

# Chapter 19C

## EQUITY SECURITIES

### SECONDARY LISTINGS OF OVERSEAS ISSUERS

#### Scope

The Exchange Listing Rules apply as much to overseas issuers with, or seeking, a secondary listing as they do to other issuers, subject to the additional requirements, modifications or exceptions set out or referred to in this chapter.

Overseas issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the applicable requirements set out in this chapter.

#### Definitions

19C.01 In this Chapter, the following definitions apply:

<b>“Foreign Private Issuer”</b>	as defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time-to-time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time-to-time
<b>“Grandfathered Greater China Issuer”</b>	has the meaning given to it in rule 1.01
<b>“WVR structure”</b>	has the meaning given to it in rule 8A.02

#### Basic Conditions

19C.02 An overseas issuer seeking a secondary listing under this chapter must demonstrate to the Exchange that it is both eligible and suitable for listing.

19C.02A The following additional requirements apply:—

- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if in its opinion:
  - (a) it believes that it is not in the public interest to list them;

- (b) the overseas issuer's primary listing is or is to be on an exchange that cannot provide the shareholder protection standards that are at least equivalent to those provided in Hong Kong;
  - (c) the overseas issuer has received waivers from or is exempt from rules, regulations or legislation that result in it being subject to regulatory requirements that are materially less stringent than those that generally apply to entities of its nature listed on its primary market;
  - (d) the application constitutes an attempt to avoid rules that apply to a primary listing on the Exchange; or
  - (e) the majority of its worldwide trading will take place in Hong Kong upon or shortly after its listing in Hong Kong;
- (2) listing on the overseas issuer's primary exchange must have been granted before listing on the Exchange can be granted;
  - (3) an overseas issuer must comply with rule 19.05(2) on the appointment and maintenance of a person authorised to accept service of process and notices on its behalf in Hong Kong; and
  - (4) an overseas issuer must comply with the securities registration requirements of rules 19.05(3), 19.05(4) and 19.05(5).

*Note: For the purpose of rule 19C.02A(1)(d), the Exchange may apply the test set out in rule 14.06B to determine whether, in the opinion of the Exchange, a transaction and/or arrangement or series of transactions and/or arrangements an applicant for secondary listing conducted on its primary exchange constituted a reverse takeover. If a material part of the applicant's business is listed on its primary exchange by way of a reverse takeover, the Exchange will normally consider its application for secondary listing on the Exchange to be an attempt to avoid rules that apply to primary listing.*

19C.03 [Repealed 1 January 2022]

### **Qualifications for Secondary Listing**

19C.04 An overseas issuer with a WVR structure must have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.

19C.05 An overseas issuer with a WVR structure must satisfy one of the following criteria:

- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
- (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

19C.05A An overseas issuer without a WVR structure must satisfy either paragraphs (1) and (2) ("Criteria A") or paragraphs (3) and (4) ("Criteria B") below:

Criteria A

- (1) a track record of good regulatory compliance of at least five full financial years on a Qualifying Exchange (for any overseas issuer without a WVR structure) or on any Recognised Stock Exchange (only for overseas issuers without a WVR structure and without a centre of gravity in Greater China); and
- (2) a market capitalisation of at least HK\$3,000,000,000 at the time of listing.

*Note: Applications for secondary listing from issuers with a centre of gravity in Greater China and without a WVR structure that are primary listed on a Recognised Stock Exchange other than a Qualifying Exchange will be considered only in exceptional circumstances on the basis of the issuer's individual circumstances and the merits of the case.*

Criteria B

- (3) a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
- (4) a market capitalisation of at least HK\$10,000,000,000 at the time of listing.

*Note: A waiver of the listing track record criteria of paragraphs (1) and (3) above may be granted if the applicant seeking a secondary listing is well-established and has a market capitalisation at listing that is significantly larger than HK\$10,000,000,000.*

19C.06 [Repealed 1 January 2022]

19C.07 [Repealed 1 January 2022]

19C.08 [Repealed 1 January 2022]

19C.09 [Repealed 1 January 2022]

### **Directors**

19C.09A Rule 3.16 is modified to require that, if an issuer does not have a board of directors, all members of the issuer's equivalent governing body must accept full responsibility, collectively and individually, for the listed issuer's compliance with the Exchange Listing Rules. If the issuer's board of directors or equivalent governing body is not empowered to take collective responsibility, this responsibility must be accepted by all the individuals empowered to do so.

