Bills Committee on Companies Bill

Follow-up actions for the meeting on 26 July 2011

Purpose

This paper sets out the Administration's response to the views raised by Members at the Bills Committee meeting on 26 July 2011 in relation to companies incorporated outside Hong Kong.

Situation in other jurisdictions

2. The geographic breakdown of listed companies in selected exchanges as of end June 2011 is as follows –

Number of Listed Companies as of end June 2011

Exchange	Companies incorporated in the same Country as where the Exchange is Located	Companies incorporated elsewhere	Total
Australian Securities Exchange	1 941	93	2 034
London SE Group	2 321	593	2 914
NYSE Euronext (US)	1 801	517	2 318
Singapore Exchange	461	312	773

Source: World Federation of Exchanges (http://www.world-exchanges.org)

3. In relation to companies listed on the Stock Exchange of Hong Kong Limited ("SEHK"), as of end June 2011, 1 246 out of the 1 448 listed companies are incorporated outside Hong Kong. We have consulted some market practitioners on the factors affecting a listed company's choice of its domicile. We note that there are many relevant factors, including the tax system, incorporation and disclosure requirements, transparency standards, etc. Jurisdictional competition is a common feature, for example, the company law in the United Kingdom

("UK") is more flexible than some other European countries and the UK attracts incorporation from such countries.

4. Specifically, the below factors are relevant to Hong Kong –

(a) **Tax**: It is believed that some companies may choose to incorporate elsewhere in order to save stamp duty for major shareholders as they may keep a certain percentage of their shares in the overseas principal register.

(b) **Corporate governance requirements**: some offshore jurisdictions have a relatively lower level of corporate governance standard which may attract company incorporation in general. However, this is not relevant to listed companies because applicants incorporated overseas seeking listing in Hong Kong would have to ensure that their shareholder protection measures would be at least equivalent to those required under Hong Kong law in certain key areas. Please refer to paragraphs 11 and 12 below for more details.

(c) **Historical factor**: As mentioned in our previous paper (LC Paper No. CB(1)2756/10-11(01)), prior to the handover in 1997, many existing companies re-domiciled for fear of a worst case scenario. Many of them re-domiciled to Bermuda or the Cayman Islands, both of which are British overseas territories. Many listed corporations then believed that their trading partners would be more confident trading with them if they re-domiciled to a jurisdiction where continuity could be assured. It had then become the norm for newly listed companies to be incorporated offshore while using a Hong Kong incorporated company for this purpose has become the exception. In the event the fear was not realized, but the habit had been set. As of end June 2011, among the 1 246 listed companies incorporated outside Hong Kong, 485 are incorporated in Bermuda and 574 are incorporated in the Cayman Islands[1].

(d) **Promotion outside Hong Kong**: Since 1993, Hong Kong has become the major capital raising centre for Mainland enterprises. As of end June 2011, there were 610 Mainland

[1] The majority of the rest – i.e. 164 – are incorporated in Mainland China.

enterprises[2] listed on SEHK. The majority of them are incorporated outside Hong Kong. Hong Kong Exchanges and Clearing Limited has also been making keen efforts to attract overseas companies to list in Hong Kong. In 2010, we had the first Russian company[3], the first French company[4] and the first Brazilian company came to list on SEHK. This year, we had the first Swiss company[5] and an Italian company listed here.

5. On company law itself, one of the guiding principles of the Companies Ordinance ("CO") Rewrite is to benchmark Hong Kong against comparable jurisdictions like the UK, Australia and Singapore. We have been mindful of the need to maintain proper corporate governance standards without unduly discouraging Hong Kong incorporations. We believe we have struck an appropriate balance in this regard. An example is that we have proposed to permit private companies not being part of a group of which a listed company is a member to have corporate directors, so long as they have at least one other director who is a natural person. This strikes a balance between enhancing corporate governance and transparency and the legitimate commercial need for flexibility.

