

It is currently expected that amendments to the SFO to introduce statutory backing for the Listing Rule described above will be introduced in the Legislative Council in the near future.

As the securities and futures industry is one of the four major pillars of the Hong Kong economy and as Hong Kong establishes itself as a premier capital formation centre, one can safely say that the reforms described in this chapter are only the beginning. The regulatory regime governing listing will continue to evolve and strengthen in response to public demands and market needs.

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Chapter 6

Listing Non-Hong Kong Companies (including PRC Enterprises)

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A. Introduction

Background

A substantial proportion of the companies whose shares are listed on the Hong Kong Stock Exchange (SEHK) are incorporated outside Hong Kong, commonly in Bermuda, the Cayman Islands and the People's Republic of China (PRC). This category of companies includes companies incorporated outside Hong Kong whose businesses are, predominantly, also carried on outside Hong Kong, as well as companies incorporated outside Hong Kong whose businesses are carried on in Hong Kong.

This chapter deals only with the requirements for listing on the Main Board of the SEHK of shares in companies incorporated outside Hong Kong.

This chapter does not deal with the migration of the corporate domicile of Hong Kong groups which, in the case of migration to Bermuda, is addressed in Chapter 10 of this Guide.



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The approach of the Listing Rules

Overseas companies

While the Listing Rules generally apply to companies incorporated both in and outside Hong Kong, they contain two specific chapters which apply only to companies incorporated outside Hong Kong. Chapter 19 contains rules applicable to all companies incorporated outside Hong Kong, apart from the PRC, in so far as they relate to primary listings, and Chapter 19A contains rules applicable to issuers incorporated or otherwise established in the PRC seeking a primary listing in Hong Kong.

Primary and secondary listings

The Listing Rules applicable to companies incorporated outside Hong Kong also differ depending on whether the relevant company has, or will have, a 'primary' or 'secondary' listing on the SEHK.

Primary listings

Listing Rule 1.05 provides that where, for the purposes of the Listing Rules, it is necessary to determine whether an issuer's primary listing is, or is to be, on the SEHK or another stock exchange, the determination will be made by the SEHK. If an issuer does not have any other listing, the SEHK will always regard the primary listing as being on the SEHK.

Secondary listings

The Listing Rules set out additional requirements, modifications and exceptions which apply to companies incorporated outside Hong Kong that are seeking to obtain a secondary listing on the SEHK. These generally relate to the application procedures, the content requirements for listing documents and continuing obligations. The rationale for this approach is that the company should be adequately regulated by the exchange on which its shares have a primary listing. It is not common for companies to seek a secondary listing on the SEHK; as at December 2010, only a small number of companies have a secondary listing on the SEHK, including Manulife Financial Corporation, Midas Holdings Ltd, and Vale S.A.

The approach of the Companies Ordinance

The Companies Ordinance regulates the offering of securities to the public whether by companies incorporated in Hong Kong or by companies incorporated outside Hong Kong. In both cases, a prospectus will be required (whose contents must comply with prescribed requirements and the prospectus itself must be registered at the Companies Registry), unless certain criteria can be satisfied.

B. Methods of listing

Methods of obtaining a primary listing

Chapter 7 of the Listing Rules prescribes a number of methods by which equities may be brought to listing. These methods are applicable to companies incorporated both in and outside Hong Kong. They include the following.

Offer for subscription

This is an offer to the public by, or on behalf of, the issuer of its own securities, being securities which have not been issued prior to the offer. The Listing Rules require the subscription of the securities to be fully underwritten and the offer to be supported by a listing document.

Offer for sale

This type of offer is very similar to an offer for subscription, except that it is an offer to the public by, or on behalf of, the holders or allottees of securities already in issue or agreed to be subscribed. In other words, the offer of securities is made by existing shareholders or allottees (rather than by, or on behalf of, the company itself). As a result, the proceeds of the offer will accrue to existing shareholders rather than to the company. The Listing Rules require the offer to be supported by a listing document, but there is no requirement for an offer for sale to be underwritten. However, it is nevertheless typical for offers for sale to be fully underwritten.

