production of financial documents to help with the professional typesetting of the prospectus and the translation of the prospectus. There may also be other professional parties involved such as independent property valuers, internal control advisers, market research consultants, investors/public relations consultants and receiving banks.

Key Documents

An IPO typically requires the preparation of the following key documents:

PROSPECTUS

The prospectus is a disclosure document intended to provide potential investors with all material information necessary to make an informed decision whether or not to invest in the shares of the company.

THE PROSPECTUS CONTAINS:

- A description of the risks associated with an investment in the shares.
- A description of the history and reorganisation of the company.
- A description of the company's business, including strengths and strategies of the company, and of the industry and markets in which the company operates.
- A section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" (**MD&A**) or "Financial Information" providing an analysis of current trends and recent financial performance of the company.
- Historical financial statements.
- List of waivers from strict compliance with the Listing Rules.
- Biographies of officers and directors and information about their compensation.
- Information about any significant pending or threatened litigation.
- A list of material properties.
- A description of material agreements.
- Any other material information.

In addition to providing potential investors with information about the proposed offering, the prospectus can also protect the company and the underwriters from liability under applicable securities laws for alleged material misstatements or omissions in connection with the offer and sale of the shares.

Although there is no hard rule, the term "offering circular" is sometimes used instead of the term "prospectus" to indicate that the shares are being offered in private transactions that rely on exemptions under applicable

securities laws from the requirement to prepare a formal prospectus in countries other than the country where the shares are being listed. In practice, an international offering circular is usually prepared so it can be used for offers and sales to Qualified Institutional Buyer (**QIBs**) in the United States pursuant to Rule 144A.

General Form and Content

Irrespective of the specific statutory/disclosure regime applicable to a particular IPO, the company, its directors and officers, the underwriters and other parties involved in an offering must always ensure that the offering document contains:

- No material misstatements or omissions.
- All material information necessary to enable potential investors in the IPO to make an informed decision about whether or not to invest in the shares of the company.

Material misstatements or omissions in the offering documents expose the company, its officers and directors and the underwriters to potential liability under applicable anti-fraud laws in each country in which shares are being offered and sold in connection with the IPO.

In Hong Kong, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32 of the Laws of Hong Kong) (**CWUMPO**), the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (**SFO**) and the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (or the Rules Governing the Listing of Securities on GEM (for a GEM listing)) (**Listing Rules**) set out specific prospectus content requirements and impose an overriding "completeness" requirement. Those responsible or deemed responsible for a prospectus are potentially subject to civil and criminal liabilities if the prospectus is inaccurate, misleading or incomplete. Liability may be imposed not only on the listing applicant and its directors, but also on those who authorised the issue of the prospectus, such as the sponsor.

For listings on the HKEx, the Listing Rules require that a prospectus must, as an overriding principle, "contain particulars and information which, according to the particular nature of an applicant and the securities for

which listing is sought, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the applicant and of its profits and losses and of the rights of the securities". Before submitting the listing application, a sponsor must form a reasonable opinion that the information contained in the application proof prospectus is substantially complete, except matters that by nature can only be dealt with at a later date.

For an IPO marketed to investors in the United States (e.g., an offering only to QIBs in reliance on Rule 144A), the offering document must be drafted to meet the disclosure standards under the general US anti-fraud provision under Section 10(b) and Rule 10b-5 (**Rule 10b-5**) of the United States Securities Exchange Act of 1934 (**US Exchange Act**). In practice, this means that offering documents used in Rule 144A offerings are prepared to a standard that is substantially similar to that for an SEC-registered offering. See also "The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing A1 Listing Application – Prospectus Drafting".

Below is a general description of the key sections that must be included in a prospectus used for a listing on HKEx. For a Hong Kong IPO, the HKEx set outs in Guidance Letter HKEx-GL86-16 what information is expected to be included in different sections of a prospectus. Alongside these requirements, international best practices continue to evolve that closely mirror the requirements used in a Rule 144A offerings.

Risk Factors Section

This section must include a discussion of the most significant factors making an investment in the IPO speculative or risky. This discussion must be concise and organised logically. The risk factors should be described in order of importance and the section is often divided into subsections, such as:

- Risks related to the business of the issuer.
- Risks related to the industry in which the issuer operates.
- Risks related to the jurisdictions in which the business is located.
- Risks related to an investment in shares of the issuer.

Specific risk factors may include:

- The issuer's lack of an extensive operating history.

- Any lack of profitable operations in recent periods.
- Its current financial position.
- Prospects for success of its proposed business or new business lines.
- The ability to successfully implement the strategy described elsewhere in the prospectus.
- The lack of an established market for the shares.

The risk factors section has a dual purpose:

- To inform investors of any significant risks related to an investment in the shares of the issuer.
- To insulate the company, its directors and officers, the underwriters and any other participants from potential civil and criminal liability in the event of a decline in the price of the shares post-IPO due, directly or indirectly, to the occurrence of one or more of the risks disclosed.

If allegations of inadequate disclosure in the prospectus or allegations of securities fraud are made, the ability to point to an express and specific risk factor in the prospectus highlighting the possibility that the relevant adverse event or development might occur is a significant advantage. Key institutional and more sophisticated investors expect a comprehensive and robust risk factors section and may view it as a positive in terms of overall transparency.

Issuers should not simply present generic risks that could apply to any issuer or any offering, but need to explain how each particular risk affects the issuer or the shares being offered. Risk factors should also avoid including mitigating language (i.e., language that waters down the risk or serves to minimise its impact or likelihood) as much as possible. In other words, you should avoid qualifying language or explanations indicating that investors should not be overly concerned about a particular risk because it is already being somehow addressed or mitigated by the issuer, or because the likelihood of its actual occurrence is low.

For IPOs eligible for sale to investors in the United States, a short title that adequately summarises the risk needs to precede each risk factor. This is becoming standard for other international/cross-border offerings.

For different reasons, the issuer, the sponsors and underwriters, their

advisers and even regulators frequently pay a high level of attention to the risk factors section of the prospectus by. The apparently one-sided and unbalanced nature of the risk factors section may initially alarm the owners and management of an IPO candidate, in particular, who may be concerned that the negative overall tone of the section may convey an unfair and overly negative image of the company and its prospects. However, as discussed above, the risks disclosure serves as an insulator from potential liability and sophisticated investors are familiar with a comprehensive and robust disclosure. Other sections of the prospectus are intended, and better suited, to convey the potential benefits and prospects of the company and an investment in the IPO – such as the business section, which typically includes a separate "strengths and strategy" subsection, and the financial information or MD&A section. The company and its management will also have plenty of opportunities to sell the IPO to securities analysts and key investors in person, during analyst sessions and the investors' roadshow that the underwriters will organise for the IPO.

Business Section

This section provides information about the company's business operations, the products it makes, or the services it provides as well as factors that affect its business. It also provides information regarding the adequacy and suitability of the company's properties, plant and equipment and any plans for future increases or decreases in these items. Drafting the business section requires significant factual input from the listing applicant, including senior management, and can be time consuming.

Below is a list of key areas typically found in the business section:

- Business model (nature and major functions of the company's business segments, scale and contribution of each business segment)
- Strengths, strategies and future plans (including how the expansion plans, if any, will be implemented, time frame, capital expenditure requirements, and source of funding)
- Suppliers, raw materials and inventory (background of material suppliers, costs related to five largest suppliers, legality of the source of supply, etc.)
- Customers (background of major customers, revenue from five largest

customers, concentration risk and counterparty risk, if any)

- Sales and marketing (including pricing policy and rebates, if any)
- Products and services, and, if applicable, production process, subcontracting, product returns and warranty
- Employees
- Properties
- Insurance
- Intellectual property (detailed list of material trademarks, patents registered and pending registration, and any dispute or infringement of trademarks and patents)
- Licences, permits and approvals (that all material, requisite licences, permits and approvals for its operation have been obtained, and, with the support of legal opinion, whether there is any legal impediment to renewing the licences)
- Compliance matters (details of material impact non-compliances, any enhanced internal controls or any rectification actions and the views of directors and sponsor on the adequacy and effectiveness of such enhanced internal controls and company's suitability for listing)
- Litigation (details of any actual or threatened material claims or litigations and their impact on company's operations, financials and reputation)
- Risk management and internal control systems (including hedging strategy)
- Environmental and Social matters

The business section is a key opportunity for the issuer to present its "equity story" and explain its operations and business prospects to potential investors. The section generally includes a separate subsection describing the company's strengths and competitive advantages as well as management's strategy for capitalising on those strengths in pursuing future growth of the business. This "strengths & strategy" subsection frequently receives a very high level of attention and scrutiny by all participants, as it impacts on the core marketing message for the IPO. For this reason, the lead underwriter for the IPO, with input from the company's management as well as the relevant industry coverage team, may prepare the initial draft of the strengths & strategy subsection for review and comment by the company and its counsel.

US SEC INDUSTRY GUIDE DISCLOSURE

For 144A transactions, there are additional disclosure requirements for certain industries, which are found in the US SEC Industry Guides (**Industry Guides**). The Industry Guides provide specific disclosure requirements covering five industries: banking, oil and gas, real estate, insurance and mining. The Industry Guides are updated regularly and the current Industry Guides will expire on August 31, 2022.

An overview of the industry-specific disclosure requirements is set forth below:

- Guide 3 – Statistical Disclosure by Bank Holding Companies requires disclosure of analyses of interest earnings, investment and loan portfolios, loan loss experience, deposit types, returns on equity and assets, and short-term borrowings.
- Guide 4 – Prospectuses Relating to Interests in Oil and Gas Programs requires enhanced disclosure relating to the offering terms and participation in costs and revenues among investors and others, a 10-year financial summary of any drilling programs by the issuer and its associates, as well as any conflict of interest which may arise in operations of the program.
- Guide 5 – Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships requires a summary of the partnership and use of proceeds, compensation and fees to the general partners and affiliates, conflicts of interest, fiduciary responsibilities of the general partner, risk factors and the financial performance of any other real-estate investment programs sponsored by the general partner and its affiliates.

- Guide 6 – Disclosure Concerning Unpaid Claims and Claim Adjustment Expenses of Property-Casualty Insurance Underwriters requires disclosure of details of reserves and historical claim data if reserves for unpaid property-casualty claims and claim adjustment expenses of the issuer, its consolidated, its unconsolidated subsidiaries and its 50%-or-less-owned equity basis investees exceed 50% of the common stockholders' equity of the registrant and its other subsidiaries as of the beginning of the latest fiscal year.
- Guide 7 – Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations requires disclosure of information relating to each of the mines, plants, and other significant properties owned or operated (or presently intended to be owned or operated) by the issuer, including location and means of access to the property, brief description of the title, claim, or lease to the property, a history of previous operations, and a description the rock formations and mineralisation of existing or potential economic significance on the property.

The US SEC has been modernising industry-specific disclosures by codifying the Industry Guides as new subparts of Regulation S-K of the Securities Act (**Regulation S-K**). For example, as part of the 2008 initiative for oil and gas reporting modernisation, the US SEC rescinded Guide 2 for oil and gas reporting and replaced it with Item 1200 of Regulation S-K. In October 2018, the US SEC also adopted final rules to modernise mining disclosure rules by codifying Guide 7 as Item 1300 of Regulation S-K. In addition, the US SEC proposed rules to update Guide 3 in September 2019, which will codify Guide 3 as Item 1400 of Regulation S-K.

Financial Information Section

This section has long been a key part of an offering document. It is also referred to as the Management's Discussion and Analysis of Financial Condition and Results of Operations section, or "MD&A" for short, a term borrowed from the US SEC disclosure regime.

The purpose of the MD&A section is to provide readers with the information necessary to gain an understanding of a company's financial condition, changes in its financial condition and results of operations, with three principal objectives:

- To provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management.
- To enhance the overall financial disclosure and provide the context within which financial information should be analysed.
- To provide information about the quality of and potential variability of a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.

In other words, MD&A should be a discussion and analysis of a company's business as seen through the eyes of those who manage the business. It should not be a recitation of financial statements in narrative form or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides this important management perspective.

With regard to focus and content of the MD&A, companies should:

- Focus on material information and eliminate immaterial information that does not promote understanding of companies' financial condition, liquidity and capital resources, changes in financial condition and results of operations – both in the context of profit and loss and cash flows.
- Identify and discuss key performance indicators, including non-financial performance indicators, that the management uses to manage the business and that would be material to investors.
- Identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance.

- Provide not only disclosure of information responsive to the technical requirements for MD&A, but also an analysis that explains management's view of the implications and significance of that information and that satisfies the objectives of MD&A.

Potential investors should be able to read and understand the MD&A on a standalone basis, so the MD&A typically starts with an "Overview" that briefly outlines the company and its business.

This is followed by "key drivers/factors" that have affected the company's past performance and that management expects to affect the company's results of operations going forward. These key drivers may relate to the economy as a whole, the industry in which the issuer operates or to the specific issuer. They may include:

- Revenue drivers (such as cyclicality or seasonality of demand, competitive developments, loss of patent protection or the introductions of new products or services).
- Cost drivers (such as fluctuations in raw material prices or changes in labour costs).
- The impact of strategic initiatives (such as acquisitions, divestments or restructurings).
- External factors (such as exchange rate fluctuations).

The key drivers/factors described in the MD&A must be consistent with related discussions elsewhere in the offering document, in particular the risk factors section and the strengths & strategies sub-section described in the business section.

This is then followed by one of the most prominent (and often very time-consuming to produce) portions of the MD&A – a narrative, line-by-line comparison and discussion of the issuer's "results of operations" for the three most recent financial years plus any interim periods, seen through the eyes of management. Assuming the key drivers/factors subsection is well drafted, the explanations provided in this subsection for any significant changes in individual line items over the periods under review should match the key factors and not come as a surprise to the reader.

The issuer must also provide information about its liquidity and capital resources. To the extent material, this information should include:

- Historical information regarding sources of cash and capital expenditures.
- An evaluation of the amounts and certainty of cash flows.
- The existence and timing of commitments for capital expenditures and other known and reasonably likely cash requirements.
- A discussion and analysis of known trends and uncertainties.
- A description of expected changes in the mix and relative cost of capital resources.
- Indications of which balance sheet or income or cash flow items should be considered in assessing liquidity.
- A discussion of prospective information regarding company's sources of and needs for capital, except where otherwise clear from the discussion.
- A discussion and analysis of material covenants related to the outstanding debt (or covenants applicable to the company or third parties in respect of guarantees or other contingent obligations) may be required. There are at least two scenarios where this information should be included:
  - » A company that is or is reasonably likely to be in breach of these covenants must disclose material information about that breach and analyse the material impact, if any, on the company.
  - » A company with debt covenants that limit, or are reasonably likely to limit, its ability to undertake financing to a material extent must discuss the covenants in question and the consequences of the limitation to the company's financial condition and operating performance.

MD&A also includes a separate subsection on "off-balance sheet arrangements", followed a subsection containing information, in tabular form, about the maturity profile of the company's "contractual obligations". The "contractual obligations" subsection should cover long-term debt obligations, lease obligations, and purchase obligations.

The company may need to include a discussion of its "significant accounting policies/critical accounting estimates". Many estimates and assumptions involved in the application of generally accepted accounting principles (**GAAP**) have a material impact on a company's reported financial condition and operating performance and on the comparability of that information over different reporting periods. This subsection should address any material implications of uncertainties associated with the methods, assumptions and estimates underlying the company's critical accounting measurements. This disclosure should supplement, not simply duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements. The disclosure should provide greater insight into the quality and variability of information regarding financial condition and operating performance. It should address specifically why its accounting estimates or assumptions bear the risk of change (for example, because there is an uncertainty attached to the estimate or assumption, or it just may be difficult to measure or value).

Equally importantly, companies should address the questions that arise once critical accounting estimates or assumptions are identified by analysing to the extent material, such factors as:

- How they arrived at the estimate.
- How accurate the estimates/assumptions have been in the past.
- How much the estimates/assumptions have changed in the past.
- Whether the estimates/assumptions are reasonably likely to change in the future.

Since critical accounting estimates and assumptions are based on matters that are highly uncertain, this section should cover their specific sensitivity to change based on other outcomes that are reasonably likely to occur and would have a material effect.

Financial Statements

For listings on the HKEx, an accountants' report is required in support. This should cover a "track record" period (**TRP**) of the immediate past three financial years for a Main Board listing and two financial years for a GEM (Growth Enterprise Market) listing.

Natural resources and mineral companies, infrastructure companies or large-cap companies may apply to the HKEx and the Securities and Futures Commission (**SFC**) for a shorter TRP on a case-by-case basis. Reporting on an interim or stub period may be required, as the latest reporting period should not be more than six months old when the prospectus is published. The HKEx may refuse vetting if the necessary financial information is not included in the listing application.

For a listing application filed after the end of the most recent financial year of the listing applicant's TRP, so long as requisite information and confirmations are submitted at the same time, the HKEx will accept accountants' reports covering a period shorter than the TRP as illustrated below (assuming the TRP is from 1 January 2018 to 31 December 2020):

Timing of Submission of an Application Proof	Required Financial Information
Within two months after the end of the most recent financial year of the TRP *i.e., submitted between 1 January and 28 February 2021*	Two financial years* of the TRP and a stub period of at least nine months *i.e., financial information for 2018, 2019 and nine months ended 30 September 2020*
Between three and six months after the end of the most recent financial year of the TRP *i.e. submitted between 1 March and 30 June 2021*	Three financial years** of the TRP *i.e. financial information for 2018, 2019 and 2020*
Between seven and eight months after the end of the most recent financial year of the TRP *i.e. submitted between 1 July and 31 August 2021*	Three financial years** of the TRP and a stub period of at least 3 months *i.e. financial information for 2018, 2019, 2020 and three months ended 31 March 2021*
Between nine and 12 months after the end of the most recent financial year of the TRP *i.e. submitted between 1 September and 31 December 2021*	Three financial years** of the TRP and a stub period of at least six months *i.e. financial information for 2018, 2019, 2020 and six months ended 30 June 2021*

* One financial year of the TRP for biotech companies under Chapter 18A of the Main Board Listing Rules and GEM listing applicants

** Two financial years of the TRP for biotech companies under Chapter 18A of the Main Board Listing Rules and GEM listing applicants

The financial results must normally be drawn up in conformity with International Financial Reporting Standards (**IFRS**) or Hong Kong Financial Reporting Standards (**HKFRS**). PRC companies applying for a listing in Hong Kong may adopt PRC accounting standards to prepare their financial statements for IPOs, namely the China Accounting Standards for Business Enterprises (**CASBE**). The reporting accountants are also expected to provide letters of comfort or opinions on financial information in the prospectus and other listing application documents, for example, profit forecasts and pro forma financial information. Pre-listing reorganisation may have an impact on the presentation of historical financial statements.