Promoting company incorporation in Hong Kong

6. Hong Kong is still highly competitive as a place for company incorporation. As mentioned in our previous paper (LC Paper No. CB(1)2756/10-11(01)), according to the World Bank's *Doing Business 2011 Report* released in November 2010, Hong Kong is the second easiest place to do business in the world. In particular, the improvement in Hong Kong's ranking in *starting a business* from 18th to sixth reflects the Government's continuous efforts to expedite the process of company incorporation. It is noted that the number of incorporations in Hong Kong has been on a rising trend in the past five years[6]. The total number of live local companies registered was 912 242 as at the end of June 2011. We believe that the Companies Bill ("CB"), once enacted,

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[2] Including H shares, Red chips stocks and Non-H Share Mainland Private Enterprises.

[3] Incorporated in Jersey.

[4] Incorporated in Luxembourg.

[5] Incorporated in Jersey.

[6] The number of companies incorporated in 2006, 2007, 2008, 2009 and 2010 is 81 974, 100 761, 98 645, 109 424 and 139 530 respectively.

would provide a modern and up-to-date legal infrastructure for the incorporation and operation of companies in Hong Kong, thus enhancing the competitiveness of Hong Kong as a corporate domicile.

Regulation of companies incorporated in or outside Hong Kong

7. As mentioned in our previous paper (LC Paper No. CB(1)2756/10-11(01)), the CB upon its enactment mainly govern companies incorporated in Hong Kong. The provisions on director's duty of care, skill and diligence (clauses 456 and 457) only apply to companies incorporated in Hong Kong. This is in line with the regimes in other comparable common law jurisdictions such as the UK, Australia and Singapore where their company laws mainly govern companies incorporated in their respective jurisdictions. For companies incorporated outside Hong Kong, their directors' duties are governed by the law in their places of incorporation or applicable case law.

8. Notwithstanding the above, there is similar protection to members and investors of companies carrying on business in Hong Kong, irrespective of their place of incorporation, in case the directors fail to perform their duties. There are provisions in the CO/CB providing remedies for protection of companies' or members' interests which are applicable to a non-Hong Kong company (i.e. a company incorporated outside Hong Kong that has established a place of business in Hong Kong). These include the unfair prejudice remedy, the statutory injunction that provides for the restraining of conduct that constitutes contravention of the new CO, the statutory derivative action, etc.

9. For companies listed in Hong Kong, irrespective of their place of incorporation, they are subject to the statutory and non-statutory requirements set out in the Securities and Futures Ordinance ("SFO") and the Listing Rules.

10. For example, section 214 of the SFO enpowers the Securities and Futures Commission ("SFC") to apply to the courts for various orders in cases of unfair prejudice of interests of minority shareholders in relation to a listed corporation. In addition, pursuant to section 36 of the SFO, the SFC may make rules in respect of the listing of securities. The Securities and Futures (Stock Market Listing) Rules, made by the SFC under section 36(1), established the "dual-filing" arrangement[7]. While

[7] The Rules stipulate that a listing applicant shall file a copy of its application with the SFC after it has submitted its application to SEHK. The SFC may request further information from an applicant and

SEHK is the front-line regulator on listing matters, the SFC has been conducting annual review on SEHK's performance in its regulation of listing-related matters. In addition, Parts XIII and XIV of the SFO prohibit six types of market misconduct related to the trading of listed securities. Part XV of the SFO sets out requirements for disclosure of interests in listed securities. The Listing Rules are supplemented by other Codes, like the Securities and Futures Commission's Codes on Takeovers and Mergers and Share Repurchases. As a latest initiative to further improve our listing regime, the Securities and Futures (Amendment) Bill 2011 was introduced into the Legislative Council on 29 June 2011 to codify in statute, among other things, the requirement for listed corporations to disclose price sensitive information in a timely manner.

