

28 May 2021

Mr Nicolas Aguzin
Chief Executive Officer
Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Mr Aguzin,

Re: Consultation Paper on Listing Regime for Overseas Issuers

The Hong Kong General Chamber of Commerce welcomes the opportunity to express our views on the subject consultation.

Our comments relate generally to the proposed introduction of a common set of core shareholder protection standards (Core Standards), which we agree should be streamlined in the interest of providing standardized protection for investors while facilitating issuer compliance. At the same time, we have also made a number of observations and recommendations on certain aspects of the Core Standards such as the removal of directors, variation of class rights, and voluntary winding up, which are detailed in the attached.

We hope you will give our comments your due consideration.

Yours sincerely,



George Leung
CEO

Encl.

HKEX Consultation Paper on Listing Regime for Overseas Issuers (March 2021)

Response by The Hong Kong General Chamber of Commerce (HKGCC¹)

1. HKGCC welcomes the opportunity to respond to this consultation paper (“CP”).
2. As a Chamber representing businesses in Hong Kong, HKGCC is primarily interested in the CP’s proposals to develop a common set of core shareholder protection standards,¹ as these would apply to both Hong Kong issuers and overseas issuers. Accordingly, our submission responds to the consultation questions relevant to these proposals, namely questions 1 to 6 (inclusive). We do not therefore address the proposed changes in the requirements for overseas issuers seeking dual primary listings or secondary listings in Hong Kong, on which overseas issuers or their representatives would be better placed to comment.
3. ***Question 1:*** *Do you agree that the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” should be replaced with one common set of Core Standards for all issuers? Please give reasons for your views.*
 - 3.1. Yes. As the CP states,² the differential in the shareholder protection standards between Recognised Jurisdictions and Acceptable Jurisdictions is contrary to HKEX’s stated objective of providing the same level of protection for investors in all issuers, irrespective of the place of incorporation. We agree with this objective. Developing a common set of Core Standards should also make it easier for both existing and future issuers to comply with these rules. Facilitating compliance in turn serves the interests of the investing public, in accordance with HKEX’s statutory duties.³
4. ***Question 2 (a):*** *If your answer to Question 1 is “Yes”, do you agree with the proposed Core Standards set out in paragraphs 79 to 137? Please give reasons for your views.*
 - 4.1. We have the following comments and suggestions on the proposed Core Standards:
 - **Removal of Directors.** The proposed Core Standard that members in general meeting shall have the power by ordinary resolution to remove any director is stated to be “important for effective corporate governance and is fundamental to shareholder protection”.⁴ However, the CP also notes that this power may undermine the effectiveness of WVR (weighted voting right) structures of certain issuers, and proposes that HKEX takes a “case-by-case approach to determining the applicability of this standard to such issuers in such circumstances”, implying that it may make exceptions to this “fundamental” standard for such issuers.⁵ It is unclear how HKEX will exercise its discretion in this respect. Presumably it will do so rarely, given that this power is fundamental to shareholder protection. We would welcome further clarity on this issue before the Core Standards are finalised.

¹ CP Chapter 2.

² CP para 67.

³ Securities and Futures Ordinance (Cap 571) s 21(2).

⁴ CP paras 79, 80.

⁵ CP para 81.

- Notice of Annual General Meeting. The proposed Core Standard states that issuers must give its members “reasonable” written notice of its general meetings.⁶ The accompanying note states that reasonable written notice normally means at least 21 days for an annual general meeting and 14 days for other general meetings “unless it can be demonstrated that reasonable written notice can be given in less time”. It is not clear what an issuer would have to do to show that a period of less time is reasonable, i.e. what criteria would be used in assessing this issue. To avoid this potential difficulty, we suggest that specific minimum periods would be preferable. The potential difficulty could, we suggest, be avoided merely by replacing “21 days” by “20 days” for AGMs. This is consistent with the current position under the Corporate Governance Code, and would accommodate PRC Company Law, as described in the CP.⁷ If this is done, the note to the proposed Core Standard could be deleted.
- Variation of Class Rights. The proposed Core Standard would require a “super-majority vote” of the issuer’s members of the class to which the rights are attached to approve a change to those rights. Note 1 states that a super-majority means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of the members of the class, where the quorum for such meeting shall be the holders of at least one third of the shares of the class. However, if it can be demonstrated that shareholder protection “*will not be compromised*” by a lower voting threshold, a “super-majority vote” is deemed to be achieved. It is not clear what an issuer would have to do to show that shareholder protection would not be compromised by a lower voting threshold, i.e. what criteria would be used in assessing this (“Problem 1”).⁸ Note 2 states that for PRC issuers, HKEX will consider a resolution representing at least two-thirds of the voting rights of the members who are present at the classified members’ meeting and have voting rights to amend class rights as satisfying the threshold of a “super-majority”. This exception would seem to contradict HKEX’s stated objective that the same level of protection should apply to investors in all issuers, irrespective of the place of incorporation (“Problem 2”). It seems to us that Problems 1 and 2 could both be avoided by aligning the threshold for a super-majority vote on the position under the SFC/HKEX Joint Policy Statement and the PRC position, namely a two-thirds majority. This is a *minimum* threshold for issuers to satisfy, and if the applicable laws of certain jurisdictions require a higher threshold to be satisfied such as three-fourths (as in Hong Kong), these laws would have to be complied with. If this suggestion is adopted, Note 1 could be amended by replacing “three-fourths” by “two-thirds”, and Note 2 could be deleted.
- Amendment of Constitutional Documents. The proposed Core Standard would require a “super-majority vote” of the issuer’s members in a general meeting to be achieved before changes to an issuer’s constitutional documents would be approved. Such a majority would be at least three-fourths of the total voting rights of the members present and voting in person or by proxy at the general meeting.⁹ As with variation of class rights (see above), Note 1 to the proposed Core Standard states that, if it can be demonstrated that shareholder protection “*will not be compromised*” by a lower voting threshold, a “super-majority vote” is deemed to be achieved.