ENGAGEMENT LETTER WITH THE INVESTMENT BANKS

During the initial phase of the IPO process, the sponsors (usually also the lead investment banks) and the company (and sometimes the key shareholders) frequently commence negotiations on an engagement letter. While practices vary in different markets, the engagement letter essentially sets out:

- The proposed role(s) of the investment banks.
- The fee structure pursuant to which the investment banks will be remunerated if the IPO closes.
- Whether the investment banks will underwrite the IPO and, if so, on what basis.
- The protection for the investment banks should they have proceedings brought against them in connection with the IPO process, typically in the form of a broad indemnity from the issuer.

Some of these provisions, once agreed in the engagement letter are also mirrored in the underwriting agreement signed later in the process, so it is important that the company is properly advised even at this early stage.

In addition, the investment banks will often seek to include in the engagement letter some form of exclusivity provision guaranteeing the lead investment banks' participation in the IPO during the exclusivity period at a specified minimum level or percentage of the overall economics for the underwriters. While the investment banks may have a very legitimate interest in asking for a certain level of exclusivity, the company may not

want to be fully tied to a particular investment bank or set of investment banks too early in the IPO process and may also have an interest in preserving at least some degree of flexibility over other aspects of the IPO process. This is particularly so given the investment banks will not and cannot commit to actually underwrite any shares at any price or guarantee a successful IPO in the engagement letter. The investment banks are only legally bound to participate in the IPO once all preparations have been completed (including a due diligence investigation), the offering document has been approved by the regulator and the investment banks and the issuer have entered into a formal underwriting agreement. The company should consult its legal counsel in connection with the negotiation of the engagement letter and consider the timing of its signing very carefully.

A sponsor must provide a copy of its engagement letter to the HKEx as soon as it is formally appointed and a listing application must not be submitted less than two months from the date of the sponsor's formal appointment.

UNDERWRITING AGREEMENT

The underwriting agreement is typically entered into at a very late stage in the offering process, usually after the marketing of the shares (that is, the roadshow) and when the underwriters and the company are prepared to price the offering (that is, commit to the exact number of shares to be sold and to a final price per share).

The underwriting agreement sets out the relationship and arrangements — in particular the allocation of potential liability arising from the offer and sale of securities — among the underwriters for the IPO, the issuer, and any selling shareholder(s). In the underwriting agreement, the issuer and any selling shareholders agree to issue (and, if applicable, sell) a specified number of shares to the investors procured by the underwriters. Subject to certain conditions, the investors procured by the underwriters agree to take up the agreed number of shares from the company and the selling shareholders at an agreed price at closing of the IPO (typically five to seven business days after the signing of the underwriting agreement).

The underwriting commitment given by the underwriters can take one of two forms:

- a "firm commitment" or "hard undertaking" to underwrite, in which the underwriters agree before the issue opens to take up a fixed amount of shares that are not subscribed/purchased by investors, or
- a "soft commitment" or "reasonable endeavours" obligation, where the underwriters are required to use reasonable endeavours to sell the shares, or where the underwriters have the option of invoking a *force majeure* clause to terminate the underwriting agreement in case any of the factors beyond their control stipulated in the clause occur that affect their ability to place the shares.

The underwriting agreement also includes numerous representations and warranties made by the issuer (and, in certain circumstances, certain directors) covering matters such as the company's business and the completeness and accuracy of the prospectus and other offering materials. One of the most important provisions from the perspective of the underwriters is an agreement by the issuer to indemnify the underwriters for any losses as a result of a breach of these representations and warranties, including any losses resulting from any material misstatements or omissions in the prospectus and other offering materials. The selling shareholders are also usually required to make at least some representations and warranties, for example, with regard to their capacity to enter into the underwriting agreement and title in the shares they are selling and to indemnify the underwriters.

The underwriters earn the fees for their services and the underwriting risk they take up by underwriting an IPO from a commission calculated by reference to a certain percentage of the fund raised by the listing applicant and the selling shareholders. This is known as the "underwriting commission". Note that in a "hard underwriting" commitment, the underwriter may be required to take up shares at a price for which there is no immediate market. For this reason, "hard underwriting" commitments are relatively rare.

Hong Kong Underwriting Agreement and International Underwriting Agreement. Under the Listing Rules, an offer for subscription must be fully underwritten. In a Hong Kong IPO with a Regulation S tranche (with or without a Rule 144A tranche), both a Hong Kong underwriting agreement and an international underwriting agreement are signed.

Under the Hong Kong underwriting agreement, the Hong Kong underwriters for the Hong Kong public offering agree to purchase the shares offered in the Hong Kong public offering from the issuer in the event of undersubscription. The obligations of the Hong Kong underwriters would usually be "several" (as opposed to joint obligations), meaning each underwriter agrees to take up a fixed proportion of the offer shares. The Hong Kong underwriters also enter into an agreement among themselves, setting out their respective rights and obligations in respect of the public offering. Customary provisions include:

- Allocation of the underwriting commissions among the Hong Kong underwriters.
- Authorising the global coordinator to act on behalf of the syndicate members.
- The mechanism used in the event of any default by a Hong Kong underwriter of its underwriting obligations.

Under the international underwriting agreement, the international underwriters agree to purchase the shares offered in the international offering from the issuer in the event that they are not be able to find enough investors to acquire the offer shares. The international offering is typically exempt from the registration requirements of the US securities laws in reliance on Rule 144A and Regulation S (see also "Listing in Hong Kong – Structure of the Offering" below). As a result, in addition to representations, warranties, and covenants similar to those contained in the Hong Kong underwriting agreement, the international underwriting agreement also contains US-specific representations, warranties, and covenants in respect of the applicable exemptions. In a Regulation S offering, the international underwriters customarily require the issuer to represent that the issuer, the selling shareholders or any of their affiliates, or any person acting on behalf of them have not offered to sell the offer shares by means of any "directed selling efforts." In a Rule 144A offering, the international underwriters customarily require the issuer to represent that the issuer, the selling shareholders or any of their affiliates, or any person acting on behalf of them have not offered to sell the shares by means of any "general solicitation" or "general advertising" in the United States, and that no securities of the same class are listed in the United States.

At the same time as entering into the international underwriting agreement, the underwriters for the international offering enter into an agreement among themselves. This agreement is similar to the agreement among Hong Kong underwriters and sets out the international underwriters' respective rights and obligations in respect of the international offering.

Greenshoe Option. An international underwriting agreement may include a "greenshoe (or "over-allotment") option" which allows the international underwriters in an IPO to "short sell" shares at the offer price: that is, to sell more shares to investors than the fixed number of shares initially agreed with the issuer (and the selling shareholders) in the international underwriting agreement. Inclusion of the greenshoe option is not a must but it can be a valuable tool that benefits the issuer, selling shareholders and the international underwriters by increasing the overall size of the IPO and facilitating stabilisation of the after-market trading price of the shares within the 30 days immediately following the close of the Hong Kong public offering. Their use, typically up to the 15 percent level, has become standard in IPOs.

LOCK-UP AGREEMENTS

The underwriters usually expect the listing applicant, any significant shareholders, and the directors, to sign a "lock-up" to address the concerns about a potential oversupply of shares and the resulting downward pressure on the trading price immediately following the IPO. In the case of the listing applicant, the lock-up restricts its ability to issue any new securities, other than possibly in connection with its employees equity incentive plans. In the case of shareholders and directors, a lock-up restricts the ability to sell their shares in the listing applicant for an agreed period after the IPO.

The lock-up period is typically 180 days but ranges between 90 and 365 days after the IPO. The need for and duration of any lock-up period for either the listing applicant or a particular shareholder are ultimately commercial points subject to negotiation with the underwriters, taking account of economic factors (including any anticipated future funding needs of the issuer as well as general market conditions). In some instances, lock-up agreements may contain a "waterfall provision" whereby a limited number of shares are released from the lock-up over a period of time. The lead underwriters can also typically waive the lock-up.

LEGAL OPINIONS AND DISCLOSURE LETTERS

Offerings made under Rule 144A and Regulation S are exempt from the registration requirements of the US Securities Act, but remain subject to the anti-fraud provisions of the US Securities Act and the US Exchange Act, including Rule 10b-5. The exercise of reasonable care, in the form of a carefully conducted due diligence investigation, can be an affirmative defence against potential claims. To that end, in a Hong Kong IPO with a Rule 144A offering, the lawyers of both the underwriters and the issuer are required to provide formal disclosure letters to the underwriters and the issuer. These are also called "negative assurance letters" or "Rule 10b-5 letters" (after the relevant liability provision).

Rule 10b-5 and the Due Diligence Defence. Rule 10b-5 prohibits any person, in connection with the purchase or sale of a security – whether public or private – from (i) making any untrue statement of a material fact, or, (ii) omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. If successful, private litigants in Rule 10b-5 claims may be awarded damages or may seek to rescind the transaction and obtain a refund of the original purchase price. In order to be successful in an action under Rule 10b-5, a plaintiff must show (among other things) that the defendant acted with "scienter," meaning an intent to defraud, deceive or manipulate. Generally, courts have found recklessness to satisfy the scienter requirement, but not simple negligence or even inexcusable negligence.

Under the US securities laws, the underwriters and certain other offering participants (such as the directors of the issuer) can avoid liability to investors in the shares for material misstatements or omissions in connection with the offering process if they can demonstrate that they conducted a reasonable investigation into the affairs of the issuer before selling the shares. This is known as the "due diligence defence". To support the due diligence defence, the underwriters, their lawyers and the lawyers of the issuer in a Rule 144A offering, conduct a thorough review of the affairs of the issuer. This is known as a "due diligence investigation" (see also "The Hong Kong IPO Process — Stage 1: Initial Preparation – Preparing A1 Listing Application — The Due Diligence Review" for more detail about due diligence).

"Rule 10b-5 Letters". To defend against possible claims that may be brought under Rule 10b-5, the lawyers of both the underwriters and the issuer are required to issue the "Rule 10-b5 letters" confirming that they have undertaken certain procedures and that, on that basis, have no reason to believe that an offering document contains an untrue statement of material fact, or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Other opinions. The lawyers are also required to provide certain legal opinions, for example, with regard to due organisation of the issuer, due authorisation of the offering of shares, no violation of any laws or agreements by which the issuer is bound or the availability of relevant exemptions from SEC-registration under the US securities laws (**no-registration opinion**).

COMFORT LETTERS

Comfort letters are typically provided by the listing applicant's auditors at or immediately prior to the signing of the underwriting agreement, representing another key component of the underwriter's due diligence defence. The comfort letter follows a standard format prescribed by the relevant accounting body in which the auditors typically:

- Reaffirm their independence and that they stand by their audit opinion for the listing applicant's audited financial statements included in the prospectus.
- Describe any review procedures they have performed on any internal management accounts for any "stub periods" between the date of the latest audited financial statements of the listing applicant and the date of the prospectus.
- Describe any additional "agreed upon procedures" they have conducted with regard to the listing applicant's financial information included in the prospectus.
- Provide "negative assurance" as to the absence of material changes with regard to certain specified financial line items, since the date of the most recent financial statements included in the prospectus.

To facilitate the comfort letter process, the lawyers for the underwriters prepare a "circle-up" of the prospectus for the auditors, circling those (financial) figures which they expect the auditors to cover and provide "comfort" on. The underwriters' counsel and the auditors then negotiate the exact coverage of the comfort letter as well as the level of comfort on particular figures. At the closing of the offering, the auditors provide a "bringdown" comfort letter to re-verify that the original comfort letter is still valid, as of the closing date.

In the context of a Hong Kong IPO with Rule 144A and Regulation S tranches, underwriters customarily request three comfort letters: one each for the Rule 144A tranche, the Regulation S tranche, and the Hong Kong public offering. The Rule 144A and Regulation S comfort letters are very similar and generally track a typical comfort letter delivered in connection with a registered securities offering in the United States. The Hong Kong comfort letter, on the other hand, may follow the US requirement or the relevant Hong Kong accounting standard, which is regarded as being more limited in the level of comfort provided.

Chapter 2

Listing in Hong Kong

The Regulatory Regime

HKEx. As a vibrant financial centre, Hong Kong is one of the world's leading venues for listings and IPOs. Companies from around the world raise capital on HKEx. It is a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, which regulates listings on the HKEx.

The HKEx operates two stock markets, the Main Board and the GEM. The Hang Seng Index is Hong Kong's benchmark stock index. Its constituent stocks are blue-chip companies listed on the Main Board. GEM is designed to accommodate small to mid-size companies seeking to access the capital market and is positioned as a stepping stone to the Main Board for smaller issuers.

Two-tier Regulatory Structure. Listing applications and IPOs in Hong Kong are regulated under a two-tier structure. The HKEx is responsible for regulating all listing-related matters, while the Securities and Futures Commission of Hong Kong (**SFC**) has a statutory duty to supervise and monitor the HKEx's performance of its listing-related functions and responsibilities.

The SFC requires that all listing applications be filed with the HKEx for vetting. Under a dual-filing system, the SFC also vets listing applications but the HKEx is ultimately responsible for granting listing approvals. The HKEx is also responsible for regulating post-listing compliance of listed companies with the Listing Rules, which specify listing requirements and ongoing obligations for listed companies.

The SFC is responsible for market regulation. It administers the CWUMPO (for example, on the issuance of securities and prospectus documents by companies), the SFO (for example, on market misconduct such as insider dealing and other securities-related offences) and The Codes on Takeovers and Mergers and Share Buy-backs (**Codes**) (for example, on fair dealing in takeovers). The Listing Rules, the CWUMPO, the SFO and the Codes combined are the key regulations covering listing applications, IPOs and post-listing activities.

Listing Considerations

SOLE LISTING VS. DUAL LISTING

While an issuer may choose Hong Kong as its only listing venue, an increasing number of multinational corporations and Mainland Chinese enterprises are seeking to list their securities on the HKEx in addition to their home listing. In other words, an international business already listed on an overseas stock exchange may apply to the HKEx for a Hong Kong listing to increase its profile, investor reach and liquidity for its securities — so long as it can meet the admission criteria (see Appendix 1 – HKEx Listing Criteria). Furthermore, Hong Kong-listed issuers can seek additional listings outside of Hong Kong. Issuers can also structure their IPOs to include multiple tranches to be launched in different markets. For example, IPOs by Mainland Chinese state-owned enterprises in recent years often include an "H" share tranche on the HKEx in addition to an "A" share tranche on the Shenzhen Stock Exchange or Shanghai Stock Exchange.

PRIMARY LISTING VS. SECONDARY LISTING

If a listing applicant chooses Hong Kong as its only listing venue, it is a primary listing. The HKEx, as opposed to any other overseas stock exchange, is its primary listing regulator.

In a dual listing, the Hong Kong listing may be either primary or secondary. To qualify for a secondary listing in Hong Kong, the issuer must maintain a primary listing on a recognised overseas stock exchange which the HKEx recognises as providing equivalent standards of shareholder protection. Otherwise, the choice is generally the listing applicant's. However, if the majority of trading in an a listing applicant's securities is likely to be on the HKEx, it is generally expected that the Hong Kong listing should be primary. The Listing Rules give greater latitude in a secondary listing in respect of listing requirements and ongoing obligations such as the contents and accounting standards of an issuer's financial reports. See also "Special Considerations - The New Concessionary Secondary Listing Regime" below.

HOLISTIC LISTING VS. LISTING OF REGIONAL SUBSIDIARIES

Subject to the relevant admission criteria, the listing applicant must make a

strategic decision regarding the scope of its proposed listing or IPO: whether it lists at the parent company level with the entire business included in the offering or only at a subsidiary level with a particular business or regional unit. Many factors affect this decision, such as market valuation, the strategic value of having a separately-listed subsidiary and the viability of the subsidiary as a standalone business. For example, purchases from or supplies to the parent company, if significant, may raise questions about the viability of the subsidiary as a standalone business. The issuer should also consider the disclosure and shareholders' approval requirements for connected, or related party, transactions between the parent company and the listed subsidiary (see Appendix 4 – Connected Transactions).

LISTING OF SHARES VS HONG KONG DEPOSITARY RECEIPTS

Before the introduction of Hong Kong depositary receipts (**HDRs**), issuers listing in Hong Kong could only do so by listing their ordinary shares and maintaining a share register in Hong Kong. With a view to diversifying the listing market, facilitating companies from jurisdictions which restrict movements of shares abroad or prohibit an overseas register or splitting of the register, the HDR programme was launched in July 2008. The depositary, usually a financial institution, takes delivery of shares and issues the depositary receipts (in a given ratio in respect of these shares) which will then be listed on HKEx. The depositary holds the shares for the benefit of the HDR holders, collects and converts dividends, and handles voting and entitlements on the HDR holder's behalf.

The listing requirements and the trading, clearing and settlement arrangements for HDRs are essentially the same as those for ordinary shares. However, since the listing of the first HDR in December 2010, their reception has yet been somewhat lacklustre.

IPO VS INTRODUCTION

A listing applicant may issue new shares, or its shareholders may sell existing shares, or a combination of both, by way of an IPO to achieve a broad shareholder base in Hong Kong and globally. However, an IPO is not the only avenue available to conduct a listing. If shares are already of such an amount and so widely held that sufficient marketability can be assumed

(for example, where the shares are already listed on an overseas stock exchange), a listing application can be made by way of introduction. In essence, the vetting process is the same in both cases but in a listing by way of introduction, no offering or other marketing arrangements are required.

Admission Criteria

The HKEx operates two listing boards – the Main Board and the GEM. The GEM is designed to accommodate small to mid-size companies seeking to access the capital market. The listing requirements for the Main Board are generally more stringent than those for the GEM. Below is a summary of the listing requirements for the two boards (for details, see Appendix 1 – HKEx Listing Criteria).