11. At the same time, applicants incorporated outside Hong Kong seeking listing on SEHK have to demonstrate that they are subject to appropriate standards of shareholder protection which represent some core requirements under Hong Kong law (a list of such shareholder protection matters can be found at **Annex**, which is extracted from the Joint Policy Statement Regarding the Listing of Overseas Companies ("JPS") issued by SFC and SEHK). If there is any shortfall in the standards of shareholder protection in these key areas, the applicant may need to change its constitutional documents or use alternative methods (e.g. by complying with rules of another exchange on which it is listed or giving undertakings) to achieve equivalence.

12. For listed companies incorporated in the Cayman Islands or Bermuda, Appendix 13 of the Listing Rules prescribes, among other things, additional requirements for the memorandum and articles of association to make up for protections that are not available in the law of Cayman Islands and Bermuda.

13. Rules 3.08 and 3.09 of the Listing Rules state that the board of directors of a listed company (wherever it was incorporated) is collectively responsible for the management and operations of the listed company. The SEHK expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director -

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to object to a listing of any securities. An issuer shall also file with the SFC a copy of any announcement, statement, circular or other document made or issued.

(a) act honestly and in good faith in the interests of the company 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; and
(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.

14. Moreover, every director of a listed company must satisfy the SEHK that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer. The SEHK may request further information regarding the background, experience, other business interests or character of any director or proposed director of a listed issuer.

15. If the SEHK finds that a person is not suitable to be appointed as or remain a director of a listed company after careful consideration of the information, it may request the listed company to take remedial action, such as calling general meeting for removal of the director, in order to comply with the requirements of the Listing Rules. In the case of wilful or persistent failure by a director of a listed company to discharge his responsibilities under the Listing Rules, the SEHK may initiate disciplinary procedures, stating publicly that the retention of office by the director is prejudicial to the interests of investors, or even suspending or cancelling the listing of the issuer's securities.

Enforcement against companies incorporated outside Hong Kong

16. Under the JPS, both SEHK and the SFC clarified that:

"It is important that Hong Kong regulators have reasonable access to information relating to the conduct of a listed overseas company in its home or governing jurisdiction to facilitate the taking of any regulatory action against a non-complying listed overseas company. Accordingly, 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 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 ("IOSCO MMOU") or an adequately comprehensive bilateral agreement with the SFC."

17. There are approximately 80 jurisdictions around the world that have entered into the IOSCO MMOU and several more jurisdictions that have equivalent bilateral arrangements with the SFC. Under these arrangements, the SFC can seek non-public information and/or ask for investigatory assistance concerning evidence and documents located in the Mainland China and overseas, including Bermuda and the Cayman Islands.

18. Moreover, the location of companies or directors is not a factor which SEHK considers in mounting disciplinary action. Any proceedings are normally served at the company's registered office or principal place of business in Hong Kong. Of the 28 companies against which disciplinary action has been brought or continued over the last three years, none were Hong Kong registered. 11 were registered in Bermuda; 14 in Cayman and three in the Mainland China.

Financial Services and the Treasury Bureau
Companies Registry
11 October 2011

SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

SFC
證監會

HKEx
香港交易所

JOINT POLICY STATEMENT

7 March 2007

Joint Policy Statement Regarding the Listing of Overseas Companies

The Stock Exchange of Hong Kong Limited (the "SEHK"), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited ("HKEx"), and the Securities and Futures Commission (the "SFC") wish to:

- clarify the Listing Rules requirements governing the listing of overseas companies; and

- provide a clear roadmap to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions (the People's Republic of China, Bermuda and the Cayman Islands) and their advisers when seeking a primary listing either on the Main Board or the Growth Enterprise Market (the "GEM").

Clarification of the Listing Rules

Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules provide the general framework applicable to all overseas companies seeking a listing on the SEHK's markets. The Listing Rules are therefore not prohibitive with respect to listing companies that are incorporated outside Hong Kong or the Recognised Jurisdictions.

In particular, Main Board Listing Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b) and the explanatory notes thereto set out the shareholder protection standards that are expected of an overseas company when seeking a primary listing on the SEHK's markets.

Main Board Listing Rule 19.03 and GEM Listing Rule 24.03 specifically provide that overseas companies are encouraged to contact the SEHK to seek guidance on compliance matters which ordinarily include considerations for waivers and modifications based on the specific facts and circumstances of each applicant's case.

