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Initial Public Offerings

An Issuer's Guide (Asia Edition)



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This Mayer Brown JSM publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or be a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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Introduction

For most companies and their owners, an initial public offering (**IPO**) is a “once-in-in-a-lifetime” event that represents the culmination of many years of hard work and personal investment. The IPO provides shareholders and management of the company with a significant sense of accomplishment, and represents one of the most important milestones in the corporate evolution of a company, for its owners, management, employees and other stakeholders.

An IPO, however, frequently also brings with it a sense of upheaval as significant changes are often required to be made to the way a company operates and conducts itself – membership of the new “public” world brings with it legal and compliance obligations that need to be both understood and present ongoing compliance challenges.

This guide provides an overview of some of the key issues with which we believe all directors, members of senior management, general counsels and other key decision makers of a potential IPO candidate should be familiar, and focuses on a listing on The Stock Exchange of Hong Kong Limited (the **HKEx**) and, to a lesser extent, a listing on a US stock exchange, such as the New York Stock Exchange (the **NYSE**) or Nasdaq. However, it is not intended as a comprehensive treatment of the subject matters covered by the guide, or of all matters relevant to an IPO. This guide is also not intended as a substitute for legal advice, and we encourage our readers to reach out to the authors of this guide or any of the other key members of our Asian Equity Capital Markets Practice before taking any action.

What are the Potential Benefits of Conducting an IPO?

There are a number of different reasons why a company may consider an IPO, including:

- The need to raise additional capital to fund growth of the company, either organically or through acquisitions.
- The need to provide existing shareholders in the company with a “liquidity event” and an option to “exit” all or part of their investment.

- The need to facilitate the transition from an “owner-managed” company to a more widely-held company with a professional (non-owner) management team, frequently in connection with succession planning in family-owned or otherwise tightly-held companies.
- The desire to provide value to shareholders through a spin-off of a particular division or line of business.
- The desire to enhance the profile and standing of the company with customers, suppliers, lenders, other investors, and as an attractive employer.

Being a public company can have significant benefits, including:

- Access to a much broader and potentially international investor base, consisting of both institutional and retail investors.
- Access to the international capital markets as an additional source of capital, through both subsequent equity offerings and potential debt offerings, possibly on more favourable terms than those available in the private equity or loan markets.
- Increased liquidity for existing shareholders, including employees of the company who may have acquired shares as part of their compensation arrangements.
- The ability to use the listed shares of the company as acquisition currency.
- An enhanced ability to attract and retain key talent for the company through executive and employee compensation and incentive arrangements, including shares, stock options or similar arrangements.
- A generally enhanced company profile and increased confidence in the company by investors, creditors, customers, suppliers and other stakeholders in the company, deriving from public company status and the enhanced transparency and disclosure that results.

What are the Potential Costs and Other Potential Downsides of Conducting an IPO?

While being a public company can offer many advantages, the owners of a private company should not take the decision to conduct an IPO lightly, and

will need to carefully consider the various downsides that can come with being a public company, including:

- The costs resulting from an IPO: conducting the IPO itself as well as the ongoing costs of being a public company. These include costs of maintaining a public company board and management team, costs of ongoing reporting obligations, listing fees, costs of the company's auditors, costs of legal advisers and general compliance costs.
- The loss of control by the existing owners: accommodating the potentially divergent interests of other shareholders, adhering to a new set of rules and regulations, being susceptible to market conditions and meeting requirements for increased transparency including disclosure of beneficial shareholders and regarding related party transactions.
- Exposure to potential scrutiny and activism by public shareholders.

Is Your Company Ready for an IPO?

Once the owners of a private company have determined that the benefits of “going public” outweigh the downsides, the company and its shareholders, together with their respective financial, accounting and legal advisers, need to consider whether it is ready for an IPO or whether the company would benefit from remaining a private company for the time being.

The ideal IPO candidate tends to exhibit some or all of the following characteristics:

- A clearly defined strategy and growth story for the company.
- A track record of sound financial performance and a solid balance sheet.
- Market leading positions and favourable industry trends and growth prospects.
- A large potential customer base and products or services that are attractive and accepted by the market.
- An experienced management team with a proven track record.

The company's “equity story” needs to be considered – investors must be provided with facts, figures and details as to why they may wish to consider purchasing shares in the company. The financial advisers, together with the

company and its owners, develop the equity story by focusing on the position of the company as a growth or income play, its position within its market and sector, its strengths, strategy, track record and business plan together with macro data. All of this must be clearly and convincingly outlined in a management presentation or other document, at the outset of the process for the benefit of the financial and legal advisers involved in the proposed IPO. Management will need to ensure that any key assumptions and projections are supported with independent information (to the extent possible) in order to allow the company's financial advisers and underwriting banks to assess the feasibility of an IPO.

Getting Ready

Prior to “going public”, the owners and management of a potential IPO candidate, in consultation with their advisers, must implement a corporate governance structure and other internal procedures and guidelines that are suitable for its life as a public company. In addition, the period leading up to the IPO is also an opportune time to consider what, if any, modifications, changes or amendments the owners and management of a potential IPO candidate may consider making to the company in the near to long-term future.

In considering any necessary or desirable changes, it’s important to bear in mind that many changes – those that require shareholder consent under applicable corporate law or under the listing rules of the exchange on which the shares of the company will be listed – may be much easier, less costly and time-consuming to implement prior to the IPO when the company may still be more closely held and is not yet subject to the relevant listing rules. In practice, certain changes may be very difficult to implement after the IPO, once the company has a potentially large percentage of public shareholders with possibly divergent agendas and incentives.

Key steps in getting ready for an IPO may include, for example:

- Simplifying the company’s capital structure.
- Moving assets out of or into the entity or group that will be listed.
- Intra-group restructuring to make the company operate in a more tax efficient manner.
- Formalising and properly documenting any existing relationships and commercial dealings between the company and its pre-IPO owners.
- Addressing internal “housekeeping” matters, such as reviewing and amending the company’s constitutional documents, committee charters, or other organisational documents.
- Putting in place a corporate governance structure suitable for a public company, including a board of directors with independent members and various committees necessary for a public company.
- Reviewing and organising the company’s financial records.

- Establishing or reviewing, together with its auditors, the company’s internal controls and creating procedures to support the on-going public reporting of the company post-IPO.
- Reviewing, amending and implementing appropriate compensation, (equity) incentive and pension arrangements.
- Reviewing the company’s policies for corporate communications and establishing a formal investor relations programme.
- Creating, reviewing, and updating a website suitable for a public company.

To avoid unnecessary costs and delays, these issues should be considered sufficiently in advance of the formal IPO “kick-off” meeting, and we encourage companies to start discussions with legal advisors to plan for changes prior to the IPO.

Are Changes Needed in the Company’s Capital Structure, the Relationship with its Key Shareholders or Other Related Parties?

The listing requirements in many jurisdictions, coupled with investors’ expectations about acceptable arrangements, may require significant changes to be made to a company’s capital structure and to its relationship with its existing shareholders. The company and its owners, with support from their financial and legal advisers, should scrutinise their respective positions and various relationships in the initial stages, and then determine the nature of any changes that may be required, and what arrangements will or should continue after the IPO. Most, if not all, issues can typically be addressed and there are few true “deal killers”. However, the time it takes to agree and implement certain changes should not be under-estimated, and this process should start in earnest as soon as a decision has been made to proceed with the IPO.

ANALYSING AND SIMPLIFYING THE EXISTING CAPITAL STRUCTURE

Many potential IPO candidates will have raised capital in the past from investors in private capital raisings. Where companies have been funded by venture capital, there may have been several formal funding rounds. As a result, it is not uncommon to find IPO candidates with highly complex share

capital structures that may comprise multiple classes of ordinary and preferred shares. While in a pre-IPO world the existence of many different share classes may be acceptable, the circumstances for a listed company are very different. It may therefore be necessary to significantly simplify the share capital structure of the IPO candidate and, ideally, convert or collapse the different classes of shares into a single class of ordinary shares on or before the IPO date.

The rights of the holders of the different share classes and the interaction of those rights across the different classes can be highly complex. If these are not structured and documented properly at the time of each funding round, certain classes of shares or even individual shareholders may effectively be able to block necessary or desirable changes to the company's capital structure, creating potentially significant holdout value for the relevant investors even when the relevant early round investors may otherwise have been significantly diluted as a result of subsequent funding rounds and only hold a small economic stake in the company. Matters can be further complicated by the existence of options, warrants, or convertible bonds.

REVISITING RELATIONSHIP WITH KEY SHAREHOLDERS AND OTHER RELATED PARTIES

The company and its key shareholders are often parties to a shareholders' agreement that governs their relationship. Shareholders' agreements usually include provisions that:

- Place restrictions on actions of the shareholders and the company.
- Define how decisions are made.
- Determine who gets to nominate or appoint directors.
- Define the circumstances in which shareholders can sell shares in the company or under which the company can issue new shares.

Again, while certain types of shareholders' agreements and arrangements may be perfectly normal and acceptable in a pre-IPO world, it may be necessary to terminate or substantially revise them on or prior to the IPO date. On the other hand, if there will continue to be a "controlling shareholder" after the IPO, applicable listing rules and market expectations may

require that this relationship be formalised, and appropriate protections for non-controlling/minority shareholders be put in place.

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

What is the Right Corporate Governance Structure for the Company Post-IPO?