⁶ CP para 90.

⁷ CP paras 92,96.

⁸ CP para 105.

⁹ CP para 112.

Note 2 states that for PRC issuers, HKEX will consider a resolution representing at least two-thirds of the voting rights of the members who are present at the classified members' meeting and have voting rights to amend class rights as satisfying the threshold of a "super-majority". So Problems 1 and 2 that we identified with regard to variation of class rights also apply to this proposed Core Standard, and we suggest the adoption of the same solution that we identified with regard to variation of class rights above.

- HKSCC's Right to Appoint Proxies or Corporate Representatives. The proposed Core Standard would require HKSCC to be entitled to appoint proxies or corporate representatives to attend the issuer's general meetings and creditors' meetings, and that those proxies/corporate representatives must enjoy rights "comparable to" the rights of other shareholders, including the rights to speak and vote. We believe that the term "comparable to" is not sufficiently specific: anything can be compared to something else, even if the two things are very different. We suggest that the word "comparable" be replaced by "equivalent": the concept of equivalence has already been used in the Listing Rules.
- Inspection of Hong Kong Branch Register. The same point made above about replacing "comparable" by "equivalent" also applies to this proposed Core Standard.
- Voluntary Winding-Up. This proposed Core Standard would require a super-majority vote of the issuer's members in a general meeting to approve a voluntary winding-up of the issuer. As with a variation of class rights and amendment of constitutional documents (see above), the norm for a super-majority would be three-fourths, except (a) where it can be demonstrated that shareholder protection "*will not be compromised*" by a lower voting threshold; and (b) for PRC issuers, HKEX would consider a two-thirds majority sufficient. Therefore Problems 1 and 2 that we identified with regard to variation of class rights and amendment of constitutional documents (see above) also apply to this proposed Core Standard. As such, we suggest the adoption of the same solution that we identified with regard to variation of class rights above.

5. **Question 2 (b):** *If your answer to Question 1 is "Yes", do you agree that the existing shareholder protection standards set out in Schedule C should be repealed? Please give reasons for your views.*

5.1. Once the proposed Core Standards have been finalised, we agree that they should replace the equivalent standards in the Listing Rules, and that the existing shareholder protection standards set out in Schedule C should be repealed. We welcome HKEX's objective, and initiative, to repeal all shareholder protection standards in the Listing Rules that have become outdated, unnecessary or superfluous.¹⁰ HKGCC has consistently advocated that legislation and regulation in Hong Kong should only be introduced, or maintained in force, if their benefits exceed their costs, and that existing legislation and regulation which do not satisfy this test should be removed. We are pleased to note that HKEX appears to be taking this approach to the Listing Rules.

¹⁰ CP para 70, 74.

6. **Question 3:** *Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards? Please give reasons for your views.*

6.1. Yes. It would be insufficient to require issuers merely to confirm or certify that the rules to which they are subject, either in themselves or in combination with the issuer's constitutional documents, satisfy the Core Standards. They must also give an explanation as to how they do so.

7. **Question 4:** *Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C, should be added or repealed? Please provide these other standards with reasons for your views.*

7.1. We do not have any further suggestions on this matter at this stage. However, we would urge HKEX to conduct a similar review of the listing rules at regular intervals with a view to removing unnecessary regulations, and we would be happy to provide our input to further consultations by HKEX in this regard.

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

8.1. Yes. In line with HKEX's objective of providing the same protection for investors in all issuers, irrespective of their place of incorporation,¹¹ we believe that existing issuers as well as new issuers should be required to comply with the Core Standards.

9. **Question 6:** *If your answer to Question 5 is "Yes", do you agree that: (a) existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards; and (b) the application of the Core Standards will not cause existing listed issuers undue burden? Please give reasons for your views.*

9.1. The proposed timescale for conforming with the proposed Core Standards would seem to be reasonable, particularly since they do not appear as a whole to constitute a significant departure from the requirements to which issuers are currently subject. For the same reason, the proposed Core Standards would not seem to cause most existing issuers an undue burden. However, we are conscious of the fact that each issuer's circumstances are different, and we defer to the views of individual issuers in this regard.

HKGCC Secretariat
May 2021

¹¹ CP para 67.