SEHK's Approach to Listing Overseas Companies

The SEHK has established a uniform approach for reviewing shareholder protection standards with respect to overseas companies to ensure a consistent interpretation of Main Board Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b).

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The SEHK has recently reviewed its practices in this area in consultation with the SFC to ensure that its practices are reasonably designed to:

- ensure that overseas companies listed in Hong Kong have appropriate standards of shareholder protection that are at least equivalent to those required under Hong Kong law; and

- are not unduly burdensome on any category of listing applicants.

A roadmap that comprises a schedule of shareholder protection matters is now presented in the Attachment to this Joint Policy Statement (the "**Attachment**") to distil the key requirements for ensuring appropriate standards of shareholder protection from the SEHK's current approach.

As the approach set out in the Attachment is materially consistent with the current practices of the SEHK contemplated under the Listing Rules, the SEHK and SFC do not consider it necessary at this time to change the approach with respect to listing companies incorporated outside the Recognised Jurisdictions.

Laws, Regulations, Codes and Listing Rules Continue to Apply

For the avoidance of doubt, the current practices with respect to listing companies that are incorporated in Bermuda, the Cayman Islands, and the People's Republic of China memorialised in the Listing Rules continue to apply. The matters listed in the schedule do not exonerate an overseas company seeking a primary listing on the SEHK's markets from complying with the Listing Rules, SFO, Codes and other laws and regulations which are applicable to overseas companies. Furthermore, the matters that the SEHK may consider for the purpose of assessing a company's suitability for listing are not limited, and the Listing Rules may be expanded or modified where the particular facts and circumstances of an applicant's case warrant. See Main Board Listing Rule 2.04 and GEM Listing Rule 2.07.

Factors Affecting Eligibility for Listing Particular to Overseas Companies

It is important that Hong Kong regulators have reasonable access to information relating to the conduct of a listed overseas company in its home or governing jurisdiction to facilitate the taking of any regulatory action against a non-complying listed overseas company. Accordingly, 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 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 ("IOSCO MMOU") or an adequately comprehensive bi-lateral agreement with the SFC.

As one of the policy objectives of the Listing Rules is to ensure that applicants may incorporate in jurisdictions that are reasonably related to their principal business operations absent other substantive concerns, jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its business operations may be subject to greater scrutiny by the SEHK. In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's place of principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.

Clarification of the Listing Rules

Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules provide the general framework applicable to all overseas companies seeking a listing on the SEHK's markets. The Listing Rules are therefore not prohibitive with respect to listing companies that are incorporated outside Hong Kong or the Recognised Jurisdictions.

In particular, Main Board Listing Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b) and the explanatory notes thereto set out the shareholder protection standards that are expected of an overseas company when seeking a primary listing on the SEHK's markets. Under this requirement, an overseas applicant is expected to benchmark the shareholder protection standards of its home jurisdiction to those standards of Hong Kong, and in case of any shortfall in the standards of the applicant's home jurisdiction, an overseas applicant is expected to compensate for such shortfalls by making changes to its constitutional documents.

Noting that overseas companies may encounter issues that affect their ability to comply with the Listing Rules, SFO and Codes, Main Board Listing Rule 19.03 and GEM Listing Rule 24.03 specifically provide that overseas companies are encouraged to contact the SEHK to seek guidance on compliance matters which ordinarily include considerations for waivers and modifications based on the specific facts and circumstances of each applicant's case.

Whether a company is suitable to be admitted to listing on the SEHK is a question to be determined by the SEHK which takes the leading role in regulating companies seeking admission to the Hong Kong markets and supervising those companies once they are listed, subject to the overriding power of the SFC to object a listing on the grounds set out in Section 6(2) of Securities & Futures (Stock Market Listing) Rules.

SEHK's Approach to Listing Overseas Companies

The SEHK has established a uniform approach for reviewing shareholder protection standards with respect to overseas companies to ensure a consistent interpretation of Main Board Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b).