*Note: The governing body of an overseas issuer, in accordance with the laws and regulations of its jurisdiction of incorporation, may have a form other than that of a board of directors. In these circumstances, this rule aims to ensure that individual and collective responsibility by relevant persons continues to be taken for compliance with the Exchange Listing Rules.*

### **Application Procedures and Requirements**

19C.09B The following modifications apply:—

- (1) for rules 9.09, 9.11(3a), 9.11(3b), 9.11(17b), 9.11(28), 9.11(38) and 9.20(1) the references to directors should be read as references to members of the overseas issuer's governing body;
- (2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 9.11(29)(a) may be signed by two members of the overseas issuer's governing body or by their agents authorised in writing rather than by or on behalf of every director or proposed director; and
- (3) the declaration and undertaking to be lodged under rule 9.11(38) may require adjustment by virtue of the laws to which the overseas issuer is subject.

## Listing Documents

19C.10 An overseas issuer must prominently disclose in its listing documents any provisions in its constitutional documents concerning the issuer's governance that are unusual compared with normal practices in Hong Kong and are specific to the issuer rather than a consequence of the laws and regulations to which the issuer is subject. An overseas issuer must also prominently disclose in its listing documents how such provisions affect its members' rights.

*Note: Examples of such provisions include, but are not limited to, "poison pill" arrangements and provisions setting restrictions on the quorum for board meetings.*

19C.10A Overseas issuers that wish to omit any of the information prescribed for listing documents should consult the Exchange at the earliest possible opportunity. The Exchange may be prepared to permit the omission of information from a listing document with regard to the principles set out in rule 19C.11A.

19C.10B The following modifications and additional requirements apply:—

- (1) where items of information specified in Parts A and B of Appendix 1 are inappropriate or not fully applicable, the item should be adapted so that equivalent information is given;
- (2) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately. If the issuer's board of directors or equivalent governing body is not empowered to take collective responsibility, the responsibility statement must be signed by all the individuals empowered to do so. The statement of responsibility must be modified according to the appropriate circumstances;
- (3) the documents to be published on the Exchange's website and the issuer's own website will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies (Winding Up and Miscellaneous Provisions) Ordinance, where any of such documents are not in the English language, certified English translations thereof must be published on the Exchange's website and the issuer's own website. In particular cases, the Exchange may require additional documents to be published on the Exchange's website and the issuer's own website. In lieu of publishing these documents on the Exchange's website and the issuer's own website, an overseas issuer can instead disclose the website addresses of the relevant statutes and regulations in the listing document on condition that the websites are easily accessible to the public free of charge;

- (4) overseas issuers that are subject to public reporting and filing obligations in their jurisdictions of incorporation or other establishment (or primary listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be in English, or accompanied by a certified English translation;

*Note: An example is where overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents.*

- (5) the listing documents need not be accompanied by a Chinese translation, unless required to do so by section 342(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance;
- (6) for the purposes of rule 2.11, the overseas issuer must appoint at least one authorised representative who need not be a director or secretary but must be a person acceptable to the Exchange. The authorised representative may also be the person authorised to accept service that is required to be appointed under the provisions of rule 19C.02A(3). The authorised representative should act as the principal channel of communication between the overseas issuer and the Exchange;
- (7) an overseas issuer must clearly disclose in its listing document:
  - (a) a summary of the waivers and exemptions that have been granted to the issuer;
  - (b) a summary of the provisions in the laws and regulations in its home jurisdiction and primary market that are different from those required by Hong Kong laws regarding:
    - (i) the rights of holders of its securities and how they can exercise their rights;
    - (ii) directors' powers and investor protection; and
    - (iii) the circumstances under which its minority shareholders may be bought out or may be required to be bought out after a successful takeover or share repurchase;
  - (c) details of withholding tax on distributable entitlements or any other tax that is payable by shareholders (e.g. capital gains tax, inheritance or gift taxes) and whether Hong Kong investors have any tax reporting obligations; and

- (d) where an overseas issuer is listing depositary receipts, a summary of the terms and conditions in the depositary agreement and deed poll; and
- (8) an overseas issuer that is a Foreign Private Issuer must prominently disclose in all its listing documents the exemptions from obligations in the United States of America that it enjoys because of its status as a Foreign Private Issuer and to inform investors that they should exercise care when investing in the listed shares of the issuer.