MAIN BOARD LISTING CRITERIA

The main listing criteria for the Main Board require:

- A trading record of at least three financial years.
- Management continuity for at least the three preceding years and ownership continuity and control for at least the most recent audited financial year up to the date of listing.
- One of the following three tests (**Financial Eligibility Tests**) must be satisfied:
    i. Profit test: profits of HK$20 million for the most recent year and an aggregate profit of at least HK$30 million for the previous two years.[1]
    ii. Market capitalisation/revenue/cash flow test: a market capitalisation of at least HK$2 billion, revenue of at least HK$500 million for the most recent audited financial year, and positive cash flow from operating activities of at least HK$100 million in the aggregate for

1 The HKEx published a consultation paper on this profit requirements on 27 November 2020, whereby it is proposing to increase the profit requirements by either 150 per cent or by 200 per cent. The two-month public comment period already ended on 1 February 2021. It is expected that in case any proposed amendments to the Listing Rules in this respect shall be adopted, the same will come into force on or after 1 July 2021.

the three preceding financial years.

iii. Market capitalisation/revenue test: market capitalisation of at least HK$4 billion and revenue of at least HK$500 million for the most recent audited financial year.

- A market capitalisation of at least HK$500 million.

The HKEx may grant exemptions for biotech companies, companies with weighted voting rights, mineral companies and newly formed project companies, from meeting some or all of the above requirements. See also "Special Consideration" below.

GEM LISTING CRITERIA

The main listing criteria for the GEM require:

- A trading record of at least two financial years.
- Management continuity for at least the two preceding years and ownership continuity and control for at least the most recent audited financial year up to the date of listing.
- Positive cash flow generated from operating activities of at least HK$30 million in the aggregate for the two preceding financial years.
- A market capitalisation of at least HK$150 million.

There are no profit requirements for the GEM listing.

For a more detailed comparison of the listing requirements for the Main Board and the GEM, see Appendix 1 – Listing Criteria.

Overseas Companies – Recognised or Approved Jurisdictions

The Listing Rules recognise only Hong Kong, the People's Republic of China, the Cayman Islands and Bermuda for the purpose of eligibility for listing (**Recognised Jurisdictions**). To facilitate the listing of overseas companies from elsewhere, the SFC and HKEx jointly issued the Joint Policy Statement Regarding the Listing of Overseas Companies in 2007, which was superseded by the Joint Statement in September 2013 and was further amended on 30 April 2018 (**Joint Policy Statement**).

THE JOINT POLICY STATEMENT

An overseas listing applicant (other than those incorporated in the Recognised Jurisdictions) must satisfy certain requirements which are categorised into five sections:

- Shareholder protection standards — the listing applicant is required to demonstrate how its domestic laws, rules and regulations, its constitutional documents and the arrangement it has adopted as a whole meet the "key shareholder protection standards" set out in the Joint Policy Statement (which include matters that require a super majority vote, individual members' approval is required to increase member's liability, appointment of auditors be approved by a majority of its members and other proceedings requirements at general meetings).
- Existence of regulatory cooperation arrangements between Hong Kong and the listing applicant's jurisdiction of incorporation and place of central management and control (if different).
- Acceptable accounting and auditing standards, independent auditors and other additional disclosure requirements.
- Practical and operational matters such as the ability to comply with Hong Kong's rules and regulations, cross-border clearing and settlement arrangements and taxation issues.
- Suitability requirements for a secondary listing applicant — which is required to demonstrate that its primary listing is, or will be, on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong but waivers may be granted if the applicant has a market capitalisation of more than US$400 million, a track record of at least five years and a good compliance record. See also "Special Considerations — The New Concessionary Secondary Listing Regime" below.

The Joint Policy Statement further explains how the Listing Rules apply to an overseas company that is primary listed, dual-primary listed or secondary listed on the HKEx. It also includes guidance on the granting of waivers by HKEx.

ACCEPTABLE JURISDICTIONS

As at March 2021, the HKEx has, based on the guidance set out in the Joint Policy Statement, approved, in principle, 28 jurisdictions acceptable as an issuer's place of incorporation (**Acceptable Jurisdictions**) and has published for each jurisdiction a corresponding Country Guide: Austria, Australia, Brazil, British Virgin Islands, Canada (Alberta), Canada (British Columbia), Canada (Ontario), Cyprus, England & Wales, France, Germany, Guernsey, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Republic of Korea, Labuan, Luxembourg, Netherlands, Russia, Singapore, United States of America (California), United States of America (Delaware) and United States of America (Nevada).

Where the listing applicant is incorporated in an Acceptable Jurisdiction and adopts the arrangements set out in the Country Guide, it is not required to provide a detailed explanation of how it meets the key shareholder protection standards. The HKEx maintains at its website a List of Acceptable Jurisdictions: https://www.hkex.com.hk/Listing/Rules-and-Guidance/Listing-of-Overseas-Companies/List-of-Acceptable-Overseas-Jurisdictions?sc_lang=en.

Group Reorganisation and Pre-IPO Investments

GROUP REORGANISATION

There are different reasons for a pre-listing reorganisation. Certain assets may be divested to the parent company or to a third party before listing for financial listing suitability or other reasons. At the same time the listing applicant may acquire certain assets prior to listing. The existing corporate structure, inter-company debt positions, related-party transactions and employee benefits may need to be streamlined, eliminated or otherwise restructured for tax, accounting or other reasons. See "Getting Ready for an IPO" above.

PRE-IPO INVESTMENTS

Pre-IPO investments are investments in companies prior to listing which can be in various forms, such as ordinary shares, preference shares or

convertible instruments. Unless there are very exceptional circumstances, the HKEx generally requires pre-IPO investments to be completed either [(a) at least 28 clear days before the date of the first submission of the listing applicant's first listing application (**First Filing**) and the relevant pre-IPO investor remains as a shareholder at the First Filing; or (b) at least 120 clear days prior to the first day of trading of the listing applicant's shares. Pre-IPO investments are considered completed when the funds for the underlying shares are irrevocably settled and received by the listing applicant.

As part of the listing application vetting, the HKEx will review the terms of the pre-IPO investments based on the guiding principle that the issue and marketing of securities is conducted in a fair and orderly manner and that all holders of listed securities are treated fairly and equally. As a result of the review, a modification of the terms of the pre-IPO investment may be required. This may lead to a possible delay of no less than 120 days in the IPO process, so the issuer should consider very carefully the arranging of a pre-IPO investment.

GENERAL PRINCIPLES: FAIR AND EQUAL

There is no bright-line test under the Listing Rules as to what is permissible or prohibited in relation to pre-IPO investments. The Listing Rules, as noted above, require that all investors in a public offering should be treated fairly and equally and that the process should be conducted in a fair and orderly manner. In other words, any special rights offered to pre-IPO investors, which do not extend to all other shareholders are generally not be permitted to survive after listing. This may yet inhibit pre-IPO financing activities, which are vital in today's IPO market.

To help clarify the HKEx's treatment of pre-IPO investments and clearly set out special rights that must be terminated at or before listing or may survive listing, HKEx issued three Guidance Letters, HKEx-GL29-12 (updated in March 2017), HKEx-GL43-12 (updated in July 2013 and March 2017) and HKEx-GL44-12 (updated in March 2017).

SPECIAL RIGHTS ATTACHED TO PRE-IPO INVESTMENTS

Below are examples of some common special rights and HKEx's guidance on whether they are permitted to survive. Treatment of other specific rights will depend on the facts and circumstance of each listing application. Applicants should discuss with advisers for an early consultation with the HKEx.

Type of rights	Must terminate upon listing	May survive listing
Price Adjustment	Terms which adjust the purchase price based on a discount to the IPO price or discount to the market capitalisation of the shares must terminate.	Terms that provide a fixed rate of return (which effectively reduce the price per share) and settled by a guaranteed shareholder may survive provided that they are not based on a discount to the IPO price or market capitalisation.
Divestment Rights	Any Divestment Rights (including put options, redemption or repurchase rights granted by the applicant/controlling shareholder to the pre-IPO investor or right (e.g. call options) permitting the applicant/controlling shareholder to repurchase shares of the pre-IPO investor) must be terminated before the First Filing but a Divestment Right may exist on or after the First Filing if it is only exercisable when listing does not take place and will terminate upon listing.	None.
Director nomination/ appointment rights	Any such right granted to pre-IPO investors by the listing applicant must terminate but the director so appointed need not resign at listing.	Agreement among the shareholders to nominate and/or vote for certain candidates as directors are generally not subject to pre-IPO investments restriction.
Other nomination rights (e.g., senior management)	Not applicable.	May survive if all such appointments are subject to board's decision provided the board is not contractually obligated to approve the nominations

Type of rights	Must terminate upon listing	May survive listing
Veto rights	Any contractual right to veto the applicant's major corporate actions (e.g., petition for winding-up, change in business, amalgamation or merger with any other legal entity, etc.) must terminate.	None.
Anti-dilution rights	Must terminate.	Exercise of anti-dilution rights in connection with IPO is permissible if subscribed for at IPO price and full disclosure is made.
Financial compensation	Any such compensation to be settled by the listing applicant or linked to the market price or capitalisation of the shares must terminate.	Any such compensation settled by a shareholder and is not linked to the market price or capitalisation of the shares may survive.
Any right that requires the prior consent of the pre-IPO investor for certain corporate actions	Examples of actions that require prior consent include: declaration of dividend, disposal of a substantial part of business, change in executive directors, and amendment to constitutional documents; and such rights must terminate.	None.
Exclusivity rights and no more favourable terms	Any restriction not to issue securities to direct competitor of the pre-IPO investor or other investors on terms more favourable than those offered to the pre-IPO investor must terminate.	May survive if such rights are modified to include an explicit "fiduciary out" clause so that directors are allowed to ignore the terms if complying with the term would constitute a breach of their fiduciary duties to act in the best interest of the company and its shareholders as a whole.

PRE-IPO INVESTMENTS IN THE FORM OF CONVERTIBLE INSTRUMENTS

Set out below is a summary of HKEx's current practices in dealing with pre-IPO investments in the form of convertible instruments (**CBs**) including

convertible or exchangeable bonds, notes or loans and convertible preference shares:

- The guidance relating to special rights attached to pre-IPO share investments discussed above will apply to all special rights attached to CBs.
- The conversion price for the CBs should be at a fixed dollar amount or at the IPO price.
- Any conversion price reset mechanism should be removed.
- Partial conversion of CBs is only allowed if all special rights are terminated after listing.
- Early redemption is allowed if at a price which will enable the investors to receive a fixed internal rate of return on the principal amount of the CBs being redeemed.
- Negative pledges restricting the listing applicant from certain corporate actions such as creating additional lien, encumbrance or security interest on its assets and revenues, or paying dividends without prior consent of the pre-IPO investor should be removed UNLESS the sponsor confirms that the negative pledges are not egregious, and do not contravene the fairness principle in the Listing Rules.
- Given the complexity of CBs and their terms, the "Financial Information" and "Risk Factors" sections of the prospectus should disclose additional information to explain the impact of the CBs on the listing applicant.

PUBLIC FLOAT CONSIDERATION

Shares held by pre-IPO investors are normally subject to a lock-up period of six months or more, imposed by the listing applicant. These shares can usually be counted towards the public float. However, if the number of shares held by a pre-IPO investor post-listing is 10 percent or more of the total issued shares of the listed issuer, or if a pre-IPO investor is "influenced" by connected persons (for example, taking directions or financial subsidies from connected persons), these shares may not be counted as part of the public float. If a pre-IPO investor holds a stake of 10 percent or more, it is considered a connected person of the listing applicant and any transactions with such investor must comply with Chapter 14A of the Listing Rules after listing (see Appendix 4 – Connected Transactions).

Structure of the Offering

HONG KONG PUBLIC OFFERING AND INTERNATIONAL OFFERING

A typical Main Board IPO in Hong Kong consists of two tranches of offering: (i) a Hong Kong public offering tranche – available to retail investors in Hong Kong; and (ii) an international offering or "placing" tranche available to institutional investors. Generally, 10 percent of the total offer of shares is initially allocated to the Hong Kong public offering tranche, with the remaining 90 percent initially allocated to the international offering tranche. Shares initially allocated to the international offering tranche are clawed back to the Hong Kong public offering tranche according to a prescribed scale if the Hong Kong public offering is significantly over-subscribed (see also "The Hong Kong IPO Process – Stage 3: Marketing and Offering – Getting Ready for the IPO – Allocation and Settlement").

In addition, the listing applicant, or sometimes the selling shareholders, may grant an over-allotment option to the underwriters, offering additional shares representing not more than 15 percent of the offer shares initially offered to cover over-allocations in the international offering tranche (see also "Key Documents – The Underwriting Agreement – Greenshoe Option").

INTERNATIONAL OFFERING AS EXEMPT OFFERING UNDER THE US SECURITIES LAW

To maximise the offer price and the potential offering size, it may be advantageous to offer shares of the IPO to the broadest possible investor base. Generally, issuers conducting a Main Board IPO offer their shares to institutional and other investors outside Hong Kong in reliance on one or more exemptions from the registration requirement under the US Securities Act, without triggering the ongoing obligations associated with a US public offering and US listing. In particular, these IPOs are marketed:

- In the United States exclusively to QIBs in reliance on Rule 144A under the US Securities Act.
- Outside the United States in reliance on Regulation S under the US Securities Act.

Rule 144A

Rule 144A provides a safe harbour that permits re-sales of securities, including re-sales by the underwriters in a securities offering, only to QIBs in the United States, which include various enumerated categories of sophisticated institutional investors with at least US$100 million of securities of non-affiliates under management and SEC-registered broker-dealers owning and investing at least US$10 million in securities of non-affiliates. To qualify, the relevant securities must not be:

- Of the same class as securities listed on a US exchange or quoted on a US automated inter-dealer quotation system.
- Convertible or exchangeable into listed or quoted securities with an effective premium of less than 10 percent.
- Issued by an open-end investment company.

However, holders of the relevant securities and prospective purchasers designated by the holders must have the right to obtain from the issuer certain "reasonably current" information about the issuer. This is because re-sales of securities pursuant to Rule 144A, like any other offers and sales of securities in the United States, are fully subject to the liability/anti-fraud provisions under the US securities laws, including Rule 10b-5 under the US Exchange Act. For this reason it is market practice to provide disclosure in connection with a Rule 144A offering that is substantially similar to the disclosure required for an SEC-registered offering, both in terms of quality and scope.

Regulation S

Rule 901 of Regulation S contains a general statement of the applicability of the registration requirements of the Securities Act. It clarifies that any offer, offer to sell, sale, or offer to buy that occurs "within the United States" is subject to the registration requirements of Section 5 of the Securities Act, while any offer or sale that occurs "outside the United States" is not subject to Section 5. The determination whether or not a transaction occurs "outside the United States" is based on the facts and circumstances of each case.

Helpfully, Regulation S also contains a number of more specific "safe harbour" provisions, including most notably the safe harbour provided by

Rule 903 of Regulation S. The effect of Rule 903 is that an offer or sale of a security is deemed to occur "outside the United States" if:

- The offer or sale are made in "offshore transactions"; and
- No "directed selling efforts" are made in the United States by the issuer, the underwriters, any other distributor, any of their respective affiliates, or any person acting on their behalf.

"Directed selling efforts" efforts means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on Regulation S. The US securities lawyers involved in an offering must analyse any relevant activity or communication in terms of its audience, timing and content as well as in light of both the various exceptions included in the definition of "directed selling efforts" and relevant SEC staff interpretative guidance.

The requirements that offers or sales are made in "offshore transactions" and not involve any "directed selling efforts" apply to any offering intended to fall within one of the safe harbours provided by Regulation S. However, in order to qualify for a given safe harbour, additional requirements may also have to be met, for example, the implementation of additional offering restrictions and the imposition of a "distribution compliance period". These requirements vary depending principally on the status of the issuer. They are generally least restrictive when it is least likely that securities offered abroad will flow in to the US market (Category 1). They are most restrictive when adequate information about the issuer is not publicly available in the United States there sufficient market interest (known as "substantial US market interest" or "SUSMI") in the relevant securities to suggest that offerings of the issuer's securities outside the United States may not come to rest abroad (Category 3). When adequate information about the issuer is publicly available in the United States (Category 2), the concerns about securities flowing into the US market are reduced and the restrictions fall between these two extremes.

A Rule 144A offering will involve additional costs because of required due diligence investigations, more stringent disclosure requirements, and offers and sales to US investors carrying a potentially higher liability risk for possible misstatements or omissions in the prospectus. Despite this, the

United States continues to remain the largest and most liquid capital market globally and has remained open for business throughout most of the recent global financial crisis. The most significant IPOs by Asian issuers on the HKEx in recent years have involved offers and sales both outside the United States in reliance on Regulation S and within the United States to QIBs pursuant to Rule 144A.

LIABILITY ON DISCLOSURE

Rule 144A and Regulation S do not provide an exemption from the anti-fraud provisions of the US securities laws, in particular the broad anti-fraud provisions of Section 10(b) and Rule 10b-5 under the US Exchange Act. Under Rule 10b-5, the issuer, its directors, its underwriters and others may potentially be liable to US investors if the offering materials contain any untrue statement of a material fact or omit material facts necessary to make the statements that are made in the offering materials not misleading. However, heightened underwriter due diligence may help establish a defence against potential claims under Rule 10b-5. For a discussion of Rule 10b-5 in the context of the due diligence process, see "The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing A1 Listing Application – The Due Diligence Review" below.

Special Consideration

The HKEx announced on 24 April 2018 the addition of three new chapters to the Listing Rules to facilitate the listing of high growth companies from emerging and innovative sectors on the Main Board of the HKEx. The new chapters, which took effect on 30 April 2018, are:

- Chapter 8A on Weighted Voting Rights (**WVR**).
- Chapter 18A on biotech companies.
- Chapter 19C on the New Concessionary Secondary Listing Route.

LISTING WITH A WVR STRUCTURE

A listing applicant with a WVR structure seeking a listing under Chapter 8A of the Listing Rules should be an "innovative company" meeting the following criteria:

- A market capitalisation of not less than HK$10 billion at the time of listing.
- Revenue of not less than HK$1 billion in its most recent financial year (not applicable if market capitalisation reaches HK$40 billion).
- A meaningful investment (which must remain at IPO) from at least one sophisticated investor, who will also be required to retain 50% of its investment for six months post-IPO.