Noting that there is limited guidance on how companies incorporated outside the Recognised Jurisdictions may be listed on the SEHK's markets, and in response to the call of the Focus Group on Financial Services formed in 2006 (see Press Release of HKEx dated 25 September 2006) to review the listing regime to facilitate further development of Hong Kong financial market, the SEHK has recently reviewed its practices in this area in consultation with the SFC to ensure that its practices are reasonably designed to:

- ensure that overseas companies listed in Hong Kong have appropriate standards of shareholder protection that are at least equivalent to those required under Hong Kong law; and

- are not unduly burdensome on any category of listing applicants.

A roadmap that comprises a schedule of shareholder protection matters is now presented in the **Attachment** to this Joint Policy Statement to distil the key requirements from the SEHK's current approach. The schedule is intended to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions seeking a primary listing on the SEHK's markets by reducing the absolute amount of work needed to file with the SEHK and allowing companies to focus attention on fewer more relevant issues.

As the approach set out in the **Attachment** is materially consistent with the current practices of the SEHK contemplated under the Listing Rules, the SEHK and SFC do not consider it necessary at this time to change the approach with respect to listing companies incorporated outside the Recognised Jurisdictions.

The matters referred to in the schedule may, in most cases, be referenced to provisions in the CO which provides the statutory corporate framework for the formation, operation and dissolution of a Hong Kong incorporated company, and against which the standards of listed companies are measured for purposes of the Listing Rules.

Laws, Regulations, Codes and Listing Rules Continue to Apply

For the avoidance of doubt, the current practices with respect to listing companies that are incorporated in Bermuda, the Cayman Islands, and the People's Republic of China memorialised in the Listing Rules continue to apply. The matters listed in the schedule do not exonerate an overseas company seeking a primary listing on the SEHK's markets from complying with the Listing Rules, SFO, Codes and other laws and regulations which are applicable to overseas companies. Furthermore, the matters that the SEHK may consider for the purpose of assessing a company's suitability for listing are not limited, and Main Board Listing Rule 2.04 and GEM Listing Rule 2.07 specifically state that the Listing Rules may be expanded or modified where the particular facts and circumstances of an applicant's case warrant. Modifications may be necessary where the overseas applicant can demonstrate to the satisfaction of the SEHK that compliance with the Listing Rules is contrary to the law in the country of its incorporation.

Where the overseas companies or their advisers consider that there are significant provisions of the company law of the company's jurisdiction of incorporation or otherwise that may have a material and negative impact on the value and rights/privileges of the shares being offered, the directors of the overseas companies and the sponsors are required under the Listing Rules to draw those matters to the attention of the SEHK pursuant to the:

(a) general disclosure obligations under Main Board Rule 2.13 and GEM Rule 2.18; and

(b) specific disclosure obligations under:

- Appendix 1 Part A to the Main Board Listing Rules and the GEM Listing Rules respectively; and

- Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules.

Factors Affecting Eligibility for Listing Particular to Overseas Companies

It is important that Hong Kong regulators have reasonable access to information relating to the conduct of a listed overseas company in its home or governing jurisdiction to facilitate the taking of any regulatory action against a non-complying overseas listed company. Accordingly, a practical factor that the SEHK ordinarily takes into account when considering applications from overseas companies is whether adequate co-operation and information gathering arrangements exist between the Hong Kong statutory securities regulator and corresponding regulator in the listing applicant's place of incorporation. Whilst this will not necessarily be a determinative factor, incorporation in a jurisdiction of which the statutory securities regulator is either a full signatory to the IOSCO MMOU or has entered into a bi-lateral agreement with the SFC which provides adequate arrangements with the 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 will be viewed favourably.

Regulatory cooperation from the securities regulator in the jurisdiction where a company is incorporated becomes less meaningful where the company concerned does not have its business operations, assets or management presence in the jurisdiction. As one of the policy objectives of the Listing Rules is to ensure that applicants may incorporate in jurisdictions that are reasonably related to their principal business operations absent other substantive concerns, jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its operations may be subject to greater scrutiny by the SEHK.