Corporate governance structures that may be appropriate, and may even have proven to be highly effective for a particular company in the pre-IPO world, may be unsuitable for a company once its shares are publicly listed. The company and its owners, with support from their financial and legal advisers, will therefore need to carefully review and, in all likelihood, supplement or possibly even completely replace, existing corporate governance structures in preparation for a proposed IPO. Factors that may influence the post-IPO corporate governance structure include:

- Applicable legal and regulatory requirements under securities laws.
- The rules of the stock exchange(s) on which the company’s shares will be listed.
- The expectations of investors and the investment guidelines of key institutional investors.
- Market practice for similar listed companies in the relevant jurisdiction.
- The requirements of the underwriters for the IPO.
- The type of board, both in terms of size and composition, the company needs to be successful as a public company.

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

Public companies are usually expected (and often required, under applicable securities laws, listing rules and corporate governance codes) to appoint a minimum number of non-executive “independent” directors. Such rules have been enacted to avoid potential conflicts of interest and to ensure that the board can properly exercise its supervisory role. “Independence” in this context varies in different jurisdictions, but typically means that the relevant director must not have any material relationship with the company or its management, other than his or her role as a director. Only non-executive directors can therefore be independent, but other relationships with the company or company management may also negate independence under applicable rules, including:

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

Some corporate governance codes set out a non-exhaustive list of criteria to determine whether a director is “independent”.

Significant share ownership or the fact that a particular director may have been appointed by a particular shareholder may not necessarily be problematic. However, where there will continue to be one or more dominant or controlling shareholders in a company post-IPO, it may also be necessary to ensure a minimum number of directors remain independent from

controlling shareholder(s) to protect the interests of the (public) minority shareholders and make sure that no individual or small group of individuals dominate the board's decision making. This is particularly important where a significant shareholder or its affiliates are also significant customers or suppliers of the company and where independent directors will have to confirm the "arm's length" nature of any future transactions with the shareholder or its affiliates.

The precise number of independent/non-executive directors to be appointed depends on the synthesis of factors such as the size of the company, the exchange on which the shares will be listed, the type of listing sought and market practice. In any case, the process of identifying and recruiting the right director candidates can take considerable time and effort, and should be started as soon as a decision to conduct an IPO has been made. In addition to specialist search companies, the underwriters for the IPO are often able to assist with introducing possible candidates to the company.

Other corporate governance questions that frequently arise in connection with an IPO include:

- Whether the roles of chairman of the board and chief executive officer should be performed by a single individual or split (as considered by many to be international best practice).
- Whether the chief financial officer should be a director.

The applicable corporate governance regime may also require that various board committees be established prior to the IPO, if they are not already in existence. These may include a remuneration/compensation, nomination and audit committees. Depending on the industry in which the company operates, additional committees may be required or appropriate, including risk, investment, environmental or technology/R&D committees. The charters/terms of reference and composition of these committees should be considered, and the company's legal advisers should work with the company and its other advisers to agree on their scope and content.

Companies may also find that the applicable corporate governance regime may influence the maximum size and nature of compensation packages for senior management and directors.

How can the Company's Employees Benefit from and Participate in the IPO?

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

Employee offerings typically involve offerings of “restricted” shares that cannot be on-sold until the expiration of a (multi-year) restricted period – either for free or at a discount to the public offering price. In addition to existing employees, employee offerings are sometimes also extended to former and retired employees.

How should Investor Relations be Handled?

One of the benefits of being a private company is that there is rarely any need to engage with any public outsiders and there are no public reporting obligations. Private companies, even those of significant size, typically do not have full-time personnel dedicated to interacting with public investors, securities analysts or the media. To the extent financial information is being shared with third parties at all, it is generally limited to the company's finance/accounting department providing limited financial information to lenders under existing credit facilities on a confidential basis. To the extent there are any regular and formal dealings with the media, these may largely fall under the category “sales & marketing”.

The approach to investor relations will change once the company has formally announced its intention to go public, and certainly once the company's shares are listed and publicly traded on a stock exchange. In particular, the company becomes subject to on-going reporting obligations: requiring it to publish formal annual and interim reports and publicly announce material developments that may affect the price of the company's

shares on a real-time basis. Any material mistakes or omissions in these reports or announcements, delays in publishing any required reports or delays in making required announcements, or inaccurate, unapproved or selective disclosure of material, non-public information. Disclosure of information by unauthorised employees or even ad hoc statements by senior management in response to questions with investors, analysts or journalists – possibly even in a social context – can have a significant impact on the company’s share price. These disclosures can also damage a company’s reputation and expose both it and the individuals involved to potential civil and criminal liability for securities fraud, market abuse, insider trading or other offences.

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

The need for effective communication with the company’s investors and other stakeholders does not end on the date of the IPO, but many would argue it only begins. The company will need to continue to work effectively with its investors in order to fully realise many of the benefits of being a public company. Strong communications can engage investors and keep them updated about the company’s strategy and progress in executing its plans, as well as ensuring that they are not surprised by any unexpected developments.

It’s important that, post-IPO, the company maintains an effective investor relations programme. This involves:

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

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

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

What is the Right Listing Venue?

One of the key decisions to be taken at the very outset of the IPO process is the choice of listing venue or venues, which can have a significant impact on the general market perception of the IPO and the valuation of the shares.

Many decisions about the exact offer structure of an IPO have only a limited impact on the overall IPO process and transaction documentation and so can be taken relatively late in the process – once a specific target launch date has been set and the issuer and underwriters have a better understanding of prevailing market conditions. The choice of listing venue or, for example, the decision whether or not US investors will be permitted to participate in the offering, has a direct impact on the IPO process, the extent and nature of the documentation required for the initial listing and the company's on-going reporting obligations. Changes in the listing venue(s) at an advanced stage of the IPO process are likely to result in significant delays and additional expense.

Many Asian issuers choose to list in Hong Kong, a major financial centre that attracts some of the world's largest IPOs each year. The HKEx ranked second among stock exchanges worldwide in terms of IPO funds raised in 2014 with a total of 122 newly listed companies; it has remained in the top-five markets as measured by IPO funds raised since 2002. An aggregate of HK\$227.7 billion, approximately US\$29.3 billion, was raised through IPOs in 2014, representing an increase of 34.79 percent compared with 2013. At the end of 2014, there were a total of 1,752 companies listed on the HKEx and the total market capitalisation of the securities market of the HKEx was HK\$25.071 trillion approximately US\$3,234.1 billion.

In addition, the United States continues to attract many foreign private issuers from Asia. In recent years, the United States Congress and the United States Securities and Exchange Commission (**SEC**), have adopted regulations designed to make obtaining and maintaining a US listing easier and more attractive for foreign companies. However, a US public offering, and NYSE or Nasdaq listing, requires the filing of a registration statement with the SEC, triggers on-going SEC reporting obligations (with related on-going costs that are not insignificant) and subjects the issuer to other compliance burdens and potential enhanced liability in the comparatively litigious US environment. Companies listing in the United States also become fully subject to the United States Foreign Corrupt Practices Act (the **FCPA**) with regard to their global activities. At the same time, Asian issuers opting for a listing on a non-US exchange can often capture potentially large US investors in reliance on the exemption from SEC registration provided by Rule 144A (**Rule 144A**) under the United States Securities Act of 1933, as amended (the **Securities Act**), without triggering the on-going obligations associated with a US public offering and US listing. Generally, issuers conducting a Main Board IPO in Hong Kong offer their securities to institutional and other investors outside Hong Kong under Rule 144A and Regulation S (**Regulation S**) under the Securities Act.

Asian issuers that opt for a US listing typically do so because:

- A large number of their peers are listed in the United States.
- The United States is a key market for them.
- A large percentage of (key) employees and production sites are based in the United States .
- Their US employees expect to be partly compensated with shares or options.
- They need US-listed shares as an acquisition currency for potential public takeovers in the United States.

Some Asian companies have elected to list their IPO shares on the regulated or exchange-regulated markets in Europe, particularly on the Alternative Investment Market (**AIM**) in London, or on Euronext Paris.

Offer Structure

In advising companies and their owners in connection with capital markets transactions, we are frequently asked for our views on the matters described below. We have therefore attempted to address these matters based on the personal experiences of the authors of this guide. As these matters are primarily of a non-legal nature, we recommend that potential IPO candidates and their owners also solicit input from the underwriters and other financial advisers retained in connection with any proposed IPO.

Regulation S vs. Rule 144A Offering

To maximise the share price and potential offering size it may be advantageous to offer shares of the IPO to the broadest possible investor base. This includes having at least the option of approaching “qualified institutional buyers” (**QIBs**) in the United States, in reliance on the exemption from SEC-registration provided by Rule 144A under the Securities Act. A Rule 144A offering involves additional costs because of required due diligence investigations, more stringent disclosure requirements and offers and sales to US investors carrying a potentially higher liability risk for possible misstatements or omissions in the prospectus. Despite this, the United States continues to remain the largest and most liquid capital market globally and has remained open for business throughout most of the recent global financial crisis. See also “Listing in the United States – Exempted Transactions: Rule 144A and Regulation S” below for more detail regarding Rule 144A and Regulation S.

The fact that a transaction is structured to be eligible for offers and sales in the United States does not mean that the company or the underwriters for the IPO must actively target US investors or even offer any shares to US investors at all. However, even if no shares are actually being offered to US investors, there is a view that the “Rule 144A label” can have a positive impact on non-US offers because non-US investors may take additional comfort from the higher level of diligence and more stringent disclosure standards required for a Rule 144A offering, potentially rewarding these aspects with a higher share price. Most significant IPOs by Asian issuers on the HKEx in recent years have involved offers and sales both outside the

United States in reliance on Regulation S and within the United States to QIBs pursuant to Rule 144A. See also “Listing in Hong Kong – Structure of the Offering” below.