According to HKEx Guidance Letter HKEX-GL93-18 (published in April 2018), an "innovative company" is expected to possess more than one of the following characteristics:

- The success of the company is attributable to the application of new technologies, innovations and/or a new business model.
- Research and development (**R&D**) is a significant contributor of its expected value and constitutes a major activity and expense.
- It has unique features or intellectual property that has contributed to its success.
- It has an outsized market capitalisation/intangible asset value relative to its tangible asset value.

The WVR structure must be share-based (i.e., attached to a specific class (or classes) of shares) and save for enhanced voting power, the rights attached to WVR shares in all other respects must be the same as ordinary shares. However, a non-share-based WVR structure (e.g., board control mechanism) or a non-compliant share-based WVR structure may still be allowed to list on the HKEx if it is already listed on a Qualifying Exchange with a good record of compliance for at least two years and seeking a secondary listing under Chapter 19C of the Listing Rules. See also "Special Considerations — The New Concessionary Secondary Listing Regime" below.

Each WVR beneficiary must be an individual who has been materially responsible for the growth of the business, has an active executive role within the business and is a director at the time of listing. Such WVR beneficiary may, for estate and/or tax planning purposes, choose to hold WVR shares through a limited partnership, trust, private company or other vehicle.

The restrictions on WVR shares are as follows:

- Voting power: no more than 10 times the voting power of ordinary shares.

- WVR shares in issue: at least 10 percent of the total issued share capital at listing.
- Further issue: no increase in the proportion of the WVR shares or change in the terms after listing.
- Lapse of rights: WVR will lapse upon transfer of WVR shares, or if the WVR beneficiary dies, ceases to be a director, or is deemed to be incapacitated by HKEx or no longer meets directors' requirements. When none of the WVR beneficiaries have beneficial ownership of the WVR shares, the whole WVR structure ceases.

For non-WVR shares, the holders must be entitled to cast at least 10 percent of the votes that are eligible to be cast on resolutions at any general meeting and would thus be able to convene an extraordinary general meeting and add resolutions to the meeting agenda.

For a listing applicant with a WVR structure, the additional corporate governance requirements are:

- Voting: the following matters must be resolved by voting on a one vote per share basis:
  - » changes to constitutional documents;
  - » variation of rights attached to any class of shares;
  - » appointment or removal of an INED;
  - » appointment or removal of auditors; and
  - » voluntary winding-up.
- Others: establish a nomination committee, a corporate governance committee (comprising entirely of INEDs to oversee and confirm compliance with the WVR rules) and appoint a compliance adviser on a permanent basis.

LISTING OF BIOTECH COMPANIES

A pre-revenue listing applicant primarily engaged in the R&D, application and commercialisation of biotech products, processes or technologies (**Biotech Products**) is eligible to apply for a listing on the HKEx under Chapter 18A of the Listing Rules. "Biotech" is defined as the application of science and technology to produce commercial products with a medical or other biological application.

According to HKEx Guidance Letter HKEX-GL92-18 (published in April 2018 and updated in October 2019 and April 2020), a pre-revenue biotech company that does not meet any of the three Financial Eligibility Tests under the Listing Rules is eligible to list on the HKEx, if it can demonstrate the following features:

- It must have developed at least one "core product" (a "regulated product" that, alone or together with other "regulated products," forms the basis of a listing application) beyond the concept stage. The HKEx would consider a core product to have been developed beyond the concept stage if it has met the developmental milestones specified for the relevant type of product.
- It must have been primarily engaged in R&D for the purposes of developing its core product(s).
- It must have been engaged with the R&D of its core product(s) for a minimum of 12 months prior to listing and, (i) in the case of a core product which is in-licensed or acquired from third parties, the listing applicant must be able to demonstrate the R&D progress since the in-licensing/acquisition; and (ii) in the case of a core product which has been commercialised in a given market for specified indication(s) and the listing applicant intends to apply a portion of the listing proceeds to, for example, (1) expand the indications of the commercialised core product, or (2) launch it in another market, the HKEx would expect further R&D expended on the core product in connection with the clinical trials required by the competent authority to either bring the core product for (1) a new indication; or (2) commercialisation in a new regulated market.
- It must have as its primary reason for listing the raising of finance for its R&D to bring its core product(s) to commercialisation. For a listing applicant that develops medical devices which have a short development cycle, the HKEx may take into account the listing applicant's business plan and development stage of the pipeline products such that it may allocate a portion of listing proceeds to, for example, set up production facilities that will be primarily used for the manufacturing of its core product(s) to bring it to commercialisation, and establish sales, marketing and medical teams to commercialise its core product(s).

- It must have registered patent(s), patent application(s) and/or intellectual property in relation to its core product(s).
- If the listing applicant is engaged in the R&D of pharmaceutical (small molecule drugs) products or biologic products, it must demonstrate that it has a pipeline of those potential products.
- It must have previously received meaningful third-party investment (being more than just a token investment) from at least one "sophisticated investor" at least six months before the date of the proposed listing (which must remain at IPO). This factor is intended to demonstrate that a reasonable degree of market acceptance exists for the listing applicant's R&D and Biotech Product. Where the listing applicant is a spin-off from a parent company, the HKEx may not require compliance with this factor if the listing applicant is able to otherwise demonstrate to the HKEx's satisfaction that a reasonable degree of market acceptance exists for its R&D and Biotech Product (for example, in the form of collaboration with other established R&D companies).

The HKEx will assess whether an investor is a "sophisticated investor" on a case by case basis by reference to factors such as net assets or assets under management, relevant investment experience, and the investor's knowledge and expertise in the relevant field. For this purpose, the HKEx will generally consider the following as examples, for illustrative purposes only, of types of a sophisticated investor:

- A dedicated healthcare or Biotech fund or an established fund with a division/department that specialises or focuses on investments in the biopharmaceutical sector.
- A major pharmaceutical/healthcare company or its venture capital fund.
- An investor, investment fund or financial institution with minimum assets under management of HK$1 billion.

The HKEx will assess whether a third-party investment is a "meaningful investment" in the circumstances on a case-by-case basis by reference to the nature of the investment, the amount invested, the size of the stake taken up and the timing of the investment. As an indicative benchmark the following investment amount will generally be considered as a meaningful investment:

- For a listing applicant with a market capitalisation between HK$1.5 billion and HK$3 billion, an investment of not less than 5 percent of the issued share capital of the listing applicant at the time of listing.
- For a listing applicant with a market capitalisation between HK$3 billion and HK$8 billion, an investment of not less than 3 percent of the issued share capital of the listing applicant at the time of listing.
- For a listing applicant with a market capitalisation of more than HK$8 billion, an investment of not less than 1 percent of the issued share capital of the listing applicant at the time of listing.

A "regulated product" is a Biotech Product that is required by applicable laws, rules or regulations to be evaluated and approved by the US Food and Drug Administration (**FDA**), China Food and Drug Administration (**CFDA**), European Medicines Agency (**EMA**) or others (on case-by-case basis), each a "competent authority" based on data derived from clinical trials (i.e., on human subjects) before it can be marketed and sold in the market regulated by that competent authority. The HKEx will consider the following to demonstrate that a regulated product has developed beyond the concept stage:

- Pharmaceutical (small molecule drugs): In the case of a core product that is a new pharmaceutical (small molecule drug) product, the listing applicant must demonstrate that it has completed Phase I clinical trials and that the relevant competent authority has no objection for it to commence Phase II (or later) clinical trials. In the case of a core product that is a pharmaceutical (small molecule drug) product which is based on previously approved products (for example, the 505(b)(2) application process of the FDA in the United States), the listing applicant must demonstrate that it has successfully completed at least one clinical trial conducted on human subjects, and the relevant competent authority has no objection for it to commence Phase II (or later) clinical trials. For an in-licensed or acquired core product, the HKEx expects the listing applicant to complete at least one clinical trial regulated by the relevant competent authority on human subjects since the in-licensing or acquisition. If the listing applicant has not completed at least one clinical trial for the in-licensed or acquired core product, the HKEx will evaluate why no clinical trial has been completed and whether substantive R&D

work and process(es) equivalent to the completion of one clinical trial on human subjects have been performed by the listing applicant. The HKEx will not consider any administrative process as substantive R&D work and process(es).

- Biologics: In the case of a core product that is a new biologic product, the listing applicant must demonstrate that it has completed Phase I clinical trials and the relevant competent authority has no objection for it to commence Phase II (or later) clinical trials. In the case of a core product that is a biosimilar, the listing applicant must demonstrate that it has completed at least one clinical trial conducted on human subjects, and the relevant competent authority has no objection to it commencing Phase II (or later) clinical trials to demonstrate bio-equivalency. For an in-licensed or acquired core product, the HKEx has the same expectation as pharmaceutical (small molecule drugs) set out above.
- Medical devices (including diagnostics): In the case of a core product that is a medical device (which includes diagnostic devices), the listing applicant must demonstrate that: (a) the product is categorised as Class II medical device (under the classification criteria of the relevant competent authority) or above; (b) it has completed at least one clinical trial on human subjects (which will form a key part of the application required by the competent authority or the authorised institution); and either the competent authority or the authorised institution has endorsed or not expressed objection for the listing applicant to proceed to further clinical trials or the competent authority or the authorised institution has no objection to the listing applicant commencing sales of the device.
- Other Biotech Products: The HKEx will consider Biotech Products which do not fall into the categories set out above on a case-by-case basis to determine if a listing applicant has demonstrated that the relevant Biotech Product has been developed beyond the concept stage by reference to, among other things, the factors described above and whether there is an appropriate framework or objective indicators for investors to make an informed investment decision regarding the listing applicant.

Given the likely significant funding needs of Biotech companies and the importance of existing shareholders in meeting the funding needs of these Biotech companies, the HKEx permits existing shareholders to participate

in the IPO of a Biotech company provided that the listing applicant complies with the public float requirement under the Listing Rules and that HK$375 million-worth of the public float is ring-fenced, but cornerstone investors and existing shareholders' subscriptions can count for the remainder. A listing applicant should have a market capitalisation of not less than HK$1.5 billion at the time of listing.

Biotech companies applying for a listing under Chapter 18A of the Listing Rules with an accountants' report covering two financial years are reminded that they must apply for a certificate of exemption from the relevant disclosure requirements under the Third Schedule of the CWUMPO.

THE NEW CONCESSIONARY SECONDARY LISTING REGIME

A listing applicant seeking a secondary listing under the new regime should be:

- An "innovative company".
- Primary listing on the New York Stock Exchange, the Nasdaq Stock Market or the Main Market of the London Stock Exchange Premium Listing, each being a "Qualifying Exchange", with a good record of compliance for at least two full financial years.
- A market capitalisation of at least HK$10 billion at the time of secondary listing in Hong Kong.

According to HKEx Guidance Letter HKEX-GL94-18 (published in April 2018), an "innovative company" is expected to possess more than one of the following characteristics:

- Success of the company is attributable to the application of new technologies, innovations and/or a new business model.
- R&D is a significant contributor of its expected value and constitutes a major activity and expense.
- It has unique features or intellectual property contributable to its success.
- It has an outsized market capitalisation/intangible asset value relative to its tangible asset value.

A listing applicant with a "centre of gravity" in Greater China and/or with a

WVR structure will be required to have a minimum revenue of HK$1 billion in its most recent audited financial year if its market capitalisation is less than HK$40 billion. This is important to qualifying issuers with a "centre of gravity" in Greater China as they were not eligible for a secondary listing before this new regime. This new regime is in particularly important to those US-listed Chinese companies which are considering returning to Hong Kong for listing.

Only issuers listed on a Qualifying Exchange before 15 December 2017 (**Cut-off Date**) (the date on which HKEx published the New Board Concept Paper Conclusions in which the new secondary listing concessionary route was announced), whose centre of gravity is in Greater China (**Grandfathered Greater China Issuers**), will enjoy the concessions in connection with the following:

- Equivalence requirement: the requirements in respect of the issuer's constitutional document under the Listing Rules will not apply. In other words, it is not mandatory for Grandfathered Greater China Issuers to amend constitutional documents to meet Hong Kong's key shareholder protection standards.
- VIE structures: Grandfathered Greater China Issuers will be able to secondary list with their existing variable interest entity (**VIE**) structures in place subject to the provision of a PRC legal opinion (that their VIE structures comply with the relevant PRC laws, rules and regulations) and additional disclosure.
- WVR safeguards: Grandfathered Greater China Issuers will be able to have a secondary listing with their existing WVR structures and will not have to comply with the ongoing WVR safeguards under Chapter 8A (such as the restriction not to increase the proportion of WVR shares after listing; or the requirement for certain resolutions to be subject to voting on a one vote per share basis) except for those that are subject to disclosure requirements. See also "Special Considerations – Listing with a WVR Structure" above.

Non-grandfathered Greater China Issuers (i.e. listed on a Qualifying Exchange after the Cut-off Date) will have to comply with existing Listing Rules requirements in relation to key shareholder protection standards, VIE structures and WVR safeguards.

HKEx has clarified that a listing applicant applying for a secondary listing under the new regime is entitled to make a confidential filing of its application proof.

HKEx will regard the majority of trading in an issuer's shares to have been moved to Hong Kong on a permanent basis if 55% or more of the total worldwide trading volume (by dollar value) of those shares (including the trading volume in depositary receipts issued on those shares) over the issuer's most recent financial year, takes place on the HKEx. When the bulk of trading is considered migrated to Hong Kong on a permanent basis, the codified waivers granted to issuers with a centre of gravity in Greater China above would cease to apply. These issuers would, on a case-by-case basis, be only granted waivers that are commonly granted to dual-primary listed companies such as those relating to reporting accountants' independence/qualifications and company secretary qualifications/experience.

LISTING USING A VIE STRUCTURE

A VIE structure is generally used in industry sectors in the PRC that are subject to certain regulatory restrictions – for example, foreign ownership restrictions in Internet-related sectors. In essence, a VIE structure refers to a structure whereby an entity established in the PRC that is wholly or partially foreign-owned exercises de facto control over a PRC domestic operating company (**Operating Company**) which holds the necessary licence(s) to operate in a restricted sector. By virtue of various contractual arrangements, the foreign-owned entity obtains de facto control over the operation and management of the Operating Company. Economic benefits would also flow from the Operating Company to the foreign-owned entity.

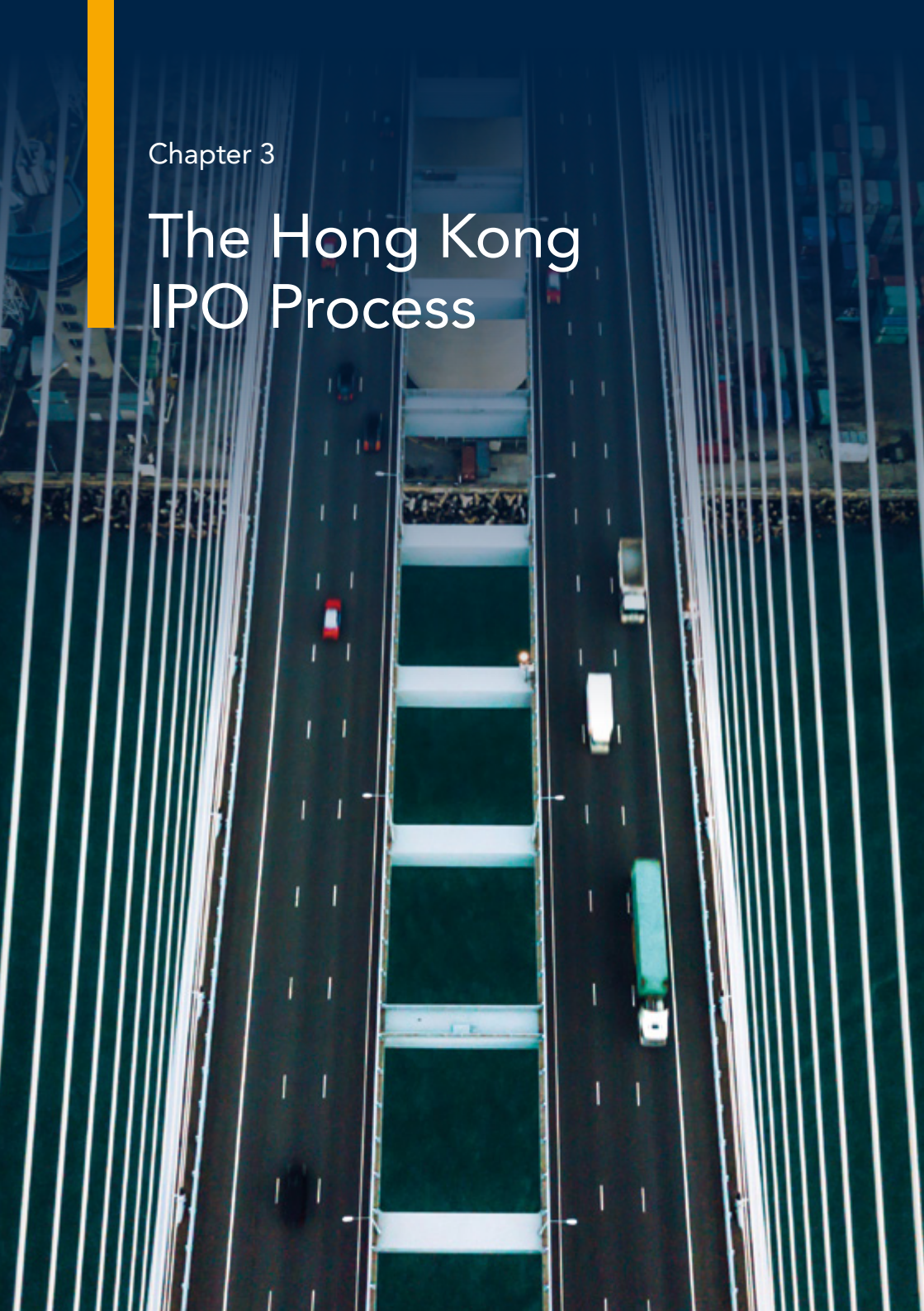
The HKEx generally allows listing applicants using VIE structures to list in Hong Kong, subject to disclosure of the relevant details of the contractual arrangements of the VIE structures and the risks involved. As a general principle, the contractual arrangements should be "narrowly tailored" to achieve the applicant's business purposes, and minimise the potential for conflict with relevant PRC laws and regulations. The listing applicant must otherwise directly hold the maximum permitted interest in the Operating Company, and obtain all necessary regulatory approvals for holding such interest and a legal opinion confirming the legality of the VIE structure.