### **Accountants' Reports**

19C.10C An accountants' report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

*Note: A list of alternative overseas auditing standards that are considered comparable to the standards set out in this rule is published on the Exchange's website, as amended from time to time.*

19C.10D Accountants' reports are required to conform with financial reporting standards acceptable to the Exchange, which are normally HKFRS or IFRS. Where the Exchange allows a report to be drawn up otherwise than in conformity with HKFRS or IFRS, the Exchange may, having regard to the exchange on which the overseas issuer has its primary listing, require the report to contain a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS.

*Notes:*

1. *The suitability of alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.*
2. *A list of alternative overseas financial reporting standards that are considered comparable to HKFRS or IFRS is published on the Exchange's website, as amended from time to time.*
3. *The reconciliation statement must be reviewed by the reporting accountant that reports on the relevant financial statements.*
4. *An overseas issuer with a secondary listing that adopts one of the alternative standards referred to in Note 2 above (other than issuers incorporated in a member state of the European Union which have adopted EU-IFRS) for the preparation of its accountants' reports must adopt HKFRS or IFRS if it de-lists from the jurisdiction*

*of that alternative standard and must do so for any annual and interim financial statements that fall due under the Exchange Listing Rules, and are published, after the first anniversary of the date of its de-listing.*

5. *For US-listed secondary listing applicants, the requirement for the preparation of a reconciliation statement in respect of the accountants' report prepared under US GAAP in a listing document applies to listing applications submitted on or after 1 January 2023.*

19C.10E As indicated in rules 4.14 to 4.16, where the figures in the accountants' report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

### **Exceptions to the Rules**

19C.11 The following rules do not apply to an overseas issuer that has, or is seeking, a secondary listing on the Exchange: 3.17; 3.21 to 3.23; 3.25 to 3.27A; 3.28; 3.29; 4.06; 4.07; Chapter 7; 8.08 (prescribed percentage of public float only); 8.09(4) (exception limited to issues outside the Exchange's markets); 8.18 (exception limited to issues outside the Exchange's markets); 9.11(10)(b); 10.05; 10.06(2)(a) to (c); 10.06(2)(e); 10.06(4); 10.06(5); 10.07(1); 10.07(2) to (4); 10.08; 13.11 to 13.22; 13.23(1); 13.23(2); 13.25A; 13.27; 13.28; 13.29; 13.31(1); 13.35; 13.36; 13.37; 13.38; 13.39(1) to (5A); 13.39(6) to (7) (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.40 to 13.42; 13.44 to 13.45; 13.47; 13.48(2); 13.49; 13.51(1); 13.51(2) (each new director or member of the overseas issuer's governing body must sign and lodge with the Exchange, as soon as practicable, a declaration and undertaking in the form set out in Form B of Appendix 5); 13.51B; 13.51C; 13.52(1)(b) to (d); 13.52(1)(e)(i) to (ii); 13.52(1)(e)(iv) (exception limited to issues outside the Exchange's markets); 13.52(2); 13.67; 13.68; 13.74; 13.80 to 13.87 (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.88; 13.89; 13.91; Chapter 14; Chapter 14A; Chapter 15 (exception limited to issues outside the Exchange's markets); Chapter 16 (exception limited to issues outside the Exchange's markets); Chapter 17; Practice Note 4 (exception limited to issues outside the Exchange's markets); Practice Note 15 paragraphs 1 to 3(b) and 3(d) to 5 (exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Exchange's markets and the approval of shareholders of the parent is not required); Appendix 10; Appendix 14; Appendix 16; Appendix 21 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent); Appendix 22 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent); and Appendix 27.