Placing

A placing involves the obtaining of subscriptions for, or the sale of securities by, an issuer (or intermediary) primarily from or to persons selected or approved

by the issuer (or intermediary). The Listing Rules provide that the SEHK may not permit a new applicant to be listed by way of a placing if there is likely to be a significant public demand for the securities. However, the SEHK may be prepared to allow preliminary arrangements and placings to be made to dispose of securities before the start of dealings in order to comply with the minimum public float requirements.

A listing document will be required if the placing is by, or on behalf of, a new listing applicant or by, or on behalf of, a listed issuer of securities of a class new to listing. However, a listing document will not be required if the placing is by, or on behalf of, a listed issuer of securities of a class already listed (unless a prospectus or other listing document is otherwise required or issued).

In relation to placings, regard must also be had to Appendix 6 of the Listing Rules which contains the Placing Guidelines for Equity Securities (Guidelines). These Guidelines draw a distinction between placings in respect of new listing applicants and placings in respect of listed issuers. In the context of companies incorporated outside Hong Kong with their primary listing on another stock exchange, it is worth noting that the requirement in the Guidelines that the securities to be placed must have an expected market capitalisation of not less than HK\$25 million is not normally applied.

Methods of obtaining a secondary listing

Introduction

A secondary listing can be obtained by applying for a listing by way of introduction. An introduction is a method of listing securities which are already in issue, and where no marketing arrangements are required because the securities for which listing is sought are already of such an amount, and so widely held, that their adequate marketability can be assumed.

The Listing Rules state that an introduction will normally be appropriate:

- where the securities to be listed are already listed on another stock exchange;

- where the securities of an issuer are distributed in *specie* by a listed issuer to its own shareholders or to the shareholders of another listed issuer; or
- where a holding company is formed and its securities are issued in exchange for those of one or more listed issuers.

An introduction will only be permitted in exceptional circumstances if there has been a marketing of the securities in Hong Kong within six months prior to the proposed introduction where such marketing was made conditional on listing being granted for those securities. In certain circumstances, the SEHK will not permit an introduction. These include where there is likely to be a significant public demand for the securities, or if a change in the nature of the issuer's business is in contemplation.

The Listing Rules require potential issuers to apply to the SEHK as early as possible to obtain confirmation that an introduction will be an appropriate method of listing. The application must contain details of the 10 largest existing beneficial shareholders (if known), the total number of shareholders and details of the holdings of the directors and their associates.

Other methods

Where a secondary listing involves an offering of securities, other methods of listing typical for a primary listing could also be used in addition to an introduction.

C. Additional qualifications and requirements for listing

General

As discussed above, while the Listing Rules generally apply to companies incorporated both in and outside Hong Kong, they contain two specific chapters (Chapters 19 and 19A) which provide additional qualifications and requirements which are applicable only to companies incorporated outside Hong Kong. These additional qualifications and requirements are further divided into those which apply to primary listings and those which apply to secondary listings.

The SEHK has also established additional requirements for three specific jurisdictions: Bermuda, the Cayman Islands and the PRC. These additional requirements are intended to provide for an appropriate level of shareholder protection. The additional requirements are set out in Appendix 13 of the Listing Rules.

This section addresses the additional qualifications and requirements for issuers incorporated outside Hong Kong, rather than the qualifications and requirements which apply to issuers generally (whether incorporated in or outside Hong Kong). The general qualifications and requirements are addressed elsewhere in this Guide.

Additional qualifications and requirements for overseas issuers seeking a primary listing (excluding PRC issuers)

SEHK's over-riding discretion

Chapter 19 provides that the SEHK reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer (excluding PRC issuers) in the following circumstances:

- the SEHK believes it is not in the public interest to list them; and
- the SEHK is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those in Hong Kong. In this connection, where the SEHK believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible to provide such standards by means of varying the overseas issuer's constitutive documents, then the SEHK may approve the listing subject to appropriate variations being made to the overseas issuer's constitutive documents.

A practical factor that the SEHK ordinarily views favourably when considering applications from overseas companies seeking a primary listing on the SEHK's markets is whether the applicant is incorporated in a jurisdiction of which the statutory securities regulator has adequate arrangements with the Securities and Futures Commission (SFC) for mutual assistance and exchange

of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong either by way of the IOSCO Multilateral Memorandum of Understanding, or an adequately comprehensive bilateral agreement with the SFC. As a result, the SFC and the SEHK had published a joint policy statement clarifying the roadmap to assist companies incorporated in these jurisdictions to apply for a primary listing in Hong Kong, which is discussed further below.