Use of Proceeds

The HKEx will expect the listing applicant to disclose specific uses for proceeds from the IPO commensurate with the applicant's past and future business strategy and observed industry trends and to explain the commercial rationale for listing. In cases where the HKEx has reason to believe that a listing applicant is seeking a listing for a purpose other than the development of its underlying business or assets, or that its size and prospects do not appear to justify the costs or purposes associated with a public listing, *i.e.*, there is a likelihood of it becoming a "shell company", the HKEx places a greater level of scrutiny on its commercial rationale for a listing and proposed use of proceeds. It is in this context that the HKEx evaluates whether there is a genuine need for funding. In recent years, failure of a listing applicant to substantiate its use of proceeds and unable to demonstrate commercial rationale for a listing has become one of the most common reasons for rejection of listing applications by the HKEx. Accordingly, a listing applicant should carefully devise its plan for use of proceeds together with the sponsor and other advisers commensurate with its past and future business strategy and the industry trends.

Chapter 3

The Hong Kong IPO Process



Indicative Timetable

Listing and IPOs in Hong Kong are generally carried out in a three-stage process: initial preparation, regulatory vetting and marketing and offering. Below is an indicative timetable setting out the key tasks at each of the three stages.

ABOUT 8 - 16 WEEKS	Making key structural decisions (including whether to include Rule 144A and Regulation S tranches and which part of the business to be listed) and kick-off	STAGE 1: INITIAL PREPARATION
	Appointment of professional parties	
	Pre-listing reorganisation	
	Accounting audit/review	
	Internal control review	
	Legal and financial due diligence and verification	
	Undertaking sponsor's PN21 due diligence	
	Considering waiver applications	
	Prospectus drafting	
	Preparing profit forecast and cash flow forecast	
	Compiling A1 application pack	
	Pre-IPO placing (if needed)	
	Note: In a Hong Kong IPO that includes Rule 144A and Regulation S tranches, it is often more efficient to engage a law firm, like Mayer Brown, that can provide both Hong Kong and US legal advice.	
SUBMISSION OF A1 APPLICATION TO THE HKEX		
ABOUT 5 - 12 WEEKS	Regulators reviewing listing application	STAGE 2: REGULATORY VETTING
	Addressing regulators' comments and queries	
	Ongoing due diligence and verification	
	Processing waiver applications	
	Note: Identifying and resolving issues ahead of the vetting process is the most effective way to ensuring a smooth vetting process. In this regard, being conversant in market practices is critical.	
LISTING HEARING		
	Pre-marketing arrangements	
	Distribution of pre-deal research report and red-herring and posting of post-hearing information pack (PHIP)	

ABOUT 5 - 8 WEEKS	Roadshow, book-building and international-offering tranche launches and closes	STAGE 3: MARKETING AND OFFERING
	Hong Kong public offering launches and closes	
	Price determination	
	Allocation and settlement	
	Note: The marketing and offering timeline is particularly sensitive to the availability of a market window. Sometimes it needs to be adjusted to cater to a specific offering structure. In a spin-off situation where shareholders' approval at the parent company level is required, more time may be required before the roadshow commences. Conversely, in a listing by way of introduction where no marketing and offering is required, the listing date may be brought forward.	
LISTING COMMENCES AND IPO CLOSES		

Stage 1: Initial Preparation

The central task during Stage 1 of the IPO process is the compilation of the listing application. The application form is prescribed as "Form A1" under the Listing Rules. Attached to Form A1 is a series of checklists and required supporting documents, which include substantially complete proofs of the prospectus for the HKEx's vetting and publication on the HKEx's website, finalised or advanced drafts of the profit forecast and cash flow forecast memoranda and an advanced draft of the sponsor's letter on working capital statement sufficiency and information as prescribed by the regulators and under the Listing Rules for vetting purposes. The sponsor and directors of the issuer must also confirm the "readiness" of the listing application in prescribed form declarations and undertakings. Once the listing application pack is ready, an A1 application can be made to the HKEx. The sponsor is responsible for lodging the listing application.

BUILDING A TEAM

Sponsor

Completing an IPO is a team effort. Once a decision to seek an IPO in Hong Kong has been made, a the issuer engages a sponsor (as required by the Listing Rules) to represent the issuer in coordinating and making the

listing application with the HKEx. The sponsor is normally an investment bank with the requisite licences under the SFO and recognised by the HKEx. Usually, the sponsor will also act as the IPO global coordinator, to coordinate the marketing and offering process of the IPO together with a syndicate of underwriters.

The sponsor plays an integral role in the application process. Its duties involve conducting due diligence inquiries on the issuer, preparation of the listing document, ensuring the issuer complies with relevant requirements in the Listing Rules, addressing all matters raised by the HKEx and accompanying the issuer at meetings with the HKEx.

A sponsor must be formally appointed by a listing applicant for a minimum period of two months before submission of the listing application. The sponsor's terms of engagement should specify the sponsor fees, which must be based solely on a sponsor's role as such and not on unrelated services.

More than one sponsor may be appointed. At least one of them must be independent from the issuer. A sponsor is not independent, for example, if it holds, directly or indirectly, more than 5 percent of the issued share capital of the issuer.

Other Professional Parties

A reporting accountant must prepare the necessary accountants' report and report and provide comfort on other financial information, for example, pro forma information and a profit forecast.

There are generally two teams of legal advisers, one team acting for the listing applicant, and the other team acting for the sponsor and the underwriters.

Other professional parties involved include independent property valuers, internal control advisers, market research consultants, investors/public relations consultants, financial printers, receiving banks and share registrars. See also "Key Parties" above.

Internal Corporate Structure

At the outset of the IPO process, it is important to ensure that the board of

directors of the listing applicant comprises members with the requisite experience, qualifications and competence in compliance with the Listing Rules, to perform their individual roles and to manage the listing applicant's business (see Appendix 5 – Corporate Governance). The directors should understand their obligations and those of the listing applicant as an issuer under the Listing Rules and other legal and regulatory requirements relevant to their role (see Appendix 6 – Directors' Duties).

KICK-OFF MEETING

Once a team has been assembled, a kick-off meeting takes place to officially launch the IPO process. This meeting generally includes the following activities:

Introduction of the working group: The working group is introduced and their respective roles and responsibilities are defined.

Timetable: The meeting sets a tentative timetable and sets out the key milestones, as well as deliverables expected from the various working group members.

Discussion of key terms of the offering: These include the size and structure of the offering and use of proceeds.

Discussion of other key issues: These include legal, regulatory, accounting, and other key issues that have implications for the successful completion of the IPO.

Presentation by management: The senior management of the issuer generally gives a presentation on the business, financial, and other aspects of the issuer .

PUBLICITY CONSIDERATIONS

General Guidelines

Publicity of the proposed listing or the IPO must be controlled tightly from this point onwards. Improper, uncontrolled or premature publicity could have severe adverse consequences on the listing applicant, the listing application and the IPO. The HKEx may refuse to process or may delay a listing application if improper or premature disclosure is made before or

during the process, in particular before the listing hearing. Publicity also risks "improperly" conditioning or influencing the market before an IPO, and may trigger unnecessary prospectus-related obligations, result in a loss of exemptions from the registration requirements of the US securities laws (e.g., Rule 144A and Regulation S), and lead to potential civil and criminal liabilities for the issuer, its directors and those making the publicity.

"Publicity" should be construed broadly in this context to include Internet publicity, press releases, speeches, press conferences, telephone conversations, roadshows with potential investors, presentations, interviews and advertising.

The prospectus is the master marketing and legal document for the listing application and the IPO. Publicity or disclosure of information about the listing application, the IPO or even the listing applicant's performance generally risks being viewed as making unauthorised investment offers or improperly conditioning the market for the securities being offered, and could cause the listing to be aborted. Publicity of information not contained in an authorised prospectus or premature leaking of prospectus information may result in a breach of applicable securities laws and may expose anyone making such publicity to investors' claims. Publicity materials must be reviewed by the HKEx before release. If they are not, the HKEx may delay the listing and the IPO timetable.

US Publicity Considerations

Exemptions provided by Rule 144A and safe harbour provisions of Regulation S preclude any "directed selling efforts," "general solicitation" or "general advertising" made into the United States. Therefore, in a combined offering that includes both a Regulation S offering outside the United States and a Rule 144A offering in the United States, it is necessary to observe such restrictions.

"General solicitation" or "general advertising" includes the following activities:

- Advertisements, articles, notices, or other publication in any US newspaper, magazine or similar media, including the Internet.

- Broadcasts over US television or radio, including the Internet.
- Any seminar or meeting in the United States whose attendees have been invited by general solicitation or advertisement.

"Directed selling efforts" generally consist of activities undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market for the securities in the United States. The placing of an advertisement in a "publication with a general circulation in the United States" that refers to the Regulation S offering outside the United States could be deemed to constitute directed selling efforts if it could reasonably be expected to condition the market in the United States.

Combined offerings often involve significant publicity issues, since marketing activities prohibited in the United States may be permitted and customary in the foreign jurisdictions where the securities are being offered (such as Hong Kong). Measures must be taken to ensure that any publicity conducted in those jurisdictions does not leak into the United States.

In addition, the posting of offering or solicitation materials – such as a prospectus – on an Internet website, could be considered an activity taking place in the United States. The SEC has indicated, however, that an Internet offer would not require registration under the US Securities Act if the offerors implement adequate measures to prevent investors in the United States from participating. This includes establishing a "click-through" on the website page, which requires Internet users to confirm their location and status prior to being given access to the full information on the website. Other information available on the Internet – including by hyperlink to or from the websites of offering participants – should also be controlled to ensure that it does not constitute improper publicity.

Improper publicity can result in an offering losing its exemptions under Regulation S or Rule 144A, making it an illegal unregistered offering in the United States. The SEC has an active monitoring programme and may launch an enquiry if any publicity concerning an offering appears in the United States, particularly if statements are attributed to an offering participant. As a practical matter, the SEC may delay or postpone an

offering to allow a "cooling-off" period for the effects of improper publicity to dissipate. The SEC may also demand that the underwriters associated with the dissemination of improper publicity be removed from the selling syndicate. In addition, a purchaser may bring a lawsuit to rescind the purchase of the securities – and to recover the consideration paid plus interest minus the amount of any income received or to recover damages, if the securities are no longer owned. Additional liability may arise if publicity relating to the offering is shown to contain a material misstatement or omission, or otherwise to violate the anti-fraud provisions of the US securities laws.

Publicity Guidelines

To ensure compliance with all applicable securities laws and regulations, the listing applicant's lawyers typically prepare "publicity guidelines" at the outset of the IPO process. These guidelines are agreed with counsel to the sponsors and underwriters. The company and other participants in the IPO need to ensure that they are familiar with the publicity guidelines. The respective parties – the listing applicant, the sponsors and underwriters, PR advisers, and the directors, officers, and employees of the listing applicant – need to adhere to the provisions set out in the publicity guidelines.

To avoid the legal risks of uncontrolled communication with the public, it is often advisable for the listing applicant to designate an individual as a single point of contact for the press and securities analysts. This individual should also be responsible for all broad-based communications during the IPO process, including any announcements that the listing applicant may wish to make. When in doubt whether a proposed communication is permissible or potentially problematic under the publicity guidelines, that individual can arrange for it to be reviewed by the listing applicant's lawyers.

The restrictions stated in the publicity guidelines should extend to at least 40 calendar days after the later of the IPO closing or completion of the securities distribution. Set out below are some basic practical guidelines on publicity:

DOs	DON'Ts
Publicity should be pre-approved internally before it is made An internal committee or an officer (**publicity committee or publicity officer**) should be designated to pre-approve the timing, circulation methods and contents of any publicity not made in the ordinary course of the issuer's business and to decide whether the materials should be submitted to the HKEx for review before their release. If in doubt, early consultation with the HKEx is advised. This pre-approval should cover all communications, including with the public, employees, analysts, potential investors,	**Don't respond to unsolicited inquiries** Unsolicited inquiries include personal visits, telephone calls or any other inquiries made without express invitation. Unless approved by the publicity committee, a "no comment" response is recommended.
Approved publicity should follow specific contents and circulation guidelines Detailed publicity guidelines on content and circulation methods should be followed when handling press releases, media briefings, presentations, advertisements, speeches and the contents of websites etc. For example, an "offer awareness" advertisement can be made in Hong Kong prior to and during the offer period. However, its contents can only relate to the administrative and procedural aspects of the IPO	**No public events in the United States** To rely on the exemptions provided by Regulation S and Rule 144A, no public events relating to the IPO (e.g., press conferences, speeches, presentations, interviews or meetings with the press) may be held in the United States. No press releases or other announcements relating to the IPO may be issued or disseminated in the United States. Public events held outside the United States should be controlled with particular care to ensure that they do not constitute an offer of securities for sale in the United States. Press conferences may be held outside the United States in accordance with local market practices and US journalists may be invited as long as access to the conference is granted to both US and non-US journalists. While solicitation of institutional investors takes place during the book-building process, public events relating to the IPO should be held in Hong Kong after registration of the prospectus.

DOs	DON'Ts
All publicity should contain accurate and complete information All publicity, if approved, should be verified to make sure that all statements it contains are true and accurate and not misleading.	**No non-prospectus information** Publicity should not provide any information not contained in the prospectus. For example, it must not include opinions on the relative merits of participating in the IPO and business and profit forecasts (except to the extent included in the prospectus). Information on the issuer's websites and in the prospectus to ensure consistency.

Information that is not publicity may continue to be released in the ordinary course of the listing applicant's business. Principal factors in determining whether information is publicity are whether its release serves a legitimate business purpose independent of the offering and the listing applicant's historical track record of conducting similar activities. Most likely, this standard permits the sending of essential factual and business communications to the listing applicant's customers, suppliers, lenders and others in the United States or elsewhere.

THE DUE DILIGENCE REVIEW

General Guidelines

In order to better understand the business of the listing applicant and to assist in drafting an accurate and meaningful prospectus, the sponsors, their counsel, and the listing applicant's counsel simultaneously conduct an extensive review of the legal, business and financial aspects of the listing applicant's operations. This typically entails a review of all material contracts, governmental authorisations and other documents. In addition, the parties conduct a series of discussions with the listing applicant's senior management, its financial staff and its reporting accountants.

The extent of due diligence required varies from case to case, depending on the circumstances, and inevitably involves judgment calls. Practice Note 21 to the Listing Rules (**PN21**) requires the sponsor to apply an attitude of professional scepticism, to examine the accuracy and completeness of statements and representations made or other information given to it by the listing applicant and its directors. PN21 also sets out a list of suggested due diligence enquiries. However, PN21 represents only the HKEx's expectation of due diligence sponsors should typically perform, and cannot be

treated as an exhaustive standard. Each sponsor must conduct independent, adequate and reasonable due diligence review on fundamental aspects of the listing applicant's business operation and financial standing in accordance with relevant due diligence guidelines. Appropriate steps should also be taken to address red flags identified during the due diligence process. Any substandard or insufficient due diligence work may subject the sponsors to serious enforcement actions taken by the SFC.

Before submitting a listing application, a sponsor must have performed all reasonable due diligence for the listing applicant, except for matters that by their nature can only be dealt with at a later date. The sponsor must ensure that all material information as a result of this due diligence has been included in the draft listing document submitted with the listing application (**Application Proof**). A sponsor should also be satisfied that all fundamental compliance issues such as listing criteria, qualification of management and internal control defects are resolved before submitting the listing application.

The information received during the due diligence process facilitates the drafting process and helps to ensure that all material aspects of the listing applicant's business are properly disclosed. The due diligence exercise also helps to ensure that disclosure contained in the prospectus is accurate and based on the most current data available.

Verification is part of the larger due diligence exercise. It is a process to document all written evidence obtained for the verification of statements made in the prospectus, and a detailed verification note (sometimes referred to as "v-notes") recording this evidence is produced at the end of the process. By the submission of the listing application, the Application Proof prospectus must be in an advanced proof stage and verification should be substantially completed.

The due diligence review also serves to establish a record that the underwriters have made a reasonable investigation upon which their defence against potential liability can be based, particularly in the case of an IPO with a Rule 144A component. To that end, underwriters generally request legal counsel to issue a so-called "Rule 10b-5 letter". For a further discussion of Rule 10b-5 Letters, see "Key Documents – Legal Opinions and Disclosure letters" above.

Obtaining comfort letters from the issuer's independent auditors is another procedure used by underwriters to establish a written record that they have made a reasonable investigation. Comfort letters serve to provide comfort on certain financial and accounting data contained in an offering document – for example unaudited financial statements and other information. For a discussion of comfort letter requirements, see "Key Documents – Comfort Letters" above.

Conducting Due Diligence

The due diligence exercise is broadly categorised into legal, business and financial due diligence and is typically led by the sponsors' and underwriters' counsel in conjunction with the listing applicant's counsel.

A legal and business due diligence review includes a review of the listing applicant's corporate structure and organisation, board minutes, finance and accounting procedures, shareholder information, presentations and reports from the listing applicant, material agreements, intellectual property, tax issues, assets, environmental issues, current and pending litigation, strategy, and the competition in and outlook for the industry in which the listing applicant operates.

Financial due diligence involves the listing applicant's finance, accounting and treasury departments. It typically includes a review of the issuer's full year and interim financial statements, results of operations, projections, cash flow, financial indebtedness and other aspects of the listing applicant's financial condition. The sponsors (and underwriters) and their counsel focus their review on factors driving the listing applicant's finances, and significant changes in the listing applicant's financial position from year to year and period to period. In addition, financial due diligence focuses on the listing applicant's profit and working capital forecasts.