Many decisions about the offer structure have only a limited impact on the overall IPO process and transaction documentation, and therefore can be, and typically are, taken relatively late in the process once a specific target launch date has been set, and the issuer and underwriters have a better understanding of the then prevailing market conditions. However, making an IPO eligible for offers and sales pursuant to Rule 144A at a later stage of the IPO process – i.e., after having prepared documentation consistent with a “Regulation S only” transaction – could result in significant delays and additional expenses. The “Regulation S vs. Rule 144A” question should therefore be answered at the very outset of the IPO process if possible.

Offer Size

Determining the appropriate total offer size for an IPO will require the careful consideration of a number of factors, most of which are of a non-legal nature. Such factors include:

- The current and anticipated future funding needs of the company and plans to issue additional shares, including in connection with employee incentive plans or as potential acquisition currency for future M&A transactions.
- Any target proceeds from the IPO for the selling shareholders.
- Any minimum offering size and “free float” requirements imposed by either investors or applicable stock exchange rules.
- Any voting thresholds for key corporate decisions imposed by applicable corporate law.
- The short and mid-term target/minimum ownership percentage of the selling shareholders/current owners of the company, following the IPO.

Primary vs. Secondary Shares

Determining the appropriate split between primary and secondary shares involves similar considerations as those involved in determining the total

offer size. The decision also depends on the “equity story” described in the prospectus. “Primary offering” or “primary shares” refers to the portion of an offering comprising newly issued shares by the company, whereas “secondary offering” or “secondary shares”, in the context of an IPO, usually refers to the portion of the offering comprising shares already in issue and held by shareholders. The term “secondary offering” can also refer to a follow-on offering of new shares such as a rights offering, placing or open offer after the IPO.

As a general rule, investors like “growth stories” that involve the injection of at least some “new money” into the company to support concrete and plausible plans for expansion through organic growth or acquisitions. However, an IPO candidate should not include primary shares or raise additional capital in an IPO just for the sake of perception. In particular, primary shares may be less important as a selling point in connection with a privatisation or private equity exit, as it may be easier to explain the rationale for the government or current private equity shareholder exiting. If a company determines that it is necessary to raise additional equity capital in the future, it can always do so in one or more follow-on equity offerings after the IPO when it actually needs the additional capital.

Allocation – Institutional vs. Retail?

The allocation of shares in an IPO depends on the quality of individual investors and the specific distribution objectives of the company. In some cases, emotional factors may also play a role. For example, strong name or brand recognition of the company and its products or services may translate into high demand, and presumably better pricing, for the company’s shares.

The final allocation, including the exact split between the institutional and retail tranches, are ultimately agreed between the company and the bookrunner(s) for the IPO immediately prior to pricing – i.e., after completion of the roadshow. It is important that the company considers relevant investor selection criteria in the initial stages of the process with input from various stakeholders, including the proposed underwriters. The company should also consider sharing information with the bookrunners about potential investors it might already know and would like to invite to participate in the IPO.

Investor quality is influenced by a number of factors and depends on many non-legal considerations, including:

- The importance of a particular investor as a valuation leader – rather than a valuation follower.
- The investor’s ownership levels in the particular industry sector – is the investor a natural holder rather than a likely seller?
- Participation of the investor in the roadshow.
- Transparency of the investor’s purchase intentions.
- Potential deal feedback and price indications from the investor.

Distribution objectives may include:

- Limited flowback – stable “buy-to-hold” investor base.
- Absence of hedge funds.
- An appropriate mix of institutional and retail shareholders.
- Breadth of ownership across target institutions.
- Desire for after-market trading of the shares to commence at a premium to the IPO price.

It is usually fruitless to try to pre-determine the ultimate split between the institutional and retail tranches at the outset of a transaction, as the actual split depends on many non-legal considerations as well as prevailing market conditions at the time of the launch of the IPO.

Legally, IPOs are typically structured to permit a retail offering only in either a single jurisdiction (the company’s “home jurisdiction”, which is typically also the jurisdiction in which the company’s shares will be listed) or at most one or two additional jurisdictions.

Key Documents

An initial public offering typically requires the preparation of the following key documents:

Prospectus

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

The prospectus contains:

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

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

Although there is no hard rule, the term “offering circular” is sometimes used instead of the term “prospectus” to indicate that the shares are being offered in private transactions that rely on exemptions under applicable securities laws from the requirement to prepare a formal “prospectus” in countries other than the country where the shares are being listed. In practice, an international offering circular is usually prepared so it can be used for offers and sales to QIBs in the United States pursuant to Rule 144A. See also “The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing A1 Listing Application – Prospectus Drafting”.

GENERAL FORM AND CONTENT

The specific form and content requirements of prospectuses are driven primarily by the securities laws of the jurisdiction and the rules of the stock exchange on which the shares of the company will be listed. It is also influenced by the identity and location of the investors to whom the shares will be offered.

In Hong Kong, the Companies Ordinance, the Securities and Futures Ordinance (**SFO**) and the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**Listing Rules**) set out specific prospectus content requirements and impose an overriding “completeness” requirement. Before submitting the listing application, a sponsor must form a reasonable opinion that the information contained in the Application Proof is substantially complete, except matters that by nature can only be dealt with at a later date. Those responsible or deemed responsible for a prospectus are potentially subject to civil and criminal liabilities if the prospectus is inaccurate, misleading or incomplete. Liability may be imposed not only on the issuer and its directors, but also on those who authorised the issue of the prospectus, such as the sponsor.

For a US IPO by a “foreign private issuer” (see “Listing in the United States” for the meaning of “foreign private issuer”), the precise form and content requirements of the SEC registration statement and the prospectus included in it are set forth in the SEC’s “Form F-1”. The Form F-1, in turn, largely cross-refers to the content requirements of “Form 20-F”. Form 20-F specifies the information required in the annual reports that foreign private issuers

with shares registered under the United States Securities Exchange Act of 1934 (**Exchange Act**) must file with the SEC. Both Form F-1 and Form 20-F are available on the SEC's website (*www.sec.gov*).

Irrespective of the specific statutory/disclosure regime applicable to a particular IPO and whether the company's shares will be listed on the HKEx or on a stock exchange in the United States, the company, its directors and officers, the underwriters and other parties involved in an offering must always ensure that the offering document contains:

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

For listings on the HKEx, the Listing Rules require that a prospectus must, as an overriding principle, “contain particulars and information which, according to the particular nature of an applicant and the securities for which listing is sought, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the applicant and of its profits and losses and of the rights of the securities”.

Material misstatements or omissions in the offering documents expose the company, its officers and directors, and the underwriters to potential liability under applicable anti-fraud laws in each country in which shares are being offered and sold in connection with the IPO. Reviewing the prospectus carefully is the primary responsibility of the company's management team.

For an IPO marketed to investors in the United States (whether an SEC-registered offering or an offering only to QIBs in reliance on Rule 144A), the offering document must be drafted to meet the disclosure standards under the general United States anti-fraud provision under Section 10(b) and Rule 10b-5 of Exchange Act (**Rule 10b-5**). In practice, this means that offering documents used in Rule 144A offerings are prepared to a standard that is

substantially similar to that for an SEC-registered offering, even though Form F-1 is not required.

RISK FACTORS SECTION

Guidance Letter HKEx-GL54-13 sets out generally the required format or content of the risk factors section in a prospectus for a Hong Kong IPO. Alongside these requirements, international best practices continue to evolve that closely mirror the requirements for risk factors used in US offerings.

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

- Risks related to the business of the issuer.
- Risks related to the industry in which the issuer operates.
- Risks related to an investment into the common shares of the issuer.

Specific risk factors may include:

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

The risk factors section has a dual purpose:

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

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

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

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

The risk factors section of the prospectus frequently receives a high level of attention by the issuer, the underwriters, their advisers and even regulators, for different reasons. The uninitiated owners and management of an IPO candidate, in particular, may initially be alarmed by the one-sided and unbalanced nature of the Risk Factors section and may be concerned that the negative overall tone of the section may convey an unfair and overly negative image of the company and its prospects, which could distract from the positive marketing message of the IPO. There are other sections of the prospectus that are intended, and better suited, to convey the potential benefits and prospects of the company and an investment in the IPO – such as the Business section, which typically includes a separate “Strengths and Strategy” subsection, and the Financial Information or MD&A section, which will include a subsection that describes any known trends and the key factors affecting the company’s results, both good and bad. In addition, the company and its management will have plenty of opportunities to “sell” the

IPO to securities analysts and key investors in person, during analyst sessions and the investors roadshow that will be organised by the underwriters for the IPO.

BUSINESS SECTION

The business section of the prospectus provides information about the company's business operations, the products it makes, or the services it provides as well as factors that affect its business. It also provides information regarding the adequacy and suitability of the company's properties, plant and equipment and any plans for future increases or decreases in these items. Drafting the business section requires significant factual input from the issuer, including senior management, and can be time consuming. The specific items required to be disclosed in a prospectus for a Hong Kong IPO are set forth in HKEx-GL50-13.

The business section must contain:

- Technical details about the company:
 - » Legal name.
 - » Date of incorporation.
 - » Domicile.
 - » Legal form.
 - » Registered office.
 - » Principal place of business.
 - » A discussion of its history and development.
- The nature of its operations and its principal activities, including:
 - » Main categories of products sold and services performed.
 - » Any significant new products or services that have been introduced.
 - » How extensively the development of new products or services has been publicly disclosed.
 - » The status of new product or service development.
- Material tangible fixed assets and leased properties, including:
 - » A description of the size and uses of the property, productive capacity and extent of utilisation of the company's facilities.