Authorised person

The overseas issuer must appoint a person authorised to accept service and process on its behalf in Hong Kong. Also, throughout the period during which its securities are listed on the SEHK, the overseas issuer must ensure that a person is authorised to accept service on its behalf in Hong Kong. Contact details of the authorised person (and changes to such details) must be provided to the SEHK.

Hong Kong register

In the case of registered securities (other than those transferable by endorsement and delivery), an overseas issuer must maintain a register of holders in Hong Kong (or such other place as the SEHK may agree) and for transfers to be registered locally. Unless the SEHK otherwise agrees, only securities registered on the Hong Kong register may be traded on the SEHK. Where two or more registers are maintained by an overseas issuer, it is not necessary for the Hong Kong register to contain particulars of the shares registered on any other register. In the case of bearer securities, provision must be made for the payment of dividends and certain other payments in Hong Kong (or such other place as the SEHK may agree).

Additional requirements for primary listings by way of a certain type of introduction

Where an overseas issuer wishes to obtain its primary listing on the SEHK by way of an introduction in the circumstances set out in Listing Rule 7.14(3) (where a holding company is formed and its securities are issued in exchange for those of one or more listed issuers), it must comply with the following additional requirements:

- **regulation in place of incorporation:** it must provide the SEHK with details of the relevant regulatory provisions in its place of incorporation

ie, persons who are connected only because they are (or are associates of) substantial shareholders of the listed issuer's single-purpose, property-specific project subsidiary (Rules 14A.72 – 73). However, such transactions continue to be subject to requirements including notification, circularisation, reporting and announcement.

Endnotes:

1. Inapplicable to financial assistance and granting of options — see Sections E and F.
2. Except securities issues to connected persons, which are governed by the second bullet point in this Section D.
3. Inapplicable to financial assistance and granting of options — see Sections E and F.
4. Except securities issues to connected persons, which are governed by the second bullet point in this Section D.
5. Note that in calculating proportionate financial assistance to a connected interest company for these purposes, where relevant the SEHK will base its calculation on the direct interest held by any relevant member of the listed issuer's group in that company, rather than on the listed issuer's ultimate attributable interest in such company.

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Chapter 8

Structured Products

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A. Introduction

The range of structured products that are eligible for listing on The Stock Exchange of Hong Kong Limited (SEHK) has grown considerably since single stock derivative warrants were first listed on the SEHK a number of years ago.

The SEHK has, to date, agreed to list various types of structured products, including the following:

- derivative warrants over a single Hong Kong-listed stock or a single foreign stock;
- basket derivative warrants over Hong Kong-listed stock or foreign stock;
- low exercise price commodity derivative warrants;
- index derivative warrants;
- gold derivative warrants;
- currency derivative warrants;
- bull equity-linked instruments;



- bear equity-linked instruments;
- range equity-linked instruments;
- callable bull/bear contracts; and
- index participation certificates.

The provisions of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules) relating to structured products have been revised a number of times in recent years as the listed structured products market has evolved and new products have been introduced into the market. In 1996, a distinct chapter of the Listing Rules (Chapter 15A) was introduced, to deal specifically with derivative warrants.

In June 2002, amendments were made to the Listing Rules to widen the range of products that would be eligible for listing on the SEHK. Chapter 15A of the Listing Rules was amended to cover structured products rather than just derivative warrant issues. In particular, specific provisions were introduced into the Listing Rules to allow for the listing of bull equity-linked instruments, bear equity-linked instruments and range equity-linked instruments. Hong Kong Exchanges and Clearing Limited (HKEx) announced in July 2003 that a new type of structured product, capital-protected instruments, would also be eligible for listing. In 2006, the first callable bull/bear contracts were listed on the SEHK. In addition, in December 2007, HKEx announced measures to facilitate the listing of a wider range of market access products. Market access products can take the form of derivative warrants, callable bull/bear contracts or equity-linked instruments. The underlying assets eligible for issues of market access products include: (i) a security listed on a recognised overseas exchange; (ii) a commodity asset or a derivative contract; or (iii) a third-party or proprietary index based on (ii) or (iii).