## **Basis for Waivers, Modifications and Exceptions**

19C.11A The Exchange may exercise its power under rule 2.04 to waive, modify or not require compliance with the Exchange Listing Rules for an overseas issuer with, or seeking, a listing under this chapter, on a case by case basis, based on the underlying principle that:

- (1) the overseas issuer is primary listed on a Recognised Stock Exchange and so reliance can be placed upon: (a) the standards of shareholder protection of the regulatory regime to which overseas issuers listed on that exchange are subject; and (b) the enforcement of those standards by the regulatory authorities of that regime;
- (2) regulatory co-operation arrangements are in place with the Commission as required by rule 8.02A;
- (3) the majority of trading in the overseas issuer's listed shares is not expected to migrate, or has not yet migrated, to the Exchange's markets on a permanent basis; and

*Note: See note 1 to rule 19C.13 for when the Exchange will regard the majority of trading in an overseas issuer's listed shares as having migrated to the Exchange's markets on a permanent basis.*

- (4) the overseas issuer can demonstrate that strict compliance with both the relevant Exchange Listing Rules and the overseas regulations would be unduly burdensome or unnecessary (including where requirements under the Exchange Listing Rules contradict the applicable overseas laws or regulations and strict compliance with the Exchange Listing Rules would result in a breach of applicable overseas laws or regulations) and that the granting of such waivers by the Exchange will not prejudice the interest of the investing public.

## **Common Waivers**

19C.11B The Exchange will consider applications for waivers from strict compliance with rules 2.07C(4)(a), 9.09, 11.06, 13.25B, 13.55(1), 13.71 to 13.73, Practice Note 5, paragraph 15(2) (c) of Appendix 1A, paragraphs 41(4) and 45 of Appendix 1A, paragraphs 34 and 38 of Appendix 1B, paragraphs 41(4) and 45 of Appendix 1E, paragraph 49(2)(c) of Appendix 1E and paragraphs 30 and 34 of Appendix 1F from issuers with, or seeking, a secondary listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances, including compliance with the prescribed conditions as set out in the relevant rules.

19C.11C An overseas issuer may apply for waivers from the requirements of other rules that the Exchange will consider in individual cases, based on the general principles set out in rule 19C.11A.

### **Migration of the Majority of Trading to the Exchange's Markets**

19C.13 If the majority of trading in an overseas issuer's listed shares migrates to the Exchange's markets on a permanent basis, the Exchange will regard the issuer as having a dual-primary listing and consequently rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply to the issuer.

*Notes:*

- 1. The Exchange will regard the majority of trading in an overseas issuer's listed shares to have migrated to the Exchange's markets on a permanent basis if 55% or more of the total worldwide trading volume, by dollar value, of those shares (including the volume of trading in depositary receipts issued on those shares) over the issuer's most recent financial year, takes place on the Exchange's markets.*
- 2. An overseas issuer to which rule 19C.13 applies will have a grace period of 12 months within which to comply with the applicable Exchange Listing Rules. This grace period will end at midnight on the first anniversary of the date of the Exchange's written notice of its decision that the majority of trading in listed shares has migrated permanently to the Exchange's markets.*
- 3. Any continuing transaction of an overseas issuer in place as at the date of the Exchange notice referred to in Note 2 will continue to be exempted from the applicable rules set out in 19C.11 for a period of three years from the date of the Exchange notice referred to in Note 2. However if such transaction is subsequently amended or renewed before the expiry of the three year period, the overseas issuer must comply with the relevant requirements under the rules at such time. For the avoidance of doubt, this exemption does not apply to any other circumstances unless otherwise stated in the Listing Rules.*
- 4. The Exchange may apply all disciplinary measures at its disposal, including a de-listing of the issuer's listed shares, if an overseas issuer fails to comply with the requirements of rule 19C.13 within the grace period allowed.*

## De-listing

19C.13A If an overseas issuer's shares or depositary receipts issued on its shares (as the case may be) cease to be listed on the Recognised Stock Exchange on which it is primary listed, the Exchange will regard the issuer as having a primary listing in Hong Kong and consequently rules 19C.11, 19C.11A, 19C.11B and 19C.11C (as applicable) will no longer apply to the issuer.

*Note: In the event that an overseas issuer is expected to be involuntarily de-listed from the Recognised Stock Exchange on which it is primary listed, the Exchange is prepared to allow an exemption in respect of any continuing transaction that will continue after the effective date of the involuntary de-listing if the transaction is entered into before the issuer notifies the Exchange that it reasonably expects to be involuntarily de-listed from the overseas exchange. Such transaction will continue to be exempted from the applicable rules set out in 19C.11 for a period of three years from the date of the notification about the expected involuntary de-listing. However if such transaction is subsequently amended or renewed before the expiry of the three-year period, the overseas issuer must comply with the relevant requirements under the rules at such time. For the avoidance of doubt, the Exchange retains the discretion to modify or not grant the exemption if the issuer fails to notify the Exchange of the expected involuntary de-listing on a timely basis.*

19C.14 [Repealed 1 January 2022]

## Annual report and accounts and auditors' report

19C.15 The following modifications and additional requirements apply to Appendix 16 insofar as an issuer is an overseas issuer. To the extent such modifications and additional requirements conflict with the provisions of Appendix 16, the following provisions shall apply.