- » How the assets are held and any major encumbrances.
- » Products produced and the location of production.
- » Any environmental issues that may affect the company's utilisation of the assets.
- Material plans to construct, expand or improve facilities, including:
 - » A description of the nature of and reason for the plan.
 - » An estimate of expenditures, including amounts already paid.
 - » A description of the method of financing such activities.
 - » The estimated dates of start and completion.
 - » The increase of production capacity anticipated after completion.
- Other items, including:
 - » The principal markets in which the company competes and the company's main competitors in those markets.
 - » The seasonality of the company's main business.
 - » The sources and availability of raw materials or other inputs.
 - » Marketing channels used by the company, including an explanation of any special sales methods.
 - » The extent to which the company is dependent, if at all, on patents or licenses, industrial, commercial or financial contracts, including contracts with customers or suppliers, or new manufacturing processes, where such factors are material to the company's business or profitability.
 - » Any material information relating to the company's workforce and its relationship with its employees.
 - » The material effects, if any, of government regulations on the company's business, identifying any relevant regulatory bodies.
 - » Any material legal proceedings.
 - » If the company is part of a group, a brief description of the group, the group's organisational structure and the company's position within the group.

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

MD&A (OR FINANCIAL INFORMATION) SECTION

In the United States, the MD&A (Management’s Discussion and Analysis of Financial Condition and Results of Operations) has been a key part of all prospectuses for decades. Over the years, the SEC has issued extensive rules (see Item 303 of Regulation S-K) as well as detailed interpretive guidance regarding the content, format and purpose of the MD&A. Prospectuses or offering memoranda for IPOs under Rule 144A will often use the US term “MD&A” to indicate that a full MD&A section has been included in the document which has been drafted by US lawyers to meet the higher standards applicable to US offerings. In Hong Kong, this section is known as the “Financial Information” section and HKEEx-GL59-13 sets forth similar disclosure requirements to those required by the SEC for the MD&A for a Hong Kong IPO prospectus.

According to SEC Release No. 33-8350, the purpose of the MD&A section is to provide readers information necessary to gain an understanding of a company’s financial condition, changes in financial condition and results of operations. The MD&A requirements are intended to satisfy three principal objectives:

- To provide a narrative explanation of a company’s financial statements that enables investors to see the company through the eyes of management.

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

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

The SEC expressly encourages early top-level involvement by a company's management in identifying the key disclosure themes and items that should be included.

With regard to overall presentation of the MD&A, the SEC emphasises the following points:

- Within the universe of material information, companies should present their disclosure so that the most important information is most prominent.
- Companies should avoid unnecessary duplicative disclosure that can tend to overwhelm readers and act as an obstacle to identifying and understanding material matters.
- Many companies would benefit from starting their MD&A with a section that provides an executive-level overview that provides context for the remainder of the discussion.

With regard to focus and content of the MD&A, the SEC emphasises that:

- In deciding on the content of MD&A, companies should focus on material information and eliminate immaterial information that does not promote understanding of companies' financial condition, liquidity and

capital resources, changes in financial condition and results of operations – both in the context of profit and loss and cash flows.

- Companies should identify and discuss key performance indicators, including non-financial performance indicators, that their management uses to manage the business and that would be material to investors.
- Companies must identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance.
- Companies should provide not only disclosure of information responsive to the technical requirements for an MD&A under the relevant SEC rules, but also an analysis that explains management's view of the implications and significance of that information and that satisfies the objectives of MD&A.

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

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

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

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

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

The issuer must also provide information about its “Liquidity and Capital Resources”. To the extent material, this information should include:

- Historical information regarding sources of cash and capital expenditures.
- An evaluation of the amounts and certainty of cash flows.
- The existence and timing of commitments for capital expenditures and other known and reasonably likely cash requirements.
- A discussion and analysis of known trends and uncertainties.
- A description of expected changes in the mix and relative cost of capital resources.
- Indications of which balance sheet or income or cash flow items should be considered in assessing liquidity.
- A discussion of prospective information regarding company’s sources of and needs for capital, except where otherwise clear from the discussion.

A discussion and analysis of material covenants related to their outstanding debt (or covenants applicable to the companies or third parties in respect of guarantees or other contingent obligations) may be required. There are at least two scenarios where this information should be included:

- Companies that are or are reasonably likely to be in breach of these covenants must disclose material information about that breach and analyse the impact on the company if material.
- Companies with debt covenants that limit, or are reasonably likely to limit, their ability to undertake financing to a material extent must discuss the covenants in question and the consequences of the limitation to the company’s financial condition and operating performance.

Then comes a separate subsection on “Off-Balance Sheet Arrangements”, followed a subsection containing information, in tabular form, about the maturity profile of the company’s “Contractual Obligations”. The “Contractual Obligations” subsection should cover long-term debt obligations, lease obligations, and purchase obligations.

Then, the company may need to include a discussion of its “Significant Accounting Policies/Critical Accounting Estimates”. Many estimates and assumptions involved in the application of Generally Accepted Accounting Principles (GAAP) have a material impact on reported financial condition and operating performance and on the comparability of that information over different reporting periods. This subsection should address any material implications of uncertainties associated with the methods, assumptions and estimates underlying the company’s critical accounting measurements. This disclosure should supplement, not simply duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements. The disclosure should provide greater insight into the quality and variability of information regarding financial condition and operating performance. While accounting policy notes in the financial statements generally describe the method used to apply an accounting principle, the discussion in the MD&A should present a company’s analysis of the uncertainties involved in applying a principle at a given time or the variability that is reasonably likely to result from its application over time. It should address specifically why its accounting estimates or assumptions bear the risk of change (for example, because there is an uncertainty attached to the estimate or assumption, or it just may be difficult to measure or value).

Equally important, companies should address the questions that arise, once the critical accounting estimate or assumption has been identified by analysing to the extent material, such factors as:

- How they arrived at the estimate.
- How accurate the estimate/assumption has been in the past.
- How much the estimate/assumption has changed in the past.
- Whether the estimate/assumption is reasonably likely to change in the future.

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

FINANCIAL STATEMENTS

Hong Kong Listings

For listings on the Main Board of the HKEx, an accountant's report is required in support. This should cover a "track record" period of the immediate past three financial years. Mining and mineral companies, infrastructure companies or large-cap companies may apply to the HKEx and the Securities and Futures Commission (**SFC**) for a shorter track record period on a case-by-case basis. Reporting on an interim or stub period may be required, as the latest reporting period should not be more than six months old when the prospectus is published. The HKEx may refuse vetting if the necessary financial information is not included in the listing application.

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

Pre-listing reorganisation may have an impact on the presentation of historical financial statements.

SEC-Registered Offerings

Similar requirements with regard to financial information apply for offerings in the United States. The specific requirements for financial information to be included in SEC-registered transactions are set out in

Form S-1 for US domestic issuers and Form F-1 for foreign private issuers as well as Regulation S-X.

In the Form S-1 or Form F-1 registration statement, issuers normally must provide:

- Selected financial information for the five most recent financial years.
- Audited financial statements that cover the latest three financial years, except for the balance sheet for the earliest of the three years.
- Pro-forma financial information with respect to any significant events, such as major acquisitions or disposition.

In practice if more than 135 days have passed since the date of the most recent audited financial statements included in the prospectus, the underwriters for the IPO will also insist on the inclusion of audited or “reviewed” interim financial statements. This enables the auditors of the issuer to provide “negative assurances” regarding recent changes in certain key financial line items in a comfort letter. This is the case for both SEC-registered offerings and exempt US offerings to QIBs in reliance on Rule 144A. See also “Comfort Letters” below.

Recent US legislation has also impacted disclosure for certain types of issues. The Jumpstart Our Business Start-ups Act (the “**JOBS Act**”) was enacted by the United States Congress in April 2012. This legislation created a new regulatory on-ramp for “emerging growth companies” (“**EGCs**”) that decide to conduct a US IPO. The process for EGC’s differs from the standard SEC process as follows:

- EGCs are only required to include two years of audited financial statements (rather than three) in any registration statement filed with the SEC.
- An EGC need only present its MD&A for each period for which financial statements are presented.
- An EGC does not need to present selected financial data for any period prior to the earliest audited period presented in connection with its initial public offering.

- An EGC need not comply with any new or revised financial accounting standard until such date that a company that is not an “issuer”, as defined in Section 2 of the Sarbanes-Oxley Act of 2002 – generally, a non-public company – is required to comply with such new or revised accounting standard.
- EGC’s are exempted (by Section 404(b) of the Sarbanes-Oxley Act of 2002) from the requirement to obtain an attestation report on internal control over financial reporting, from the issuer’s registered public accounting firm.

See “Listing in the United States – Emerging Growth Companies” below for more detail about EGCs.

US domestic issuers must prepare their financial statements in accordance with US GAAP unless the company qualifies as a “foreign private issuer” (see “Listing in the United States – Foreign Private Issuer vs. US Domestic Issuer” for an explanation of the term “foreign domestic issuer”). The company might therefore need to convert the company’s existing financial statements into US GAAP financial statements, which would likely require significant amount of time and expense. In addition, the company might have to make significant changes to its internal and external accounting and audit teams if it were to switch from its current accounting principles to US GAAP accounting for purposes of its ongoing SEC reporting.