In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.

Definitions

In this Joint Policy Statement, the followings words and expressions shall have the following meanings ascribed to them:

"CO"	**:**	means the Companies Ordinance, Chapter 32 of the Laws of Hong Kong.
"Codes"	**:**	means the Hong Kong Codes on Takeovers and Mergers and Share Repurchases.
"IOSCO MMOU"	**:**	means International Organisation of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information ("MMOU"). Information on the full signatories to the IOSCO MMOU is available on the IOSCO website at: http://www.iosco.org.
"Listing Rules"	**:**	means the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Main Board Listing Rules") and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited ("GEM Listing Rules").
"Recognised Jurisdictions"	**:**	means Bermuda, the Cayman Islands, and the People's Republic of China ("PRC") as an overseas jurisdiction of an issuer's incorporation.
"SFO"	**:**	means the Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong.

ATTACHMENT

Schedule of Shareholder Protection Matters that the SEHK expects overseas companies to address when seeking a primary listing on the SEHK

Comparability in Key Areas as Identified in the Table

For the purpose of determining whether an overseas company demonstrates acceptable shareholder protection standards, the SEHK ordinarily expects an overseas applicant to provide submissions to demonstrate appropriate shareholder protection standards in the various key aspects under five headings as outlined in the Table below.

Guide to using the Table

The left column under headings 1 to 4 describes the main focuses of shareholder protection concerns as identified by the SEHK and the SFC. The CO provisions referred to in the right column under headings 1 to 4 indicate the source from which the identified shareholder protection concerns originate and therefore are for reference only.

While the SEHK expects substantial comparability between Hong Kong and overseas standards in identified areas, the SEHK and the SFC do not consider it practicable to require an overseas applicant to demonstrate verbatim comparison of the textual content of the CO provisions with those prescribed in the home jurisdiction of the overseas applicant.

In the case of jurisdictional or regulatory differences in any of the aspects set out in the Table, the SEHK expects an overseas applicant to give specific disclosure against each topic by reference to the overseas company's constitutional documents, the law of the jurisdiction of the company's incorporation or any regulation to which the overseas company is subject, highlighting the major differences with the Hong Kong requirements in those aspects. The penalties and consequences of contravention of the relevant laws, rules and regulations must be clearly stated. A legal opinion on relevant foreign laws is ordinarily expected.

For the avoidance of doubt, the SEHK may request further information to be provided in light of the particular circumstances of an individual jurisdiction at its discretion.

Shareholder Protection Matters	Relevant Companies Ordinance Provisions
1. An overseas company is expected to adopt a corporate structure that clearly protects principal shareholder rights.	
(a) For any change to an overseas company's constitutional document, however framed, there should be a general requirement for the company to obtain the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Sections 7, 8, 13, 25A

(b) Rights attached to any class of shares of an overseas company may only be varied with the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required, subject to rights of members holding not less than 10% of the nominal value of the issued shares of that class to make a petition to the court to have the variation cancelled).	Sections 63A, 64
(c) Notwithstanding anything in the constitutional document of an overseas company, any alteration in the constitutional document to increase an existing member's liability to the company is not binding unless such liability increase is agreed by such member in writing.	Section 25
(d) Voluntary winding up of an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Section 228
(e) Appointment, removal and remuneration of auditors must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Sections 131, 132
(f) An overseas issuer must ensure that its branch register of members in Hong Kong shall be open to inspection by members. Closure of the register on terms comparable to the current provisions of Hong Kong law will be allowed.	Sections 98, 99
(g) The circumstances under which the minority shareholders of an overseas company may be bought out or may require an offeror to buyout their interests after a successful takeover or share repurchase must be clearly stated.	Sections 168 and 168B
2. An overseas company is expected to adopt fair proceedings for general meetings to enable shareholders to utilise their rights in full.	
(a) Overseas companies are required to hold a general meeting each year as its annual general meeting. Not more than 15 months shall elapse between the date of one annual general meeting of the company and the next.	Section 111
(b) Members holding not less than 5% of the paid up capital of the overseas company may require the company to convene an extraordinary general meeting and may request the company to circulate a resolution proposed by the requisitionists to members entitled to receive notice of that meeting.	Sections 113, 115A
(c) Overseas companies must ensure that any annual general meeting or any extraordinary general meeting at which a resolution that requires the approval of members by three-quarter majority vote will be proposed shall be convened on at least 21 days' written notice; and that any other general meeting shall be convened on at least 14 days' notice.	Section 114
(d) Overseas companies must adopt general provisions as to meetings and votes on terms that are comparable to those required of a Hong Kong incorporated public company.	Section 114A