19C.16 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the International Federation of Accountants and must be either:—

- (1) qualified under the PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or

- (2) an overseas firm of practising accountants that is a Recognised PIE Auditor of that issuer under the FRCO.

*Note: In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an overseas issuer, the Exchange may provide a statement of no objection to that issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 4.03(1)).*

19C.17 The annual accounts must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

*Note: A list of alternative overseas auditing standards that are considered comparable to the standards set out in this rule is published on the Exchange's website, as amended from time to time.*

19C.18 The report of the auditors must be annexed to all copies of the annual accounts and indicate whether in the opinion of the auditors the accounts give a true and fair view:—

- (1) in the case of the overseas issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the overseas issuer's profit and loss account, of the profit or loss and cash flows for the financial year; and
- (2) in the case where consolidated accounts are prepared, of the state of affairs and profit or loss of the overseas issuer and cash flows of the group.

19C.19 The report of the auditors must indicate the act, ordinance or other legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.

19C.20 If the overseas issuer is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, the Exchange may allow its accounts to be drawn up to that standard. Reference must, however, be made to the Exchange. If an overseas issuer is in doubt as to what more detailed and/or additional information should be provided, it should contact the Exchange for guidance.

19C.21 An auditors' report which conforms to the requirements of the International Standards on Auditing issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants or the alternative overseas auditing standards acceptable to the Exchange referred to in rule 19C.17 is acceptable.

19C.22 An auditors' report in a different form may be applicable in the case of banking and insurance companies. The wording of such an auditors' report should make it clear whether or not profits have been stated before transfers to or from undisclosed reserves.

19C.23 The annual accounts are required to conform with financial reporting standards acceptable to the Exchange, which are normally HKFRS or IFRS. Where the Exchange allows annual accounts to be drawn up otherwise than in conformity with HKFRS or IFRS, the annual accounts will be required to conform with financial reporting standards acceptable to the Exchange. In such cases the Exchange will normally require the annual accounts to contain a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS.

*Notes:*

1. *The suitability of alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.*
2. *A list of alternative overseas financial reporting standards that are considered comparable to HKFRS or IFRS is published on the Exchange's website, as amended from time to time.*
3. *An overseas issuer is also required to include a reconciliation statement in its interim report. The reconciliation statement contained in the annual accounts or interim report must be reviewed by its auditor.*
4. *An overseas issuer with a secondary listing that adopts one of the alternative standards referred to in Note 2 above (other than issuers incorporated in a member state of the European Union which have adopted EU-IFRS) for the preparation of its annual accounts must adopt HKFRS or IFRS if it de-lists from the jurisdiction of that alternative standard and must do so for any annual and interim financial statements that fall due under the Exchange Listing Rules, and are published, after the first anniversary of the date of its de-listing.*
5. *For US-listed issuers with a secondary listing on the Exchange that adopted US GAAP in the preparation of their financial statements, the requirement for the preparation of a reconciliation statement applies to the first annual financial statements for the financial year commencing on or after 1 January 2022 and subsequent interim and annual financial statements.*

## **Company Information Sheet**

19C.24 An overseas issuer with, or seeking, a secondary listing must disclose the information required by rule 19C.10B(7) separately as a Company Information Sheet for publication on the Exchange's website and the overseas issuer's website.

*Note: The purpose of the Company Information Sheet is to enable investors to easily locate specific information on the differences between the overseas requirements to which an overseas issuer is subject and the Hong Kong requirements.*

19C.25 An overseas issuer that is required to publish a Company Information Sheet must update it from time to time to reflect any material change to the information disclosed within it as soon as practicable after such a change occurs.

## **General**

19C.26 Rules 19.27 and 19.28 also apply to an overseas issuer with, or seeking, a secondary listing under this chapter.