If the company (pre- and post-IPO) qualifies as a “foreign private issuer”, it may elect to present its financial statements in conformity with any of the following:

- US GAAP.
- IFRS as issued by the IASB without a requirement for reconciliation to US GAAP.
- Local GAAP, including any local variation of IFRS, other than as issued by the IASB, provided only they are audited in compliance with United States generally accepted auditing standards, and contain a reconciliation to US GAAP.

For the IPO registration statement, the company is only required to reconcile the two most recent fiscal years and any interim periods covered by the financial statements in the prospectus. A company should consult its external auditors as soon as possible about the accounting, reporting and compliance implications of a potential US IPO.

Engagement Letter with the Banks

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

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

Some of these provisions, once agreed in the engagement letter are also mirrored in the underwriting agreement signed later in the process, so it is important that the company is properly advised even at this early stage. In addition, the engagement letter often contains some form of exclusivity provision guaranteeing the lead banks participation in any IPO during the exclusivity period at a specified minimum level or percentage of the overall economics for the underwriters. At the same time, the banks will not and cannot commit to actually underwrite any shares at any price or guarantee a successful IPO in the engagement letter, which may be signed many months before the company is ready for the IPO. The banks are only legally bound to participate in the IPO once all preparations have been completed (including a due diligence investigation), the offering document has been prepared and approved by the relevant regulator and the banks and the issuer have entered into a formal underwriting agreement as described below.

However, the banks may nevertheless have a very legitimate interest in asking for at least a certain level of exclusivity and protection in the form of the engagement letter before they invest significant time, money and other resources assisting the company to prepare for an IPO. Otherwise, they run the risk that the issuer could bring in other banks at the last minute and either significantly dilute their share of the overall IPO fees or replace them altogether once all the “heavy lifting” has already been completed. The banks may even have put their own reputation behind the IPO in private/informal conversations with potential investors (known as “pre-marketing”). At the same time, the company may not want to be fully tied to a particular bank or set of banks too early in the IPO process and may also have an interest in preserving at least some degree of flexibility over other aspects of the IPO process. Companies should consult their legal counsel in connection with the negotiation of the engagement letter and consider the timing of its signing very carefully.

Underwriting Agreement

The underwriting agreement is also sometimes referred to as “purchase agreement” or “subscription agreement”. Although practices vary in different markets and depending on the particular type of offering, it is typically entered into very late in the offering process, usually after the marketing of the shares (i.e., the “roadshow”) and when the underwriters and the company are prepared to “price” the offering (i.e., commit to the exact number of shares to be sold and to a fixed price per share). However, the banks usually want the underwriting agreement to be in a final, agreed form earlier than pricing, especially where an engagement letter has not been executed.

The underwriting agreement sets out the relationship and arrangements – in particular the allocation of potential liability arising from the offer and sale of securities – among the underwriters for the IPO, the issuer, and any selling shareholder(s). In the underwriting agreement the company and any selling shareholders agree to issue (and, if applicable, sell) a specified number of shares to the underwriters. Subject to certain conditions, the underwriters agree to purchase the agreed number of shares from the company and the selling shareholders at an agreed price at closing (typically 3-5 business days after the signing of the underwriting agreement).

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

- A “firm commitment” or “hard undertaking” to underwrite, in which the underwriters agree to take up any shares that are not purchased by investors, or
- A “soft commitment” or “reasonable endeavours” obligation, where the underwriters are required to use reasonable endeavours to sell the shares but no legal obligation exists by the underwriters to take up any shortfall in sales.

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

Where the selling shareholders hold a significant stake in the company pre-IPO or are otherwise involved in the strategic or day-to-day management of the company, they may also be required to provide representations, warranties and indemnities with regard to the company’s business and the completeness and accuracy of the offering materials – at least with regard to those portions of the prospectus that relate to them.

Upon execution of the underwriting agreement, the underwriters take on the risk of distributing the shares to investors, where they have given a hard commitment to underwrite. Should they not be able to find enough investors to acquire the shares that are the subject of the offering they will have to acquire the shortfall themselves.

The underwriters earn the fees for their services and the underwriting risk they take by underwriting an IPO from the price difference between the price they agree to pay the issuer for the shares in the underwriting agreement and the public offering price at which the shares will be sold on to investors. This is known as the “underwriting spread” or “underwriting discount”. Note that in a “hard underwriting” commitment, the underwriter may be required to purchase shares at a price for which there is no immediate market. For this reason, “hard underwriting” commitments are relatively rare.

Hong Kong Underwriting Agreement and International Underwriting Agreement

In a Hong Kong IPO with Rule 144A and Regulation S tranches, both a Hong Kong underwriting agreement and an international underwriting agreement are signed.

Under the Hong Kong underwriting agreement, the underwriters for the Hong Kong public offer agree to purchase the securities offered in the Hong Kong public offer from the issuer. Under the Hong Kong underwriting agreement, the underwriters have “several” obligations (as opposed to joint obligations). This means each underwriter agrees to take up a fixed proportion of the IPO offer shares. The Hong Kong underwriters of the Hong Kong public offer tranche also enter into an agreement among themselves, setting out their respective rights and obligations in respect of the public offer. Customary provisions include:

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

Under the international underwriting agreement, the international underwriters agree to purchase the securities offered in the international offer tranche from the issuer. The international offer tranche is typically exempt from the registration requirements of the US securities laws in reliance on Rule 144A and Regulation S (see also “Listing in Hong Kong – Structure of

the Offering” below). As a result, in addition to representations, warranties, and covenants similar to those contained in the Hong Kong underwriting agreement, the international underwriting agreement also contains US-specific representations, warranties, and covenants in respect of the applicable exemptions. In a Regulation S offering, the underwriters customarily require the issuer to represent that the issuer, the selling shareholders or any of their affiliates, or any person acting on behalf of them have not offered to sell the securities by means of any “directed selling efforts.” In a Rule 144A offering, the underwriters customarily require the issuer to represent that the issuer, the selling shareholders or any of their affiliates, or any person acting on behalf of them have not offered to sell the securities by means of any “general solicitation” or “general advertising” in the United States, and that no securities of the same class are listed in the United States.

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

Greenshoe Option

An underwriting agreement may include a “greenshoe option”. Whether or not to include a greenshoe option and, if so, what size it should be often arises during the negotiation of the underwriting agreement. A greenshoe (or “over-allotment”) option allows the underwriters in an IPO to “short sell” shares at the agreed public offering price: that is, to sell more shares to investors than the fixed number of shares initially agreed with the issuer and the selling shareholders in the underwriting agreement. This can help the underwriters stabilise the trading price of the shares in the after-market immediately following the IPO and might therefore have a positive impact on the achievable IPO price, in that the underwriters may be able to agree to a higher/more aggressive IPO price with a sizeable greenshoe option rather than without one.

The greenshoe option may vary in size but must not normally exceed 15 percent of the original number of shares offered. This is due to applicable securities laws, and the fact that the sale of more than an additional 15

percent of shares could arguably be considered material information that may require the issuer and underwriters to go back to investors in the IPO and give them an opportunity to re-consider their investment decision. This is particularly the case should the issuer agree to sell additional primary shares pursuant to the greenshoe option because any such additional shares would further dilute the other shareholders. Raising a significant amount of additional capital for the issuer may also be inconsistent with the “equity story” and the “use of proceeds” described in the offering documents. This concern is less relevant for secondary shares, i.e., to the extent the greenshoe option is provided by one or more selling shareholders, although a significant increase in the total offer size, by way of the greenshoe option, could potentially lead to an over-supply of shares in the market – that may ultimately put some downward pressure on the share price.

That said, greenshoe options can be a valuable tool that can benefit the issuer, any selling shareholders and the underwriters by increasing the overall size of the IPO and facilitating stabilisation activities within the 30 days following the listing. Their use, typically at the 10–15 percent level, has become standard in IPOs.

Relationship/Controlling Shareholders’ Agreement

In connection with some IPOs, there may be a concern by potential investors that a controlling shareholder or group of shareholders (usually, shareholders that alone or as a group hold 30 percent or more of the company’s shares) may use their shareholding to unduly influence and control the company. Specifically, the concern may be that the controlling shareholders may interfere in the company’s affairs and detract from its independence to the potential detriment of future minority shareholders. To address this very real concern, to ensure that post IPO the company will be run independently of its controlling shareholders and to protect the interests of minority shareholders, investors usually expect (and some listing regimes require) that “relationship agreements” or “controlling shareholder agreements” are put in place between the company and the controlling shareholder. See also “Getting Ready – Are there any changes that need to be made to the company’s capital structure and to the relationship with its key shareholders and other related parties?” above.

Lock-Up Agreements

The underwriters usually expect the company, any significant shareholders, and the directors, to agree to a “lock-up”. In the case of the company, the lock-up restricts its ability to issue any new securities, other than possibly in connection with its equity incentive programmes. In the case of shareholders and directors, a lock-up restricts the ability to sell their shares in the company for an agreed period after the IPO. The existence and duration of lock-up agreements can be important factors in the investment decision of key institutional investors, especially if there is a large “overhang” (that is, a large existing shareholder that could potentially sell a large stake in close proximity to the IPO, flooding the market with additional shares, thereby increasing pricing pressure on the newly listed shares). In addition to concerns about a potential oversupply and the resulting downwards pressure on the trading price, even smaller volume sales by “insider” shareholders (such as directors, officers or large shareholders) could potentially be misinterpreted as a lack of confidence in the company or share price and disrupt a potentially volatile market in the shares of the company in the period immediately following the IPO.