(e)	Proxies/corporate representatives may be appointed by any recognised clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) for attending general meetings and creditors meetings on terms comparable to those permitted under Hong Kong law; and such proxies/corporate representatives should enjoy statutory rights, including the right to speak in such meetings, comparable to those appointed with respect to a Hong Kong incorporated public company.	Sections 114C, 115
(f)	The right of members of an overseas company to demand a poll must be comparable to that available to members of a Hong Kong incorporated public company.	Section 114D
3.	**An overseas company is expected to adopt corporate governance measures that ensure the powers of directors are reasonably contained and subject to reasonable scrutiny.**	
(a)	Appointment of a director is required to be voted on individually. Unanimous approval of members is required to pass a resolution permitting appointment of two or more directors by a single resolution.	Section 157A
(b)	A director is required to declare any material interest in any contract with the overseas company at the earliest meeting of the board of directors of the company.	Section 162
(c)	An overseas company is required to include in notices of its intention to move a resolution at a general meeting or class meeting particulars of the relevant interests of directors in the matter dealt with by the resolution.	Section 155B
(d)	The circumstances under which an overseas company may make loans, including quasi loans and credit transactions, to a director must be confined to circumstances no less stringent than those permitted for a Hong Kong incorporated public company.	Sections 157H, 157HA
(e)	Any payment to a director or past director of an overseas company as compensation for loss of office or retirement from office is required to be approved by members of the company on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Sections 163, 163A, 163B, 163C, 163D
4.	**An overseas company is expected to ensure that the notion of capital maintenance is enshrined in its corporate structure and with respect to all its corporate actions.**	
(a)	Any alteration of share capital in an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Section 53
(b)	Any reduction of share capital in an overseas company must be subject to confirmation by the court and be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Section 58

(c)	An overseas company may only redeem its shares out of distributable profits or fresh proceeds from a new issue of shares or under other circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such redemption.	Section 49A
(d)	An overseas company may only distribute its assets to its members in circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such distribution, that is, out of realised profits and if out of assets, the remaining net assets must not be less than the share capital plus undistributable reserves.	Sections 79B, 79C
(e)	The circumstances under which an overseas company may give financial assistance for the acquisition of its own shares must be clearly stated.	Sections 47A, 47B, 47C, 47D
5.	**An overseas company is expected to be incorporated in a jurisdiction where arrangements are in place to ensure reasonable regulatory cooperation between the statutory securities regulators of its home jurisdiction and the company's statutory securities regulators in Hong Kong.**	
(a)	An overseas company must state whether the statutory securities regulator of the overseas company's home jurisdiction (i) is a full signatory of the ISOCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information; or (ii) has entered into an appropriate bi-lateral agreement with the SFC which provides adequate arrangements with the 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.	
(b)	If neither (i) or (ii) applies, the overseas company must explain what other regulatory cooperation exists between its home securities regulator and the Hong Kong securities regulator.	

Note

When assessing reasonableness of the regulatory co-operation arrangements, the SEHK ordinarily will consider whether the jurisdiction is reasonably related to the principal business operations of the overseas company, including the location of its principal trading activities, its principal assets and its principal executive offices.

Jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its operations may be subject to greater scrutiny by the SEHK.

In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.