B. Description of structured products and terminology

The Listing Rules state that structured products provide holders of the structured products with an economic, legal or other interest in another asset (the underlying asset) and, therefore, derive their value by reference to the price or value of such underlying asset. Rule 15A.05 lists certain characteristics of structured products. This list is not exhaustive and includes:

- the underlying asset may be a security, index, currency, commodity or other asset, or a combination of any of these assets;
- the structured products allow holders to purchase or sell the underlying asset at a pre-determined price, or at a price calculated by reference to a pre-determined formula, or to receive a cash payment (or payments) calculated by reference to the price or value of the underlying asset;
- when determining the cash payments to be made to the holders of the structured products, the underlying assets may be valued on one or more occasions prior to the final expiry or maturity date of the structured products. If valuation occurs prior to the expiry or maturity date, the resulting cash payment can be made at the time of the valuation or may be paid at later valuation times or on the expiry or maturity date for the structured products;
- holders may be required to make one or more payments during the life of the structured products to acquire the underlying assets;
- structured products may provide for holders to receive any distributions (for example, dividends) on the underlying assets during the life of the structured products;
- the structured products may or may not be capital-protected (ie, all, or a proportion of, the initial investment made will be payable to investors at expiry or maturity); and
- a holder's return on any structured products may be subject to limits and may also contain knock-in or knock-out features (ie, the return on the structured products is dependent on certain barriers or prices being reached or not reached).

Rule 15A.05(4) states that structured products which can be exercised on any business day during a pre-determined period (ie, between the dealing commencement date of the structured products and the expiry date of the structured products) are known as American-style structured products. Structured products which can only be exercised on one day (the expiry date of the structured products) are known as European-style structured products. Upon expiry of the exercise period for the structured products, the structured products will lapse and all the rights of the holders of the structured products will cease. It is a requirement in the Listing Rules when settlement is by way of cash only that structured products are automatically exercised rather than exercised by notice given by the holders of the structured products.

Rule 15A.05(5) divides structured products into two categories, one being collateralised structured products and the other non-collateralised structured products. Collateralised structured products are structured products whereby the issuer owns all of the underlying securities or assets to which the collateralised structured products relate, and grants a charge over such securities or assets in favour of an independent trustee which acts on behalf of the holders of such structured products. In the case of non-collateralised structured products, the issuer's obligations are supported in a form other than by way of a charge over the underlying securities or assets. Issuers of non-collateralised structured products will normally adopt hedging strategies to support their obligations during the life of these structured products. Such issuers must comply with the net asset value requirements of Rule 15A.12 and the credit rating and supervision requirements of Rule 15A.13. The structured products listed to date on the SEHK have all been non-collateralised structured products.

The requirements for the main types of structured products are described below.

Derivative warrants

General

Derivative warrants may relate to shares, an index, gold, currencies, or other assets as approved from time to time. These derivative warrants give holders a return by reference, for example, to the fluctuation in the price of a share or a basket of shares, the level of a particular index or the price of a commodity. Derivative share warrants usually relate to existing issued shares of an underlying company, which is separate from the issuer of the derivative warrants. The derivative warrants may be cash settled or physically settled on exercise, and payments or deliveries will either be made by the issuer of the derivative warrants or the holder of the derivative warrants, depending on the terms of the derivative warrants. The vast majority of derivative warrants listed on the SEHK are cash settled.

There is a distinction drawn in the Listing Rules between 'put' and 'call' derivative warrants. Physically settled call derivative warrants give the holder

the right to receive the underlying asset upon payment of a pre-determined exercise price in anticipation that the price of the underlying asset will have risen above the exercise price between the date of issue of the derivative warrant and the date of exercise of the derivative warrant. Physically settled put derivative warrants give the holder the right to sell the underlying asset at a pre-determined price in anticipation that the price of the underlying asset will have fallen below the exercise price between the issue date and the exercise date. In respect of a cash settled call derivative warrant, the issuer of the derivative warrant will make a payment to the holder if the value or price of the underlying asset has risen in relation to the exercise (or strike) price between the date of issue of the derivative warrant and the date of its exercise. A holder will receive payment from the issuer on a cash settled put warrant if the value or price of the underlying asset has fallen in relation to the exercise (or strike) price between such dates.