A lock-up period of at least 180 days for both the issuer and key shareholders has become an almost universal minimum standard for IPOs, but the period can sometimes be longer. In Hong Kong IPOs, the lock-up period is typically 180 days but ranges between 90 and 365 days. The need for and duration of any lock-up period for either the issuer or a particular shareholder are ultimately commercial points subject to negotiation with the underwriters, taking into account economic factors (including any anticipated future funding needs of the issuer as well as general market conditions).

In some instances, lock-up agreements may contain a “waterfall provision” whereby a limited number of shares are released from the lock-up over a period of time. The lead underwriters can also typically waive the lock-up. In some jurisdictions, companies must have a certain proportion of their shares held by the public. This is known as the “free float”. In these jurisdictions, if shares are locked up for longer than a stipulated period, they may not be counted towards the “free float”.

Legal Opinions and Disclosure Letters

Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 subject issuers of securities and other participants in a securities offering to liability. More specifically, Rule 10b-5 under the Exchange Act prohibits any person, in connection with the purchase or sale of a security – whether public or private – from:

- Making any untrue statement of a material fact, or
- Omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

If successful, private litigants in Rule 10b-5 claims may be awarded damages or may seek to rescind the transaction and obtain a refund of the original purchase price. In order to be successful in an action under Rule 10b-5, a plaintiff must show (among other things) that the defendant acted with “scienter,” meaning an intent to defraud, deceive or manipulate. Generally, courts have found recklessness to satisfy the scienter requirement, but not simple negligence or even inexcusable negligence.

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

If the IPO will be marketed to investors in the United States, for example in a Hong Kong IPO with a Rule 144A tranche, the lawyers of both the underwriters and the issuer are also required to provide formal disclosure letters to the underwriters and the Board of the issuer. These are also called

“negative assurance letters” or “Rule 10b- 5 letters” (after the relevant liability provision). These letters indicate that nothing came to the attention of the lawyers to cause them to believe that the prospectus was materially incomplete, inaccurate or misleading during the course of their work on the offering and as a result of their due diligence investigations.

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

Comfort Letters

Comfort letters are typically provided by the issuer’s auditors at or immedi-ately prior to “pricing” (signing of the underwriting agreement), representing another key component of the underwriter’s due diligence defence. The comfort letter follows a standard format prescribed by the relevant account-ing body (e.g., Statement of Accounting Standards (SAS) 72, also called SAS 72, for US comfort letters). In the comfort letter, the auditors of the issuer typically:

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

Auditors are only able to provide “negative assurance” in a SAS 72 comfort letter if no more than 135 days have passed since the date of the most recent audited or reviewed financial statements included in the offering document. For this reason it is critical to monitor the timing of the proposed IPO (including the closing of the Greenshoe Option) and potentially ask the company’s auditors to conduct a formal “review” of the most recent interim financial statements for inclusion in the offering document early-on, in case of delays.

To facilitate the comfort letter process, the lawyers for the underwriters prepare a “circle-up” of the offering document(s) for the auditors, circling those (financial) figures which they expect the auditors to cover and provide “comfort” on. The exact coverage of the comfort letter as well as the level of comfort on particular figures are then negotiated between underwriters’ counsel and the auditors.

At closing of the offering, the auditors provide a “bringdown” comfort letter to re-verify that the original comfort letter is still valid, as of the closing date.

In the context of a Hong Kong IPO with Rule 144A and Regulation S tranches, underwriters customarily request three comfort letters: one for the Rule 144A tranche, one for the Regulation S tranche, and one for the Hong Kong public offer. The Rule 144A and Regulation S comfort letters are very similar and generally track a typical “SAS 72” comfort letter delivered in connection with a registered securities offering in the United States. The Hong Kong comfort letter, on the other hand, may track SAS 72 or HKSIR 400, a Hong Kong accounting standard generally regarded as being more limited in the level of comfort provided.

Key Parties

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

Issuer

The “issuer” is the legal entity whose shares are offered to investors and subsequently listed on the relevant stock exchange. The sales of newly issued shares to investors directly by the issuer and where the issuer receives the proceeds from the sale of the shares is known as the “primary offering”. The precise identity of the “issuer” depends on a variety of factors. In some cases it may be possible for an existing holding company to serve as the issuer. However, there may be various factors that weigh against using the existing holding company:

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

A further consideration is to what extent, if any, the jurisdiction of incorporation will impact upon the regulatory burden that will apply to legislative and regulatory framework of the company. The company and its owners may therefore need to explore available options for a potential pre-IPO reorganisation or re-domiciliation, with the support of their legal, tax and financial advisers. See also “Getting Ready” above.

Selling Shareholders

Existing shareholders of a company may use the IPO as a liquidity event to

sell down some or all of their shareholding. If this is the case, these shareholders are commonly referred to as “selling shareholders”. The offering of the shares that are sold by the selling shareholders is referred to as a “secondary offering” (as opposed to a “primary offering” that involves sales of newly issued shares to investors directly by the company and where the company receives the proceeds from the sale of the shares).

Depending on the size of their shareholding, selling shareholders may be required to be parties to the underwriting agreement and be asked to give comfort to the banks on certain issues in the form of representations, warranties and indemnities. See also “Key Documents – The Underwriting Agreement” above.

Depending upon the size of their remaining shareholding and role with the company, selling shareholders who retain shares in the company may be requested to enter lock-up agreement to prevent them disposing of more shares in the after-market. See also “Key Documents – Lock-Up Agreements” above.

Management of the Issuer

The issuer’s management – particularly the CEO and the CFO – will be heavily involved in the IPO process. Their active participation in the process is a key determinant in ensuring that the IPO is successful and is not delayed. An IPO places a heavy time and resource burden on the company’s organisation, given it has an existing business to run in addition to dealing with the IPO. Senior management must attend management presentations and due diligence sessions focusing on the business. The CEO and the CFO must also attend drafting sessions on the prospectus with their counsel and the broader group of IPO advisers. The CFO will be heavily engaged with the accountants in the preparation of the financial statements and various financial models that need to be prepared. The CEO and the CFO also have central roles to play on the roadshows with investors, where they need to convey information relating to the company’s vision for the future and its financial position. Other members of the management team – for example, heads of divisions/product areas, the general counsel (if there is one), the human resources manager, the investor relations officer – also have roles to play in explaining what their respective departments do, how they function

and how they fit into the broader corporate structure and strategy. These functions also need to be available to respond to due diligence and verification queries that may arise.

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

Auditors/Reporting Accountant of the Issuer

The company's auditors/reporting accountant must be independent. In an IPO process, they are responsible for assisting the company in preparing its financial statements and any pro forma financial information required.

They are also required to provide the various comfort letters to the underwriters as described under "Key Documents – Comfort Letters" above.

Underwriters

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

- Conducting due diligence via due diligence sessions held with management and the auditors.
- Attending drafting sessions and raising queries generally.
- Drafting the prospectus and other marketing materials (e.g., investor presentations) to address queries that investors may have.
- Developing the "equity story" with the company's management and positioning the company in the market.
- Recommending a particular listing venue.
- Providing advice on market conditions and on the timing of the IPO

- Coordinating and organising roadshow meetings.
- Advising on the optimum allocation of shares.
- Recommending the offer price range.

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

The lead underwriters responsible for overseeing the entire offering and for coordinating the activities of the other underwriters are sometimes called “lead managers” or “global coordinators”. To the extent a single bank takes the lead role on an IPO, this can be indicated by appointing this bank as “sole” lead manager or global coordinator or by simply listing the name of that bank to the top left where the names of the members of the underwriting syndicate are listed on the cover page of the prospectus (the “left lead”). Other banks with less prominent roles in the IPO process and a smaller economic stake in the IPO may be referred to as “co-managers”. Practices and descriptions of roles can vary considerably depending on factors such as the size of the IPO, the specific nature of the offering and the involvement of a particular bank in different aspects or portions of the offering.

In a Hong Kong IPO, the Listing Rules require a sponsor to be engaged by the issuer. The sponsor represents the issuer in coordinating and making the listing application with the HKEx. The sponsor is normally an investment bank with the requisite licence under the SFO and recognised by the HKEx. Usually, the sponsor also acts as the IPO global coordinator to coordinate the marketing and offering process of the IPO together with a syndicate of underwriters. See “The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing A1 Listing Application” for more detail about sponsors.

Legal Advisers

Separate legal advisers are usually appointed for the issuer and for the underwriters. Depending on the jurisdiction of organisation of the issuer and proposed listing venue, there may also be separate “local counsel” to both the issuer and the underwriters.

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

Other Parties

In addition to the main parties described above, there are a number of additional parties that will often be involved in an IPO. For example, the company needs to appoint a registrar to administer its share register following the IPO and send circulars to shareholders, count votes at shareholder meetings, deal with shareholder proxies and corporate representatives who attend meetings, arrange payment of dividends and deal with other corporate actions. If depositary receipts rather than shares are being listed, the company also enters into a deposit agreement with a depositary bank. A financial printer needs to be appointed to help with the professional typesetting of the prospectus and to print physical copies of the final prospectus to distribute to potential investors. Other professional parties involved may include independent property valuers, internal control advisers, market research consultants, investors/public relations consultants and receiving banks.