Documentary review. The sponsors (and underwriters) and their counsel provide the listing applicant with a list of documents they would like to review in preparation of the prospectus. This due diligence request list is comprehensive and broad. As the requesting party is not fully apprised of the issuer's documentation, the list necessarily includes a range of items that a sponsor and underwriter would normally expect to find in the data room of a similar company in a similar industry.

After receiving a diligence request list, the listing applicant begins preparing a data room containing documents responsive to the diligence request list as well as any documents not on the diligence request list but deemed by the listing applicant to be material. The location of the data room itself varies, based on the location of the documents and the parties that need to review the documents. For most listing applicants, it is more efficient and economical to make the documents available for review via a secure, password-protected website, accessible only to those parties involved in the offering. For certain listing applicants, it is perhaps more convenient to set up a space at their place of business where all of the documents can be set aside for review.

Due diligence meetings. In addition to documentary review, a series of due diligence meetings will be conducted with senior management of the listing applicant. These meetings afford the sponsors and their legal counsel the opportunity to understand the strategic aspects of the listing applicant's business and to raise issues identified in the due diligence process. Such meetings also serve to facilitate review and discussion of the listing applicant's prospectus.

It is also customary to have a due diligence meeting with the listing applicant's external auditors to discuss, among other things, auditors independence from the listing applicant, any problems identified during the audit or review process and comments on the listing applicant's internal accounting policies, controls and procedures.

As part of the business review, the sponsors and their legal counsel will conduct interviews with the major suppliers, subcontractors, customers and bankers of the listing applicant as well as experts and other professional parties engaged by the listing applicant.

PROSPECTUS DRAFTING

Prospectus Liability

The CWUMPO, the SFO and the Listing Rules set out specific prospectus content requirements for a prospectus, and impose an overriding "completeness" requirement. This means that before submitting the listing application, a sponsor should come to a reasonable opinion that the information contained in the Application Proof prospectus is substantially

complete, except matters that by nature can only be addressed at a later date. Those responsible (or deemed to be responsible) for a prospectus are potentially subject to civil and criminal liabilities if the prospectus is inaccurate, misleading or incomplete. Liability may be imposed not only on the listing applicant and its directors, but also on others who authorised the issue of the prospectus, such as the sponsor.

Prospectus Content

Contents of a prospectus can be broadly categorised as follows:

- Business sections: business, management discussion and analysis, risk factors, industry overview, history and development, management biographies, future plans, use of proceeds;
- Offer terms: application and allocation methods, selling restrictions, underwriting arrangements;
- Statutory and compliance: statutory and general information, waivers, shareholders' information, corporate information, connected transactions; and
- Expert reports: accountants' report, valuation report and other technical reports (such as for mining companies - see Appendix 2 – Mining and Mineral Companies).

See also "Key Documents – The Prospectus" above.

The prospectus generally serves two main purposes. It serves as the main document setting out the listing applicant's information in support of the listing application, based on which the regulators carry out the vetting process and approve the listing. In this sense, it is also referred to as the listing document. The prospectus is also the master marketing and legal document. The prospectus prepared at this stage later becomes the "red herring" or "path finder" prospectus. This is distributed – without pricing information – during the book-building process. The Hong Kong prospectus with offer prices set at a range (for the Hong Kong retail tranche) are distributed first. Once the book-building process is complete and pricing is established, the final international offering circular (for the international tranche) are distributed.

As discussed in "Listing in HK - Structure of the Offering" above, a typical

Main Board IPO in Hong Kong consists of two tranches of offering: (i) a Hong Kong public offering tranche available to retail investors; and (ii) an international offering or "placing" tranche available to institutional investors. The offering document used for the international offering tranche includes additional significant disclosure in a section known as an "international wrap" preceding the Hong Kong prospectus. The purpose of the international wrap is to provide additional disclosure relevant to investors in the international offering tranche, including risk factors specific to international investors, US federal tax considerations and plan of distribution. The Hong Kong prospectus and the international wrap, together constitute the international offering circular, which is the offering document used in the international offering tranche.

In the case of an IPO on the HKEx with a Rule 144A component, as legal counsel would be expected to issue Rule 10b-5 letters, (see "Key Documents – Legal Opinions and Disclosure Letters - Rule 10b-5 Letters" above) confirming, among other things, that they have no reason to believe that an offering document contains an untrue statement of material fact, or omits to state a material fact, counsel would usually insist on following as closely as possible the disclosure standards imposed in SEC-registered offerings.

Drafting Responsibility and Drafting Sessions

Drafting of the offering document may be led by the issuer's counsel or the underwriters' counsel, based on information obtained during the due diligence process. To advance the drafting process, the drafting counsel circulates drafts of the offering document electronically and requests that the issuer and the working group provide general comments and respond to specific queries which arise during the course of drafting. Customarily, the issuer's legal counsel takes principal responsibility for the drafting of the offering document.

Among the most effective methods of gathering and processing comments is to arrange a drafting session, which typically takes place over one or two days. The process will required multiple drafting sessions . Depending on the status of the disclosure, the drafting sessions may consist of a conceptual review or a more detailed page-by-page review of the offering document. The issuer and other parties involved in the transaction prepare

for drafting sessions by reviewing and commenting on the offering document circulated by the drafting counsel. In addition, the issuer's senior management with in-depth knowledge and understanding of the business is expected to participate in all the drafting sessions.

SUBMISSION OF THE LISTING APPLICATION PACKAGE

In submitting the formal listing application, the following documents (which must be substantially complete if in draft form) should together with the Listing Application Form (Form A1) and the initial listing fee, be lodged with the HKEx (the listing application package):

- Application Proof prospectus
- All waiver applications (see Appendix 3 – Waivers)
- Directors' confirmation
- Statement of adjustments relating to the accountants' report
- Board's profit forecast and cash flow forecast memorandum
- Listing applicant's certificate of incorporation or equivalent
- Sponsor's confirmation on sufficiency of working capital statement
- any other documents the HKEx may require (the HKEx' checklist on "Additional Information to be submitted with the Form A1" contains 22 items)

Apart from the above, a listing applicant also needs to submit a redacted version of the Application Proof prospectus for publication on the HKEx's website. This should include appropriate disclaimer and warning statements to advise readers of its legal status.

Stage 2: Regulatory Vetting

REGULATORS' REVIEW

Once the listing application package has been submitted, the HKEx notifies the sponsor acknowledging receipt of the listing application. The Listing Division of the HKEx then reviews the listing application and either approves or rejects the application to move to a listing approval hearing (also known as a listing hearing) by the Listing Committee. Under the

dual-filing regime, the HKEx passes copies of materials submitted by listing applicants to the SFC. If, after a qualitative assessment, the regulators consider the Application Proof prospectus not substantially complete, they will return the listing application form, the Application Proof prospectus and other documents to the sponsor. The SFC may exercise its power to object to a listing if the disclosure in the listing materials appears to the SFC to contain false or misleading information.

RESPONDING TO COMMENTS FROM REGULATORS

The regulators comment on all issues relating to the listing application, including admission criteria, extent and quality of disclosure in the prospectus, pre-IPO investment and compliance issues. They will also process any waiver applications (see Appendix 3 – Waivers).

The prospectus is then revised and written submissions are made in response. During the review process, the prospectus should not be revised on a piecemeal basis and, unless as requested by the HKEx, is expected to be submitted at least five business days after a previous submission. If only one round of comments is raised, and the sponsor takes five business days to respond, a listing application can be brought to the Listing Committee for hearing around 25 clear business days from the listing application.

If more than six months has elapsed since a listing application, a renewed application or a new application (if made three months after lapsing) is required and a fresh listing fee is payable.

HEARING

Once all comments are addressed and the Listing Division recommends the listing application to proceed, a listing hearing date will be confirmed.

Stage 3: Marketing and Offering

PRE-MARKETING AND PRE-DEAL RESEARCH

After the listing hearing, a post-hearing letter setting out the Listing Committee's comments and any conditions to the listing approval is sent to the sponsor. If the listing application is approved, or approved-in-principle, the pre-marketing or "investor education" stage then commences.

Syndicate members meet with potential investors to determine investor demand for the securities being offered.

At this stage, syndicate members may prepare and finalise their own independent pre-deal research reports. Pre-deal research is not a marketing exercise. These reports are prepared independently from the issuer and represent the relevant research analyst's independent view on the issuer. The circulation of these reports should follow relevant local securities' restrictions and the syndicate members' in-house compliance guidelines strictly. Generally, the underwriters' legal counsel prepares guidelines regarding the review and distribution of research reports.

To facilitate preparation of pre-deal research, senior management of the listing applicant meets with research analysts under the guidance of the sponsor. Hong Kong regulators recognise the role pre-deal research has in the price discovery process, but are concerned to ensure analysts' independence and objectivity in relation to pre-deal research reports.

THE GUIDING PRINCIPLES FOR INTERACTIONS WITH RESEARCH ANALYSTS INCLUDE:

- No non-prospectus information: only information which is expected to be included in the prospectus, or otherwise publicly available, can be provided to research analysts.
- Analysts from firms connected to the listing cannot be put at an advantage by being provided with information that is not made available to other analysts.
- Analysts' conflicts of interest should be addressed.

Regarding conflicts of interest, analysts and firms issuing research reports are expected to ensure policies and procedures are in place to address conflicts of interest concerns among:

- Their trading and financial interests.
- The firms' financial interests and business relationships.
- The analysts' reporting lines and compensation.

- The firms' compliance systems.

There should also be policies and procedures to address undue influence by outside parties upon analysts, disclosure about any actual or potential conflicts of interests, and the analysts' integrity and ethical behaviour.

Research reports prepared by underwriters in connection with an offering conducted under Rule 144A and Regulation S must not be distributed, directly or indirectly, in the United States or to any US person (as defined by Regulation S) from the time when the underwriters are engaged until either 40 days after the closing of an offering or upon the completion of the distribution of the securities, whichever is later.

BOOK-BUILDING AND ROADSHOW

Following pre-marketing, the book-building process commences. "Book-building" refers to the pricing and underwriting method typically used on an IPO whereby the final offer price is fixed and the offer underwritten, after a book of preliminary orders has been built at the end of the marketing phase/roadshow. Book-building allows the "bookrunner(s)" among the underwriters to compile a comprehensive picture of the strength of institutional demand for the shares over a range of prices by obtaining non-binding expressions of interest from potential investors. The aim is to ensure that the shares are spread across a wide range of high-quality investors and that pricing tension is maximised. "Bookrunner" refers to the bank responsible for keeping the books for an offer – the bank responsible for the syndication, tranche-sizing, marketing, book-building, pricing, allocation and stabilisation of an offer.

Book-building is usually conducted at the same time as a management roadshow over a period of a few days to two weeks. The roadshow consists of a series of group, or one-on-one meetings that the senior management of the listing applicant and the underwriters hold with key investors to present the investment case for the listing applicant. A "red-herring" prospectus, which is a near-final draft prospectus, only omitting the offer pricing terms, is distributed at the same time.

A post-hearing information pack (**PHIP**), containing essentially the same information as the red-herring prospectus, will also be posted on the HKEx's website. The PHIP is required by Hong Kong regulators to address

the apparent inequality of information dissemination between institutional investors and retail investors who, without the PHIP, can only obtain information at a later stage when the Hong Kong public offering launches.

HONG KONG PUBLIC OFFERING

The Hong Kong public offering launches after the prospectus is registered with the Hong Kong Registrar of Companies. The Hong Kong public offering lasts for at least three and a half days, and usually ends with the book-building process. At this stage, an indicative price range is set for the Hong Kong public offering, subject to price determination. A Hong Kong underwriting agreement is also signed at this stage.

The new Listing Rules introducing a paperless listing and subscription regime will come into effect on July 5, 2021, whereby (i) all listing documents in a new listing (but excludes listing applicant adopting the mixed media offer) will be published solely in an electronic format and (ii) new listing subscriptions, where applicable, will be made through online electronic channels only.

PRICE DETERMINATION

The offer price is fixed between the listing applicant and the global coordinator based on the level of interest expressed by prospective institutional investors during the book-building process. It is normally within the indicative price range set for the Hong Kong public offering. Once a price is determined, the international offering circular is finalised and the international underwriting agreement is signed.

ALLOCATION AND SETTLEMENT

Generally, 10 percent of all IPO offer shares are initially allocated to the Hong Kong public offering tranche. If there are oversubscriptions, shares allocated to the international offering tranche are clawed back, according to a scale prescribed by the Listing Rules or otherwise permitted by the HKEx. The Hong Kong public offering tranche increases to 30 percent if the oversubscriptions are 15 to less than 50 times; 40 percent if 50 to less than 100 times and 50 percent if 100 times or more. This clawback ensures broad retail allocations in situations where strong retail demand exists, while offering flexibility to issuers and underwriters to place shares with

institutional investors to generate demand and build a strong institutional base of investors.

The global coordinator usually retains the right to terminate the IPO if "*force majeure*" events occur prior to 8:00 a.m. on the date of listing (or another time as agreed), although this right is rarely invoked in practice.

An listing applicant, or sometimes selling shareholders, may grant a greenshoe, or overallotment, option to the global coordinator, offering additional shares representing up to 15 percent of the IPO offer shares to cover overallocations in the international offering tranche. The global coordinator may also cover any overallocations by purchasing shares in the secondary market, or by a combination of purchases in the secondary market and a partial exercise of the overallotment option. This option may be exercised within a period of 30 days after the Hong Kong public offering closes. During this time, the global coordinator or a designated stabilising manager may be appointed to carry out other permitted stabilisation activities to maintain or stabilise the market price of the shares at a level higher than might otherwise prevail in the open market. Stabilising bids must be made at any price at or below the offer price. Stock borrowing arrangements with controlling shareholders may also be put in place to facilitate settlement of overallocations. See also "Key Documents – The Underwriting Agreement – Greenshoe Option" above.

Once allocation is complete, settlement of all IPO offer shares will take place and listing commences (subject to "force majeure"). "Settlement" or "closing" is the formal issuance and delivery of the shares by the company and the selling shareholders against payment therefor by the underwriters. It takes place a few business days – frequently three to five business days – after pricing, to allow sufficient time to prepare the necessary documentation and collect payment for the shares from investors.

Chapter 4

Ongoing Obligations of Listed Companies in Hong Kong

The disclosure of accurate, comprehensive and timely information about security issuers builds sustained investor confidence and allows an informed assessment of their business performance and assets. This enhances both investor protection and market efficiency.

Listed companies must ensure appropriate transparency for investors through a regular flow of information. This is important not only because the Listing Rules and the SFO may require them to do so, but also to build strong investor relations to be able to fully reap the potential benefits of being a public company, such as ready access to the capital markets. To the same end, shareholders must also inform issuers of the acquisition of, or other changes in, major holdings in listed companies so that the latter are in a position to keep the public informed.

The continuing obligations set out in the Listing Rules and the SFO are intended to safeguard a fair and orderly market in securities and to ensure that all market participants have simultaneous access to the same information. Failure by a listed issuer to comply with the continuing obligations may result in the HKEx taking disciplinary action as well as suspending or cancelling a listing. The directors of a listed issuer are collectively and individually responsible for ensuring the issuer's full compliance.

Compliance Adviser

Once a company is listed on the HKEx, it must appoint a compliance adviser – typically an investment bank – with the requisite licence under the SFO. For a Main Board-listed issuer, the compliance adviser should be appointed from the date of its listing until the date on which it distributes its annual report for the first full financial year. For a GEM-listed issuer, the appointment is required for a longer period, until the date of its annual report for the second full financial year. The compliance adviser will ensure that a listed corporation is properly guided and advised on its compliance with the continuing obligations. A listed issuer should seek advice from its compliance adviser:

- Before the publication of any regulatory announcement, circular or financial report.
- Where a notifiable or connected transaction is contemplated, including share issues and repurchases.

- Where it proposes to use the IPO proceeds differently from the prospectus disclosure.
- Where the HKEx enquires about unusual trading movements in the price or trading volume of its listed securities.

Disclosure Obligations

The Statutory Disclosure of Information Regime. One of the most important ongoing obligations of a listed issuer is the duty of disclosure. The disclosure of information regime is primarily laid down in Part XIVA of the SFO (**Statutory Disclosure of Information Regime**). Failure to comply with these statutory provisions may result in investigation by the SFC, which may directly instigate legal proceedings before the Market Misconduct Tribunal. If a listed issuer is found to be in breach of its disclosure requirements, the listed issuer, its directors and chief executive may be subject to a fine of up to HK$8 million. The relevant officer of the listed issuer may also be barred from being a director or manager of a listed issuer for a period of up to five years.

Under the Statutory Disclosure of Information Regime, a listed issuer must disclose the information to the public as soon as reasonably practicable after any inside information has come to its knowledge (subject to limited disclosure exceptions). "Inside information" means specific information in relation to a listed issuer, its shareholders or officers, or its listed securities or derivatives, which is not generally known to the market but if made generally known would likely materially affect the price of listed securities. The more commonly applicable exceptions to disclosure include information that concerns an incomplete proposal or negotiation, or constitutes a trade secret. A listed issuer can only take advantage of the exceptions if reasonable precaution is taken to preserve the confidentiality of the information and the confidentiality is effectively preserved. Once confidentiality is no longer preserved, the listed issuer must disclose the inside information as soon as reasonably practicable. Disclosure should be made by the publication of the inside information on the HKEx website.

The False Market Avoidance Regime. Alongside the Statutory Disclosure of Information Regime, the HKEx assumes the role of monitoring the market. It may make enquiries and halt trading of listed securities of an

issuer if, in its view, there is likely to be a false market. Under the Listing Rules, where the HKEx believes that there is, or there is likely to be, a false market in an issuer's securities, a listed issuer must announce the information necessary to avoid a false market as soon as reasonably practicable after consultation with the HKEx. Where the HKEx makes enquiries regarding unusual movements in the price or trading volume of the securities of a listed issuer or the possible development of a false market, the listed issuer must respond promptly by providing the relevant information to the HKEx and announcing it to the market to clarify the situation if the HKEx so requests. If directors of the listed issuer, having made an enquiry to the listed issuer, are unaware of any matter that is relevant to the unusual trading movement, or any information necessary to avoid a false market, the HKEx may require the listed issuer to make a standard negative announcement prescribed under the Listing Rules. The listed issuer must apply to the HKEx for a trading halt or trading suspension in cases where:

- A listed issuer possesses information which must be disclosed under the Statutory Disclosure of Information Regime.
- To avoid a false market under the Listing Rules.
- Where such information falls under one of the disclosure exceptions but confidentiality is no longer preserved and it is unable to promptly make an announcement.