The above provisions are set out in Rule 15A.06 of the Listing Rules which defines a derivative warrant as a warrant that gives the holder the right (but not the obligation) either to:

- purchase from (derivative call warrant) or sell to (derivative put warrant) the issuer at a pre-determined exercise or strike price:
 - a specified number of securities issued by a company (or to receive a cash payment calculated by reference thereto); or
 - any asset (or to receive a cash payment calculated by reference thereto); or
- receive from the issuer a cash payment equal to the excess (if any) of:
 - in the case of a derivative call warrant, the value of an index relating to securities or assets (or other index) on the date of exercise of the derivative warrant over the exercise or strike price; or
 - in the case of a derivative put warrant, the exercise or strike price over the value of an index relating to securities or assets (or other index) on the date of exercise of the derivative warrant,

during a pre-determined exercise period or on a pre-determined date or dates. The definition extends to any similar type of instrument (whether in the form of derivative warrants or otherwise).

It should be noted that only single stock derivative warrants over Hong Kong-listed shares may be physically settled. The issuer must specify at launch that such warrants will, on exercise, be purely cash settled or physically settled. All other warrants (relating to a basket of shares or indices or relating to currency, an index or foreign shares) must be purely cash settled.

The Listing Rules also contain some standard provisions for the terms of derivative warrants which are described in Section D below.

Derivative share warrants

It is a pre-condition to the listing of derivative share warrants that the underlying shares: (i) are listed on the SEHK on the day of launch of the derivative share warrants and are also a constituent stock of the Hang Seng Index; (ii) are listed on the SEHK on the day of launch of the derivative share warrants and are Single Scheduled Stock as described in Rule 15A.35; or (iii) are listed or dealt in on another regulated, regularly operating and open stock market recognised for this purpose by the SEHK and are required by relevant laws, regulations and rules to have a minimum public float capitalisation (ie, shares in the hands of the public) and such public float capitalisation is not less than HK\$4 billion. Alternatively, where the underlying shares are listed or dealt in on another such exchange and are not subject to such a public float capitalisation requirement, the SEHK may allow the listing of the derivative share warrants if the market capitalisation of the shares is not less than HK\$10 billion and the SEHK is satisfied with the liquidity of the shares (Rule 15A.30(3)(b)).

The Listing Rules contain provisions which allow the listing of derivative share warrants over underlying shares which are listed on overseas stock markets but not on the SEHK. Rule 15A.31 sets out the factors which the SEHK will consider in determining the suitability of derivative share warrants that relate to shares listed or dealt in on markets other than the SEHK. These include:

- whether the market is regulated on a fair and orderly basis by a body of laws, regulations or rules enforced by government or a body having

- governmental authority, particularly its trading regulations including timely price and volume dissemination;
 - whether the market has adequate and pre-determined market trading hours and days, the suspension of which is provided for only by laws, regulations or rules regulating it;
 - whether or not there are restrictions on foreign investors in the trading of securities;
 - whether or not there are foreign exchange controls or foreign ownership restrictions;
 - the quality of the reporting requirements (such as the reporting of adequate financial information and the price and volume of transactions on or off exchange) and its availability to investors in Hong Kong;
 - the availability of price information for investors in Hong Kong, particularly on a real-time basis; and
- the arrangements by the issuer for requesting suspension of trading in the warrants whenever trading in the underlying shares are suspended.

Basket warrants, which must be cash settled, entitle a holder, upon exercise, to receive a cash payment by reference to the value of a basket of shares to which such warrants relate.

Where single stock call derivative warrants over Hong Kong-listed shares are to be physically settled, Rule 15A.46(3) requires such derivative warrants to be settled on exercise either: (i) by physical delivery of documents of title (including certificates in the name of the holder or its nominee) in respect of the shares to the warrant holder (or its nominee); or (ii) by way of electronic transfer through the Central Clearing and Settlement System (CCASS) operated by Hong Kong Securities Clearing Company Limited (HKSCC).

Typically, the terms and conditions of physically settled call derivative warrants relating to shares provide that dividends and other income distributions paid or made by the underlying company pass to the issuer or beneficial owner of the underlying securities until the date of exercise of the warrant, from which time the warrant holder will be entitled to all rights attaching to the underlying securities accumulated from the date of such exercise as though he had been the registered holder of those securities since that date. The voting rights attaching to the underlying securities (if any) relating to the