Listing in Hong Kong

The Hong Kong Stock Exchange

As a vibrant financial centre, Hong Kong is one of the world's leading venues for listings and IPOs. Companies from around the world raise capital on the HKEx. The HKEx is a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, which regulates listings on the HKEx. According to data published by the World Federation of Exchanges, as at the end of 2014, the HKEx was Asia's third largest stock exchange in terms of market capitalisation (behind only the Tokyo Stock Exchange and the Shanghai Stock Exchange) and the sixth largest in the world.

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

Regulatory Regime

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

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

The SFC is responsible for market regulation. It administers the Companies Ordinance (for example, on the issuance of securities and prospectus documents by companies), the SFO (for example, on market misconduct such as insider dealing and other securities-related offences) and The Codes on

Takeovers and Mergers and Share Buy-backs (**Codes**) (for example, on fair dealing in takeovers). The Listing Rules, the Companies Ordinance, the SFO and the Codes combined are the key regulations covering listing applications, IPOs and post-listing activities.

IPO vs. Introduction

An issuer may issue new shares, or its controlling shareholders may sell existing shares, or a combination of both, by way of an IPO to achieve a broad shareholder base in Hong Kong and globally. However, an IPO is not the only avenue available to conduct a listing. If shares are already of such an amount and so widely held that sufficient marketability can be assumed (for example, where the shares are already listed on an overseas stock exchange), a listing application can be made by way of introduction. In essence, the vetting process is the same in both cases but in a listing by way of introduction no offering or other marketing arrangements are required.

Listing Considerations

SOLE LISTING VS. DUAL LISTING

While an issuer may choose Hong Kong as its only listing venue, an increasing number of multinational corporations and Chinese enterprises are seeking to list their securities on the HKEx in addition to their home listing. In other words, an international business already listed on an overseas stock exchange may apply to the HKEx for a Hong Kong listing to increase its profile, investor reach and liquidity for its securities – so long as it can meet the admission criteria (see Appendix 1 – HKEx Listing Criteria).

Furthermore, Hong Kong-listed issuers can seek additional listings outside of Hong Kong. Issuers can also structure their IPOs to include multiple tranches to be launched in different markets. For example, IPOs by Chinese state-owned enterprises in recent years often include an “H” share tranche on the HKEx in addition to an “A” share tranche on the Shanghai Stock Exchange.

PRIMARY LISTING VS. SECONDARY LISTING

If an issuer chooses Hong Kong as its only listing venue, it is a primary

listing. The HKEx, as opposed to any other overseas stock exchange, is its primary listing regulator.

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

LISTING OF SHARES VS. HDRS

Prior to July 2008, issuers listing in Hong Kong could only do so by listing their ordinary shares. In July 2008, the regulatory framework for Hong Kong depositary receipts (**HDRs**) was first put in place. The first HDR was listed on the HKEx in December 2010.

Depositary receipts are securities issued by a depositary representing underlying shares of an issuer that have been placed with the depositary or its nominated custodian. The subject matter of listing is the underlying shares represented by depositary receipts. HDR is the informal name for a depositary receipt programme listed on the HKEx securities market. HDRs were created to provide an alternative facility for issuers to list on the HKEx. They also aim to provide convenience to overseas issuers where issuing shares in Hong Kong or maintaining a share register in Hong Kong may be problematic, and to Hong Kong investors where there may be issues associated with direct ownership of foreign stocks.

The depositary must be an authorised and regulated financial institution that is acceptable to the HKEx. The depositary is instrumental to HDRs. It creates the HDR and acts as agent of the listed issuer and handles matters such as compliance with investment regulations in the issuer's home jurisdiction, currency conversion and the transmission of corporate information to investors. HDRs are traded and dividends are paid in Hong Kong dollars

or US dollars. The Listing Rules include specific requirements on depositary agreements. These set out the rights and obligations of the issuer, the depositary and the holders of HDR's. The listing requirements and the trading, clearing and settlement arrangements for HDR's are essentially the same as those for ordinary shares. See also "Listing in the United States – Shares vs. American Depositary Shares" for a discussion on American depositary shares.

HOLISTIC LISTING VS. LISTING OF REGIONAL SUBSIDIARIES

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

Structure of the Offering

HONG KONG PUBLIC OFFERING AND INTERNATIONAL PLACING

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

Ready for the IPO – Allocation and Settlement”). In addition, the issuer, or sometimes the selling shareholders, may grant over-allotment options to the underwriters, offering additional shares representing up to 15 percent of the shares initially offered to cover over-allocations in the international offer tranche (see also “Key Documents – The Underwriting Agreement – Greenshoe Option”).

INTERNATIONAL PLACING AS EXEMPT OFFERING

Generally, issuers conducting a Main Board IPO in Hong Kong offer their securities to institutional and other investors outside of Hong Kong under Rule 144A and Regulation S under the Securities Act. Both Rule 144A and Regulation S provide a mechanism enabling an issuer to offer securities without the need for registration under the Securities Act. See also “Listing in the United States – Exempted Transactions: Rule 144A and Regulation S” below for more detail about Rule 144A and Regulation S.

LIABILITY ON DISCLOSURE

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

Admission Criteria

The HKEx operates two listing boards – the Main Board and GEM. GEM was established to meet the capital-raising needs of growth enterprises. The listing requirements for the Main Board are generally more stringent than those for GEM. Below is a summary of the listing requirements for the two boards.

MAIN BOARD LISTING CRITERIA

The main listing criteria for the Main Board require:

- A trading record of at least three financial years.
- Management continuity for at least the three preceding years and ownership continuity and control for at least the most recent audited financial year.
- One of the following three tests must be satisfied:
 - i. **Profit test:** profits of HK\$20 million for the most recent year and an aggregate profit of at least HK\$30 million for the previous two years.
 - ii. **Market capitalisation/revenue/cash flow test:** a market capitalisation of at least HK\$2 billion, revenue of at least HK\$500 million for the most recent audited financial year, and positive cash flow from operating activities of at least HK\$100 million in the aggregate for the three preceding financial years;
 - iii. **Market capitalisation/revenue test:** market capitalisation of at least HK\$4 billion and revenue of at least HK\$500 million for the most recent audited financial year.

The HKEx may grant exemptions for mineral companies and newly formed project companies, which can have shorter trading records.

GEM LISTING CRITERIA

The main listing criteria for GEM require:

- A trading record of at least two financial years.
- Positive cash flow generated from operating activities of at least HK\$20 million in the aggregate for the two preceding financial years.
- A market capitalisation of at least HK\$100 million.
- Management continuity for at least the two preceding years and ownership continuity and control for the preceding full financial year up to the date of listing.

There are no profit requirements for GEM listing.

The HKEx may grant exemptions for mineral companies and newly formed project companies, which can have shorter trading records.

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

Listing Fees

INITIAL LISTING FEES

For an issue of equity securities by a new applicant, an initial listing fee is payable on the application for listing based on the monetary value of the equity securities to be listed. The initial listing fee is payable at the same time as the submission of the listing application. Where the initial listing fee is calculated based on the estimated figure for the monetary value of the equity securities to be listed, the sponsor must inform the HKEx of the actual figure as soon as it is determined. Any shortfall of the initial listing fee must be paid to the HKEx as soon as the actual monetary value of the equity securities to be listed is determined and in any event before dealings commence. As at 31 December 2014, the Main Board initial listing fees range from HK\$150,000 to HK\$650,000 and the GEM initial listing fees range from HK\$100,000 to HK\$200,000.

For secondary listings on the Main Board, the initial listing fee is normally 25 percent of the Main Board initial listing fees mentioned above – subject to a minimum payment of HK\$150,000. Also, for transfer from GEM to the Main Board, the initial listing fee payable by GEM listed issuers carries a 50 percent discount.

ANNUAL LISTING FEES

In addition to the initial listing fee, an annual listing fee is payable on each class of securities. This annual listing fee is calculated by reference to the nominal value of the listed equity securities which are or are to be listed on the HKEx, and shall be payable in advance in one instalment. If a listed issuer has shares which have a nominal value of less than HK\$0.25, the nominal value of each share is deemed to be HK\$0.25 for the purpose of calculating the annual listing fee. As at 31 December 2014, the Main Board

annual listing fees range from HK\$145,000 to HK\$1,188,000 and the GEM annual listing fees range from HK\$100,000 to HK\$200,000.

Pre-IPO Financing

Issuers contemplating an IPO in Hong Kong sometimes engage in pre-IPO investments. Unless there are very exceptional circumstances, the HKEx generally requires pre-IPO investments to be completed either at least 28 days before the date of the first submission of an issuer's first listing application or 180 days before the first day of trading of a listed issuer's securities. Pre-IPO investments are considered completed when the funds are irrevocably settled and received by a listed issuer. As part of the vetting process, the HKEx reviews the terms of pre-IPO investments, based on its guiding principle that the issue and marketing of securities is conducted in a fair and orderly manner and that all holders of listed securities are treated fairly and equally. A modification of the terms of the pre-IPO investment may be required as a result of the review, resulting in a possible delay of the IPO process. Very careful consideration should be given to the terms of a pre-IPO investment.

GENERAL PRINCIPLES: FAIR AND EQUAL

There is no bright-line test under the Listing Rules as to what is permissible or prohibited in relation to pre-IPO investments. Practical guidance is available from Guidance Letters and Listing Decisions issued by the HKEx. The concern about pre-IPO investments has always been whether IPO investors are being treated fairly and equally if the terms of the pre-IPO investment are different from, or even better than, those offered to IPO investors.