A trading halt allows information to be announced during trading hours subject to a minimum halt of 30 minutes. This means that trading can resume as soon as 30 minutes after the announcement is made. Trading can be halted for up to a maximum of two trading days and after that point automatically becomes a trading suspension.

It is important that listed issuers which are also listed on other stock exchanges, should announce information on the HKEx at the same time as such information is released on the other stock exchanges.

DISCLOSURE OF SPECIFIC MATTERS

In addition to the general disclosure obligations discussed above, Chapter 13 of the Listing Rules sets out specific matters that give rise to disclosure obligations. These matters include:

- Advances to an entity.
- Financial assistance and guarantees to affiliated companies of a listed issuer.
- Pledging of shares by the controlling shareholder.
- Loan agreements with covenants relating to specific performance of the controlling shareholder.
- Breach of a loan agreement by a listed issuer.
- Issue of securities
- Notifiable transactions, connected transactions, takeovers and share repurchases.
- Sufficient operations.
- Material matters which impact on profit forecast.
- Winding-up and liquidation.

The listed issuer may also be required to issue a circular regarding notifiable transactions, connected transactions, takeovers and share repurchases, explaining the transaction to its shareholders and seeking shareholder approval.

RESULTS ANNOUNCEMENTS AND FINANCIAL REPORTS

A listed issuer must publish announcements of its preliminary results for each full financial year and half financial year, not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session, or any pre-opening session on the next business day after approval by or on behalf of the board. A Main Board-listed issuer must publish its full financial year results no later than three months after the end of the financial year; and its half-year results for the first six months of the financial year no later than two months after the end of such period. For a GEM-listed issuer, it is also required to publish its quarterly results. The full financial year results must be published no later than three months after the end of the financial year, and the half yearly results, as well as quarterly results, must be published within 45 days after the end of such period.

A Main Board-listed issuer must also distribute to its shareholders an annual report, or summary financial report, no later than 21 days before the date of its annual general meeting, and within four months after the end of

the financial year; and its interim report, or summary interim report, for the first six months of each financial year, no later than three months after the end of such period. For a GEM-listed issuer, it must distribute its full year directors' report and annual accounts, or its summary financial report, no later than 21 days before the date of its annual general meeting, and within three months after the end of the financial year, and its half-year and interim reports within 45 days after the end of such period.

Corporate Governance Report

In addition to the mandatory Listing Rules provisions relating to corporate governance, such as the appointment of independent non-executive directors and company secretary, and the establishment of an audit committee, a nomination committee and a remuneration committee (see Appendix 5 - Corporate Governance), issuers must also comply with the Corporate Governance Code of the Listing Rules, which has six sections dealing with:

- Directors.
- Remuneration of directors and senior management and board evaluation.
- Accountability and audit.
- Delegation by the board.
- Communication with shareholders.
- Company secretary.

In each section, the Corporate Governance Code sets out the principles of good corporate governance, and two levels of recommendations: the "comply or explain" code provisions (i.e., an issuer is allowed to either adopt the provisions or if it does not, explain the reasons for deviations) and recommended best practices.

An issuer is required to report its compliance and give considered reasons for each deviation from code provisions in the Corporate Governance Report to be contained in its annual reports and explain each deviation in its interim reports (or its half yearly reports for GEM issuers).

*Environmental, Social and Governance (**ESG**) Report*

Under the Listing Rules, an issuer is required to include in its directors' report a discussion of the issuer's environmental policies and performance.

The issuer must also state in its annual reports (or in separate ESG reports) whether they have complied with the "comply or explain" provisions set out in the ESG Guide of the Listing Rules for the relevant financial year and give considered reasons for any deviation.

The ESG Guide requires disclosure of information in the following areas:

- Environmental – Emissions; Use of Resources; and Environment & Natural Resources
- Social - Employment & Labour Practices; Health & Safety; Development & Training; Labour Standards; Supply Chain Management; Product Responsibility; Anti-corruption; and Community Investment

Disclosure of Interest

Part XV of the SFO requires corporate insiders to give notice in prescribed forms to both the HKEx and the listed issuers concerned on the occurrence of certain events:

- Substantial shareholders - individuals and corporations who are interested in 5 percent or more of any class of voting shares in a listed issuer, must disclose their interests, and short positions, in voting shares of the listed issuer; and
- Directors and chief executives of a listed issuer must disclose their interests, and short positions, in any shares in a listed issuer (or any of its associated corporations) and their interests in any debentures of the listed issuer (or any of its associated corporations).

The listed issuer must keep a register of interests in shares and short positions and must record in the register, against the name of the person giving the notice, the information received and the date of the entry.

Takeovers

The SFC is the principal regulator of the Codes. Under the Codes, if a party acquires 30% or more of a listed issuer's shares, or if the party already holds 30% or more, but not more than 50% of a listed issuer's shares, and it acquires 2% or more in any 12-month period, that party must make a mandatory takeover offer to acquire all the shares of that listed issuer. The listed issuer will then have to comply with its obligations under the Codes as takeover target.

Appendix

Appendix 1 – HKEX Listing Criteria

The following table summarises the listing criteria for the Main Board and GEM:

	MAIN BOARD	GEM
Trading Record/ Operations	Applicant must generally have a trading record of at least three financial years.	Applicant must generally have a trading record of at least two financial years.
Management Continuity	Under substantially the same management for at least the three preceding financial years.	Under substantially the same management throughout the two preceding full financial years.
Ownership Continuity and Control	With ownership continuity and control for at least the most recent audited financial year.	With ownership continuity and control throughout the preceding full financial year.
Profitability/ Financial Standards	Applicant must fulfil one of the three financial criteria: • Profit test : » Profits of HK$50 million in the last three years – with HK$20 million in the most recent year and an aggregate of HK$30 million in the two preceding years. » Market capitalisation of at least HK$500 million at the time of listing. • Market capitalisation/revenue/cash flow test: » Market capitalisation of at least HK$2 billion at the time of listing. » Revenue of at least HK$500 million for the most recent audited financial year. » Positive cash flow from operating activities of at least HK$100 million in aggregate for the three preceding financial years. • Market capitalisation/revenue test: » Market capitalisation of at least HK$4 billion at the time of listing. » Revenue of at least HK$500 million for the most recent audited financial year.	Applicant must fulfil the following financial criteria: • Market capitalisation of at least HK$150 million at the time of listing. • Positive cash flow from operating activities of at least HK$30 million in aggregate for the two preceding financial years.

	MAIN BOARD	GEM
Market Capitalisation	Minimum market capitalisation of at least: • HK$500 million for applicants under the profit test at the time of listing. • HK$2 billion for applicants under the market capitalisation/revenue/cash flow test at the time of listing. • HK$4 billion for applicants under the market capitalisation/revenue test at the time of listing. Please refer to "Profitability/Financial Standards" for other financial criteria.	Minimum market capitalisation of HK$150 million at the time of listing.
Shorter Trading Period	The HKEx may accept a shorter trading record for: • A new applicant applying under the market capitalisation/revenue test, where its directors and management have sufficient and satisfactory experience of at least three years in the line of business and industry of the new applicant.	The HKEx may accept a shorter trading record for: • Mineral companies. • Newly formed "project" companies **provided** the applicant can still meet the positive cash flow requirement of HK$30 million for that shorter trading record period.
Age of Accounts Disclosed in Listing Documentation	Latest financial period reported on must not have ended more than six months before the date of the listing document.	
Shares in Public Hands	At least 25 percent of shares subject to a minimum of HK$125 million must be in public hands. For applicants with an expected market capitalisation of over HK$10 billion at the time of listing, the HKEx may accept a lower percentage of between 15 percent and 25 percent. The minimum public float must be maintained at all times.	At least 25 percent of shares subject to a minimum of HK$45 million must be in public hands. For applicants with an expected market capitalisation of over HK$10 billion at the time of listing, the HKEx may accept a lower percentage of between 15 percent and 25 percent. The minimum public float must be maintained at all times.

	MAIN BOARD	GEM
Competing Business	Competing businesses of directors and controlling shareholders of the applicant are allowed, provided full disclosure is made in the prospectus at the time of listing and on an ongoing basis.	Competing businesses of directors and controlling shareholders of the applicant are allowed, provided full disclosure is made in the prospectus at the time of listing and on an ongoing basis. For a competing business of a substantial shareholder, full disclosure is only required to be made in the prospectus at the time of listing.
Sufficient Management Presence	At least two of the executive directors must be ordinarily resident in Hong Kong.	Not applicable.
Free Transferability of Shares	Shares must be freely transferable.	
Electronic Settlement	All securities newly listed on the HKEx must be eligible for deposit, clearance and settlement in the Central Clearing and Settlement System, established and operated by the Hong Kong Securities Clearing Company Limited, from the date on which dealings in such securities are to commence.	
Corporate Governance Requirements	See "Appendix 5 - Corporate Governance".	
Reporting Standards for Accounts Disclosed in Listing Documentation	HKFRS, IFRS or other accounting standards are acceptable to the HKEx under certain circumstances. PRC companies applying for listing in Hong Kong may adopt CASBE to prepare their financial statements for IPOs.	

Appendix 2 – Mining and Mineral Companies

Additional listing conditions, disclosure requirements and continuing obligations for Mineral Companies are set out in Chapter 18 of the Listing Rules. This section provides an overview of the requirements.

MEANING OF MINERAL COMPANY

"Mineral Company" means new applicants whose major activity is the exploration for and extraction of minerals or petroleum products; and a "major activity" is one that represents 25 percent or more of the total assets, revenue, or operating expenses, of the listed issuer and its subsidiaries.

ADDITIONAL LISTING CONDITIONS

Meaningful portfolio of sufficient substance. A Mineral Company applicant must establish to the HKEx that it has at least a meaningful portfolio of the following which is identifiable under a recognised reporting standard and substantiated in an independent technical report by a recognised competent person (i.e., someone who has at least five years' relevant experience, and appropriate professional qualifications):

- Contingent Resources (applicable to petroleum companies, meaning those quantities of petroleum products estimated, at a given date, to be potentially recoverable from known accumulations by application of development projects but which are not currently considered to be commercially recoverable due to one or more contingencies); or
- Indicated Resources (applicable to mining companies, referring to that part of a mineral resource for which tonnage, densities, shape, physical characteristics, grade and mineral content can be estimated with a reasonable level of confidence).

Rights to participate actively in the exploration. A Mineral Company applicant must establish to the HKEx that it has rights to participate actively in the exploration and extraction of the relevant resources, either

- through control over a majority (i.e., a more than 50 percent interest),

by value, of the assets in which it has invested, together with adequate rights over the exploration for and extraction of the relevant resources; or

- through adequate rights to provide it with sufficient influence in decisions over the exploration for and the extraction of those resources.

The HKEx recognises rights granted under government mandates.

Working capital. A Mineral Company applicant must demonstrate that it has available working capital for 125 percent of its working capital needs, for at least the next 12 months. The analysis of an applicant's working capital needs must include, at a minimum: general, administrative and operating costs, property holding costs and the costs of proposed exploration and development.

Cash Operating Cost Estimate. Where a Mineral Company has commenced production, it must provide an estimate of cash operating costs, highlighting all material cost items. Where a Mineral Company has not yet begun production, it must disclose its plans to proceed to production with indicative dates and costs.

Applicant at Early Stage of Exploration. A Mineral Company applicant which is unable to meet the standard profitability/financial tests or the track-record listing requirements, may still apply to be listed if its primary activity is the exploration of and/or extraction of natural resources and it can establish to the HKEx that its board and senior management, taken together, have sufficient experience in the type of exploration and extraction activity that the Mineral Company is pursuing. Such individuals must possess a minimum of five years' relevant industry experience and details of the relevant experience must be disclosed in the applicant's listing document.

Despite the aforesaid relaxation, early-stage exploration companies without identifiable mineral or petroleum reserves or resources are unlikely to qualify as suitable listing candidates.

DISCLOSURE REPORTING STANDARDS

A Mineral Company must disclose its mineral resources and reserves under the JORC Code, NI 43-101 and the SAMREC Code. The Mineral Company must also disclose its petroleum resources and reserves under PRMS (Petroleum Resources Management System). The HKEx may allow the use of other reporting standards; however, the Mineral Company must then provide a reconciliation to an accepted reporting standard. Currently, the Russian and Chinese standards are not recognised and reconciliations are required.

Any valuation of a Mineral Company's mineral or petroleum assets must be prepared under the CIMVAL Code, SAM VAL Code or VALMIN Code and the basis of the valuation, relevant assumptions and reasons for choosing a particular method of valuation, must be clearly stated.

CONTINUING OBLIGATIONS

A newly-listed Mineral Company must include, in its interim and annual reports, details of their exploration, development and mining production activities, and a summary of expenditure incurred on these activities during the relevant period. A listed issuer that publicly discloses details of the relevant resources and reserves, must also give an update of those resources and reserves once a year in its annual report, in accordance with the reporting standard under which they were previously disclosed, or another accepted reporting standard. These updates must be presented in a format that can be easily understood by investors. Annual updates are not required to be supported by a Competent Person's Report and may take the form of a no-material-change statement. For any major acquisition of natural resources assets, a Competent Person's Report and valuation report must be included in the shareholders' circular. For any major disposal of natural resources assets, details of any material liabilities that will remain with the listed issuer after the disposal must be disclosed.

Appendix 3 – Waivers

Companies seeking a primary or secondary listing in Hong Kong must comply with the Listing Rules, the SFO, the Codes and other applicable laws and regulations.

If an applicant can demonstrate to the satisfaction of the HKEx and/or the SFC that it is burdensome for it to comply with certain rules or regulations, or that compliance with these rules or regulations is contrary to the laws in the country of its incorporation, the HKEx and/or the SFC may at their discretion waive, modify or not require compliance with such rules or regulations in individual cases to suit the circumstances of a particular case.

Experience shows that if genuine necessity is established, the regulators are prepared to grant the waiver(s) in vast different areas, for instance, the listing qualification requirements under the Listing Rules (such as management presence, company secretary qualifications and etc.); the prospectus disclosure requirements under the relevant rules and regulations (such as disclosure of pre-acquisition financial information of material business, disclosure of share capital changes, disclosure relating to share options, property valuation report and etc.); or the continuing obligations after listing (such as simultaneous release of information for dual-listing applicants).

In October 2020, the HKEx codified in the Listing Rules of certain waivers that have been granted by the HKEx with general effect as approved by the SFC or granted on multiple occasions on the basis of similar principles and conditions, as well as administrative guidance set out in various listing decisions or guidance letters published by the HKEx. Such codification exercise illustrates the long practice of the HKEx granting waivers to applicant(s) based on the facts and circumstances presented.

Below are, for illustration purposes only, examples of circumstances where waivers from strict compliance may be granted to Main Board listing applicants.

RULES/REGULATIONS REQUIREMENT	CIRCUMSTANCES WHERE THE REQUIREMENT MAY BE WAIVED
Listing qualification – no change of financial year period	Applicant is an investment holding company and the change is to allow its financial year to be coterminous with that of all or a majority of its major operating subsidiaries; and that all Listing Rule 8.05 listing qualification requirements are satisfied.
Listing qualification – qualification requirements of company secretary	Applicant's principal business activities are primarily outside Hong Kong and the proposed company secretary, though without the required qualification or experience, is a suitable candidate (e.g. familiar with applicant's operations and board) and would be assisted by a person possessing the necessary qualification.
Accountant's report – Disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period	• The acquisition is not material (i.e., all percentage ratios being less than 5 percent); • the requisite SFC exemption has been obtained for financing the acquisition from the proceeds of the offer; and • where the applicant's principal activities involve the purchase of equity securities, the applicant has no control (30 percent voting power or more) or significant influence over the underlying target; or where the acquisition of a business is involved for which historical financial information is unavailable or unduly burdensome to obtain, the applicant has disclosed this in its listing document information required for the announcement of a discloseable transaction.
Share Option Scheme – Exercise Price Requirement - Dually listed A+H Issuers	The exercise price requirement may be waived if the scheme involves only the issuer's domestic A shares listed on a PRC stock exchange and the exercise price is no less than the prevailing market price of its A shares at the time of grant.
Prospectus Disclosure Requirements under CWUMPO – disclosure of directors' addresses	An applicant can demonstrate to the satisfaction of the SFC that there is genuine privacy concern.

Appendix 4 – Connected Transactions

Broadly speaking, a connected transaction means a transaction between a listed issuer, or any of its subsidiaries, and a "connected person" or its "associates".

The HKEx has the discretion to deem certain persons "connected" if they enter or propose to enter into any arrangement with a director, ex-director, chief executive or substantial shareholder of a listed issuer (including a person who was a director of the listed issuer in the preceding 12 months) so that in the opinion of the HKEx that person should be considered a connected person.

Connected transactions can be any kind of transaction, and include entering into leases or receiving services from a connected person, joint ventures, trading with a connected person or providing financial assistance to a connected person – which could be a guarantee, loan or simply offering "favourable" trading terms, such as extended trade credit or leaving a loan outstanding. It may be a "one-off", in the case of listed issuers, or a continuing transaction, in the case of both listed issuers and listing applicants.

WHAT ARE THE DISCLOSURE AND OTHER OBLIGATIONS?

Connected transactions that a listing applicant proposes to enter into or continue upon listing must be disclosed in the prospectus. Depending on the transaction size, each connected transaction is subject to ongoing disclosure, annual review and shareholders' approval requirements of the Listing Rules (**CT Requirements**). For example, any shareholder who has a material interest in a particular transaction must abstain from voting.

The Listing Rules also require a listed issuer to enter into written agreements with the relevant parties in respect of all connected transactions. In particular, in relation to all continuing connected transactions that are not fully exempted from the CT Requirements, the agreements must set out the basis of the calculation of the payments to be made. The period for the agreements must be fixed and reflect normal commercial terms or better and, except in special circumstances, must not exceed three years.

The listed issuer must set a maximum aggregate annual value (cap) of the transaction for each continuing connected transaction. This annual cap must be expressed in terms of monetary value rather than a percentage of the listed issuer's annual revenue. The cap must be determined by reference to previous transactions and figures that are readily ascertainable from published information of the listed issuer. If there are no previous transactions, the cap must be made based on reasonable assumptions.

It is important to identify all connected transactions that a listing applicant will continue, or enter into, upon listing, in order to facilitate:

1. Appropriate disclosure in the prospectus.
2. Preparation of agreements documenting these transactions.
3. Ascertaining the ongoing obligations in respect of these transactions.
4. If required, waivers may be sought from the HKEx on the shareholders' approval requirement.

WHAT DO "CONNECTED PERSON" AND "ASSOCIATE" MEAN?

1. *"Connected Person" Includes:*

a. A director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries.

b. Any person who was a director of the listed issuer or any of its subsidiaries in the last 12 months.

c. A supervisor of a PRC issuer or any of its subsidiaries.

d. An associate of a person referred to above.

e. A connected subsidiary – i.e., a non wholly-owned subsidiary of the listed issuer where any connected person(s) at the issuer level can exercise or control the exercise of 10 percent or more of the voting power at the subsidiary's general meeting, or any subsidiary of such non wholly-owned subsidiary.

f. A person deemed to be connected by the HKEx.

2. *"Associate" (In the Context of Non-PRC Listed Issuers) includes:*

a. In relation to an individual includes:

Immediate family member

i. His or her spouse, his or her (or his or her spouse's) child or stepchild, natural or adopted, under the age of 18 years – each an "*immediate family member*").

ii. The trustees, acting in their capacity as trustees of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is a discretionary object – other than a trust which is an employees' share scheme or occupational pension scheme established for a wide scope of participants and the connected persons' aggregate interests in the scheme are less than 30 percent (the *trustees*).

iii. A *30 percent-controlled* company – i.e., a company held by a person who can exercise or control the exercise of 30 percent, or an amount for triggering a mandatory general offer under the Codes, or more of the voting power at general meetings, or control the composition of a majority of the board of directors – held by the individual, his immediate family members or the trustees or any of its subsidiaries.

Family Member

i. A person cohabiting with him or her as a spouse, or his or her child, step-child, parent, step-parent, brother, stepbrother, sister or stepsister (each a "*family member*").

ii. A majority-controlled company – i.e., a company held by a person who can exercise or control the exercise of more than *50 percent* of the voting power at general meetings, or control the composition of a majority of the board of directors – held, directly or indirectly, by the family members or held by the family members together with the individual, his immediate family members or the trustees, or any of its subsidiaries.

b. In relation to a company includes:

i. Its subsidiary or holding company, or a fellow subsidiary of the holding company.

ii. The trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary or, in the case of a discretion-

ary trust, is a discretionary object (the trustees)

iii. A 30 percent-controlled company held, directly or indirectly, by the company, the companies referred to in (i) above, or the trustees or any of its subsidiaries.

Note: A 30 percent-controlled company held by a person will not be regarded as his, or its associate, if the person's and his or its associates' interests in the company, other than those indirectly held through the listed issuer's group, are together less than 10 percent.

THE EXEMPTIONS FOR CONTINUING CONNECTED TRANSACTIONS?

The Exemptions are Broadly Divided into Two Categories:

1. Fully exempt from shareholders' approval, annual review and all disclosure requirements.
2. Exempt from circular, including independent financial advice, and shareholders' approval requirements.

The HKEx has the discretion to specify that an exemption will not apply to a particular transaction or it may also grant waivers from any requirements in individual cases, subject to conditions which it may impose:

Types of Exempt Transactions	**Fully Exempt Transactions**	**Exempt from Circular (Including Independent Financial Advice) and Shareholders' Approval Requirements**
De Minimis Transaction (Apart From an Issue of New Securities by The Listed Issuer)	The transaction is conducted on normal commercial terms or better. If all the percentage ratios[1] – other than the profits ratio – are: 1. Less than 0.1 percent. 2. Less than 1 percent and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level. 3. Less than 5 percent and the total consideration is less HK$3,000,000	The transaction is conducted on normal commercial terms or better. If all the percentage ratios (other than the profits ratio) are: 1. Less than 5 percent. 2. Less than 25 percent and the total consideration is less HK$10,000,000

Types of Exempt Transactions	Fully Exempt Transactions	Exempt from Circular (Including Independent Financial Advice) and Shareholders' Approval Requirements
Financial Assistance	Provided by the listed issuer's group to a connected person or commonly held entity[2] if the transaction is conducted: 1. On normal commercial terms or better. 2. In proportion to the equity interest directly held by the listed issuer, or its subsidiary, in the connected person or commonly held entity. Any guarantee given must be on a several, and not a joint and several basis. Received by a listed issuer's group from a connected person or commonly held entity if: 1. The transaction is conducted on normal commercial terms or better. 2. It is not secured by the assets of the listed issuer's group. Providing an indemnity for a director of the listed issuer or its subsidiaries for liabilities that may be incurred in the course of performing his duties, provided that the indemnity is in a form permitted under the laws in Hong Kong or the laws of the place of incorporation (where the company providing the indemnity is incorporated outside Hong Kong).	

Types of Exempt Transactions	Fully Exempt Transactions	Exempt from Circular (Including Independent Financial Advice) and Shareholders' Approval Requirements
Issue of New Securities by the Listed Issuer or its Subsidiary to a Connected Person	Under certain situations such as pro rata entitlement, subscription for securities in rights issue/open offer, securities issued under a share option scheme or a "top-up placing and subscription" (subject to satisfaction of specified conditions).	
Dealings in Securities on Stock Exchanges by the Listed Issuer's Group	Subject to the satisfaction of certain specified conditions, dealing in the listed securities of a target company (i.e. a company which the listed issuer's group is acquiring from a person who is not a connected person but as a result of the acquisition a substantial shareholder of the target company is or becomes a connected person).	
Repurchases of Securities by the Listed Issuer or its Subsidiary	If they are made on the HKEx or a recognised stock exchange, except where the connected person knowingly sells the securities to the listed issuer's group, or in a general offer under the Codes.	
Directors' Service Contracts and Insurance	A director entering into a service contract with the listed issuer or its subsidiary. Purchase and maintenance of insurance for a director of the listed issuer, or its subsidiaries, against liabilities to third parties that may be incurred in the course of performing his duties, if it is permitted under the laws of Hong Kong or the laws of the place of incorporation (where the company purchasing the insurance is incorporated outside Hong Kong).	

Types of Exempt Transactions	Fully Exempt Transactions	Exempt from Circular (Including Independent Financial Advice) and Shareholders' Approval Requirements
Buying or Selling of Consumer Goods or Services from or to a Connected Person	If the transaction is on normal commercial terms or better in its ordinary and usual course of business.	
Sharing of Administrative Services between The Listed Issuer's Group and a Connected Person	If it is on a cost basis, **provided** that the costs are identifiable and allocated to the parties involved on a fair and equitable basis.	
Transactions Between the Listed Issuer's Group and an Associate of a Passive Investor	The passive investor is a connected person only because it is a substantial shareholder of the listed issuer or any of its subsidiaries – also subject to satisfaction of other specified conditions.	
Transactions Between the Listed Issuer's Group and a Connected Person at the Subsidiary Level		If the transaction is conducted on normal commercial terms or better, the listed issuer's board of directors has approved the transaction and the independent non-executive directors have confirmed that the terms of the transaction are fair and reasonable, on normal commercial terms or better and in the interests of the listed issuer and its shareholders as a whole.

1. *Percentage ratios* are the figures, expressed as percentages resulting from each of the following calculations:

   a. Assets ratio – the total assets that are the subject of the transaction divided by the total assets of the listed issuer.

   b. Profits ratio – the profits attributable to the assets that are the subject of the transaction divided by the profits of the listed issuer.

c. Revenue ratio – the revenue attributable to the assets that are the subject of the transaction divided by the revenue of the listed issuer.

d. Consideration ratio – the consideration divided by the total market capitalisation of the listed issuer (which is the average closing price of the listed issuer's securities as stated in the HKEx's daily quotations sheets for the five business days immediately preceding the date of the transaction).

e. Equity capital ratio – the number of shares to be issued by the listed issuer as consideration divided by the total number of the listed issuer's issued shares immediately before the transaction.

2. A "*commonly held entity*" is a company whose shareholders include (a) a member of the listed issuer's group; and (b) any connected person(s) at the issuer level who, individually or together, can exercise or control the exercise of 10 percent or more of the voting power at the company's general meeting. This 10 percent excludes any indirect interest held by the person(s) through the listed issuer.

Appendix 5 – Corporate Governance

	Main Board	GEM
Independent Non-Executive Directors	Listed issuers are required to appoint at least three independent non-executive directors representing at least one-third of the board. At least one of the independent non-executive directors must have appropriate professional qualifications, or accounting, or related financial management expertise.	
Company Secretary	The issuers are required to appoint an individual who, by virtue of his or her academic or professional qualifications or relevant experience, is capable of discharging the functions of company secretary.	
Authorised Representatives	The issuers are required to appoint two authorised representatives as the principal channel of communication with the HKEx. The two authorised representatives must be either two directors or a director and the company secretary.	The issuers are required to appoint authorised representatives. The authorised representatives must be two individuals from among the executive directors and the company secretary.
Compliance Officer	Not applicable.	Listed issuers are required to designate one of its executive directors as the compliance officer to ensure compliance with the GEM listing rules.
Audit Committee	Listed issuers are required to establish an audit committee comprising only non-executive directors. The audit committee must comprise a minimum of three members, at least one of whom is an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise. The majority of the audit committee members must be independent non-executive directors and must also be chaired by an independent non-executive director.	
Nomination Committee	Listed issuers are required to establish a nomination committee comprising a majority of independent non-executive directors and chaired by an independent non-executive director or the chairman of the board.	
Remuneration Committee	Listed issuers are required to establish a remuneration committee comprising a majority of independent non-executive directors and chaired by an independent non-executive director.	

	Main Board	GEM
Corporate Governance Code	Listed issuers are expected to comply with the code provisions under the Corporate Governance Code, or to explain, with considered reasons, any deviations. The code provisions include requirements for board meeting procedures, separation of the roles of chairman and chief executive officer, board composition, appointment, re-election and removal of directors, establishment of audit committee, nomination committee and remuneration committee, internal control review, delegation and voting by poll.	

Appendix 6 – Directors' Duties

GENERAL

By accepting appointment as a director of a listed company in Hong Kong, an individual assumes a wide variety of general legal duties, including as agent and controller and, in the case of an executive director, as an employee, as well as other specific duties under the Listing Rules. Additional duties are also applicable to independent non-executive directors of listed issuers. Set out below is a general overview of the duties and responsibilities of a director of a listed company in Hong Kong.

DUTIES GENERAL TO ALL DIRECTORS OF HONG KONG COMPANIES

The Hong Kong Companies Registry has issued "A Guide on Directors' Duties" outlining the general principles under the common law which a director of a company should observe in the performance of his functions and exercise of his powers:

- Duty to act in good faith for the benefit of the company as a whole.
- Duty to use powers for a proper purpose for the benefit of members as a whole.
- Duty not to delegate powers, except with proper authorisation and duty to exercise independent judgement.
- Duty to exercise care, skill and diligence.
- Duty to avoid conflicts between personal interests and interests of the company.
- Duty not to enter into transactions in which the directors have an interest, except in compliance with the requirements of the law.
- Duty not to gain advantage from use of position as a director.
- Duty not to make unauthorised use of company's property or information.
- Duty not to accept personal benefit from third parties conferred because of position as a director.
- Duty to observe the company's constitution and resolutions.
- Duty to keep proper books of account.

DUTIES SPECIFIC TO DIRECTORS OF LISTED ISSUERS

1. The Listing Rules

A person holding the office of a director of an issuer listed on the HKEx is obliged to assume the following general duties under the Listing Rules:

a. Act honestly and in good faith in the interests of the listed issuer as a whole.
b. Act for proper purpose.
c. Be answerable to the listed issuer for the application or misapplication of its assets.
d. Avoid actual and potential conflicts of interest and duty.
e. Disclose fully, and fairly, his interests in contracts with the listed issuer.
f. Apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience, and holding his office within the listed issuer.

In the case of wilful or persistent failure of a director to discharge his responsibilities under the Listing Rules, the HKEx may impose sanctions on the director, such as the issue of a public statement that involves criticism, or a public censure against the offending director. There have been incidences where the offending directors were directed to undertake training in compliance and corporate governance matters on courses held by institutions approved by the HKEx, and in some cases where the directors were no longer directors of the listed issuer at the time the public censure was issued, the HKEx made it a prerequisite for those ex-directors to first obtain training on Listing Rules compliance and directors' duties before they could be appointed to any directorship in the future.

HKEx has also issued "Guidance for Boards and Directors" to provide practical advice to boards and directors with regards to good corporate governance of listed companies, which covers:

- Directors' duties and board effectiveness.
- Board committees' role and functions.
- Board diversity and policy.

- Risk management and internal control.
- Company secretary.
- Corporate governance for weighted voting rights issuers.

*2. Model Code for Securities Transactions by Directors of Listed Issuers (**Model Code**)*

The Model Code – both the basic principles and the rules – sets out a required standard against which directors must measure their conduct regarding transactions in securities of their listed issuers. Any breach of the required standard is regarded as a breach of the Listing Rules.

The Model Code states that even when the insider dealing and market misconduct provisions under the SFO are not contravened, there are occasions when directors are not free to deal. Directors are not free to deal in any securities of the listed issuer on any day on which its financial results are published and (a) during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and (b) during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results.

*3. Additional Duties of Independent Non-Executive Directors (**INEDs**)*

Given the essential unitary nature of the board, non-executive directors have the same duties of care and skill and fiduciary duties as executive directors. Major responsibilities of INEDs include (a) providing an objective view on (i) the assessment of the financial statements of the listed issuer; and (ii) connected transactions and transactions which require independent shareholders' approval; and (b) participating in the audit, remuneration, nomination and other governance committees, if invited.

Where independent board committees are formed to assess connected transactions and transactions which require independent shareholders' approval, the INEDs of a listed issuer will normally be members of such committees.

4. Market Misconduct Under the SFO

There is a civil regime and a criminal regime in relation to market misconduct under the SFO.

MARKET MISCONDUCT TRIBUNAL (MMT) – THE CIVIL REGIME

Under the civil regime of the SFO, a duty is imposed on "officers of a corporation" – the definition of which includes a director – to ensure that proper safeguards exist to prevent the corporation from perpetrating any act constituting market misconduct. A private right of civil action is also given under the SFO to any person who suffers pecuniary loss as a result of market misconduct. A person who has committed market misconduct may be liable to pay damages to another person who has suffered pecuniary loss, as a result of the market misconduct.

Part XIII of the SFO provides for the establishment of the MMT, a civil tribunal to hear cases of market misconduct and to impose civil sanctions and make orders prohibiting the relevant person from being involved in the management of a listed company, trading in specific financial products, engaging in specified market misconduct, and ordering the payment of any profit gained or loss avoided.

"Market Misconduct" in the SFO includes:

- Insider dealing.
- False trading.
- Price rigging.
- Disclosure of information about prohibited transactions.
- Disclosure of false or misleading information inducing transactions.
- Stock market manipulation.

OFFENCES RELATING TO DEALINGS IN SECURITIES AND FUTURES CONTRACTS – THE CRIMINAL REGIME

The SFO imposes criminal penalties for market misconduct that mirror the civil wrongs the MMT deals with under Part XIII of the SFO. Market misconduct and acts of fraud or deception involving securities, futures contracts or leveraged foreign stock exchange trading could be subject to prosecution as a criminal offence.

The maximum sanction is either 10 years' imprisonment, a fine of up to HK$10 million or both. Those who suffer pecuniary loss as a result of the conduct in breach of the criminal offences also have a private right of civil action.

GENERAL PROVISIONS REGARDING LIABILITIES

Directors should also be aware of other general provisions under the SFO, under which they may be held personally liable as officers of the offending corporation. Where an offence under the SFO, committed by a corporation, is aided or abetted, counselled or procured by, or committed with the consent of, or is attributable to the recklessness of, an officer, including a director, of the corporation, that officer will be guilty of the offence and liable to punishment accordingly. The provision of false or misleading information to the SFC will also attract criminal liability. Persons relying on false or misleading information concerning securities or futures contracts, or having an effect on the price of securities or dealings in futures contracts made knowingly, recklessly or negligently, will also have a private right of action against the person making, issuing or participating in, or approving the making, or issuing of such information by way of damages for any pecuniary loss sustained.

5. Disclosure of Interests

The SFO disclosure regime requires a director or chief executive of a listed issuer to disclose any interest in the shares and debentures of and equity derivatives relating to the listed issuer or its associated corporations and any short positions.

An initial notification to the listed issuer and to the HKEx must be made within 10 business days after the relevant event. Other notifications should be made within three business days of the day on which he became aware of the relevant event – not the day he realises the relevant event gives rise to a duty of disclosure.

The offence of non-compliance, or supply of false information, carries a maximum fine of HK$100,000 and imprisonment for two years. The shares – including unissued shares which, on issue, are to be registered on the listed issuer's Hong Kong share register – may be subject to an order imposing restrictions on transfer.

6. Indemnities and Insurance Provided By a Listed Issuer to Its Directors

So far as the Listing Rules are concerned, subject to the satisfaction of certain conditions, any arrangement for a listed issuer to provide an indemnity or insurance for the benefit of a director would be a fully-exempt connected transaction – i.e., fully exempt from shareholders' approval, annual review and all disclosure requirements.

Pursuant to the Listing Rules, the articles of association of a listed issuer must provide that a director shall not vote on any board resolution approving any contract, arrangement or any other proposal in which he or any of his associates has a material interest, and shall not be counted in the quorum present at the meeting; although an exception may be provided from the general prohibition if the proposed contract, arrangement or proposal relates to the giving of any security or indemnity to the director in respect of any obligations undertaken by him for the benefit of the listed issuer or any of its subsidiaries. Regardless of there being no express prohibition in the articles of association of the listed issuer or applicable companies law against a director being present at a meeting to discuss and vote in relation to any such arrangements, one may argue that it is wise for such director to abstain from any deliberations or vote on his own arrangements to avoid breaching his general duties owed to the listed issuer.

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