The guiding principles of the Listing Rules are that all investors in a public offering should be treated fairly and equally and that the process should be conducted in a fair and orderly manner. However, these general principles may cause uncertainty and inconsistency about what is permissible and what is not for pre-IPO investments. Therefore, in 2012, the HKEx published two Guidance Letters, HKEx-GL43-12 (which was updated in July 2013) and HKEx-GL44-12, to help remove some of the uncertainties. These Guidance Letters catalogue which pre-IPO investment terms and which pre-IPO

convertible instruments pricing arrangements are allowed, and which ones are not.

SPECIAL RIGHTS AND OBLIGATIONS AVAILABLE IN PRE-IPO INVESTMENTS

Guidance Letter HKEx-GL43-12 provides guidance on whether special rights commonly granted to pre-IPO investors are permitted. Some of these special rights are summarised as follows:

- Any price adjustment provisions effectively creating two different prices for the same securities for pre-IPO investors and other shareholders at the time of listing are not allowed.
- All put or exit options granted to pre-IPO investors to put back the investments to the issuer or its controlling shareholder are only allowed when the terms of the pre-IPO investment clearly state the put or exit option can only be exercised when listing does not take place, and the put or exit option may not be otherwise exercised.
- Any right of a pre-IPO investor to nominate a director may not survive after listing as such a right is not generally available to other shareholders. The pre-IPO investors may nominate or appoint a director before the issuer's listing and that director would be subject to retirement and re-appointment requirements under the issuer's constitutional documents after listing.
- Pre-IPO investors' veto rights over the listed issuer's major corporate actions must be terminated upon listing.
- Where pre-IPO investors are granted preferential rights to purchase additional securities to be issued by the issuer so as to maintain their shareholding percentages, these anti-dilution rights must be extinguished upon listing.
- Pre-IPO investors may be entitled to compensation if the listed issuer's profit does not meet a certain level in the future. This profit guarantee is only allowed if the compensation is settled by a shareholder and the compensation is not linked to the market price or capitalisation of the shares.
- Pre-IPO investors may be entitled to compensation if the issuer does not achieve a qualified IPO within a specified period of time. Such

compensation is allowed if the amount to be compensated is set out in the pre-IPO investment agreement or can be derived from the compensation provisions under the pre-IPO investment agreement.

CONVERTIBLE OR EXCHANGEABLE BONDS, NOTES OR LOANS AND CONVERTIBLE PREFERENCE SHARES (CBS)

Guidance Letter HKEx-GL44-12 sets out the current practices of the HKEx in dealing with convertible instruments with a conversion price reset mechanism issued to pre-IPO investors as follows:

- The conversion price for the CBs should be at a fixed dollar amount or at the IPO price.
- Any conversion price reset mechanism of the CBs should be removed.
- Partial conversion of CBs is only allowed if all atypical special rights granted to the pre-IPO investors are terminated after listing.
- The pre-IPO investors' option to redeem early the outstanding CBs at a price which will enable the pre-IPO investors to receive a fixed internal rate of return on the principal amount of the CBs being redeemed is allowed.
- Given the complexity of CBs and their terms, additional information should be disclosed in the "Financial Information" and "Risk Factors" sections of the prospectus to explain the impact of the CBs on the issuer.
- Additional information (including the number of shares that may be issued upon full conversion of the outstanding CBs) should be disclosed in the listed issuer's interim and annual reports to enable investors to be aware of the dilution impact on the listed issuer's shares if all outstanding CBs were converted.

PUBLIC FLOAT

Shares held by pre-IPO investors are normally subject to a lock-up period of six months or more, imposed by the issuer. These shares can usually be counted towards the public float. However, if the number of shares held by pre-IPO investors post-listing is 10 percent or more of the total issued shares of the listed issuer, or if the pre-IPO investors are "influenced" by connected persons (for example, taking directions or financial subsidies from

connected persons) these shares may not be counted as public float. If a pre-IPO investor holds of a stake of 10 percent or more it is considered a connected person of a listed issuer and must comply with Chapter 14A of the Listing Rules after listing (see Appendix 4 – Connected Transactions).

Group Reorganisation

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

RECOGNISED OR ACCEPTABLE JURISDICTIONS

A listed issuer's place of incorporation must either be recognised formally under the Listing Rules or accepted by the HKEx on a case-by-case basis. The SFC and the HKEx streamlined the procedures for listing of overseas companies and issued the Joint Policy Statement Regarding the Listing of Overseas Companies in March 2007, which was subsequently superseded by another joint policy statement issued in September 2013 (**Joint Policy Statement**).

Traditionally, the HKEx recognised only a limited number of jurisdictions as the place of incorporation for a listed company. Four jurisdictions are recognised formally as the place of incorporation for a listed company under the Listing Rules: Hong Kong, the People's Republic of China, Bermuda and the Cayman Islands (**Recognised Jurisdictions**). Reorganisation was previously needed to create a new holding company in these jurisdictions.

However, more jurisdictions outside the traditional ones are now being accepted for listing, subject to a case-by-case vetting by the HKEx on the level of shareholder protection offered by the company and the jurisdiction concerned. As at April 2014, the HKEx had found 21 overseas jurisdictions acceptable on a case-by-case basis: Australia, Brazil, the British Virgin Islands, Canada (Alberta), Canada (British Columbia), Canada (Ontario),

Cyprus, England & Wales, France, Germany, Guernsey, Isle of Man, Italy, Japan, Jersey, Labuan, Luxembourg, Republic of Korea, Singapore, the United States of America (State of California) and the United States of America (State of Delaware) (**Acceptable Jurisdictions**).

The HKEx's website contains a List of Acceptable Jurisdictions, which is updated on a regular basis: http://www.hkex.com.hk/listing/suppmat/list_of_aoj.htm.

JOINT POLICY STATEMENT

The Joint Policy Statement prescribes five requirements that a company incorporated in an overseas jurisdiction (other than the Recognised Jurisdictions) needs to satisfy before it can be listed on the HKEx. These five requirements are:

1. Shareholder protection standards.
2. Regulatory cooperation arrangements.
3. Accounting and auditing related and other disclosure requirements.
4. Practical and operational matters.
5. Suitability for secondary listing.

The application of the requirements depends on the type of listing that the company is seeking in Hong Kong as explained below:

	PRIMARY LISTING	SECONDARY LISTING
OVERSEAS COMPANIES INCORPORATED OUTSIDE A RECOGNISED JURISDICTION		
Main Board	Requirements 1 to 4	Requirements 1 to 5
GEM		Not applicable
OVERSEAS COMPANIES INCORPORATED IN A RECOGNISED JURISDICTION		
Main Board	Not applicable	Requirements 3 to 5
GEM		Not applicable

The Joint Policy Statement explains how the Listing Rules apply to an overseas company that is primary listed, dual-primary listed or secondary listed on the HKEx. It also includes guidance on the common waivers that the HKEx is prepared to grant to an overseas company seeking a listing from

the requirements under the Listing Rules and the waivers that the HKEx automatically grants to companies with, or seeking, a secondary listing from the requirements under the Listing Rules if they meet certain criteria set out in the Joint Policy Statement.

(1) Shareholder Protection Standards

An overseas listing applicant must show that it is subject to the key shareholder protection standards set out in the Joint Policy Statement by explaining how its domestic laws, rules and regulations and its constitutional documents, in combination, meet these standards. For this purpose, the HKEx may require an overseas listing applicant to amend its constitutional documents to provide key shareholder protections.

The HKEx has published a country guide for each Acceptable Jurisdiction (**Country Guide**) setting out (a) comprehensive and user-friendly guidance on how companies incorporated there can meet the requirement for equivalent shareholder protection standards in the Listing Rules; and (b) if applicable, updated guidance to reflect the experience that the HKEx has gained in listing new applicants from the same jurisdiction.

Where an overseas listing applicant adopts the arrangements set out in the Country Guide for its place of incorporation in an Acceptable Jurisdiction, it is not required to provide a detailed explanation of how it meets key shareholder protection standards.

An overseas listing applicant incorporated in a jurisdiction that is not Recognised Jurisdiction or an Acceptable Jurisdiction can refer for guidance to the methods used to show equivalent shareholder protection standards specified in a Country Guide for an Acceptable Jurisdiction or methods used by those incorporated in Recognised Jurisdictions. In addition, it must still demonstrate how its domestic laws, rules and regulations, its constitutional documents and the arrangements it has adopted as a whole meet the key shareholder protection standards in the light of its particular facts and circumstances.

(2) Regulatory Cooperation Arrangements

The statutory securities regulator in an overseas company's jurisdiction of

incorporation and place of central management and control (if different) must:

- Be a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.
- Have entered into an appropriate bi-lateral agreement with the SFC that 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.

The HKEx may make exceptions from the above requirements in an individual case but will not do so without the SFC's explicit consent.

(3) Accounting and Auditing Related and Other Disclosure Requirements

If accountants' reports and financial statements are not prepared in accordance with HKFRS or IFRS by non-Hong Kong qualified auditors, HKEx applies the following regulatory approach according to the Joint Policy Statement. Overseas listing applicants need to satisfy the following requirements before they can be listed on the HKEx:

- Auditing standards.
- Independence and qualification requirements for auditors and reporting accountants.
- Acceptable financial reporting standards.
- Additional disclosure requirements in prospectuses and Company Information Sheets.

(4) Practical and Operational Matters

An overseas listing applicant may face practical or operational difficulty complying with the Listing Rules or the Codes where there is a potential conflict between the laws and regulations of its home jurisdiction and the Listing Rules or the Codes. In these circumstances, such overseas listing applicant should consult the HKEx and the SFC.

All listing applicants must make arrangements with Hong Kong Securities Clearing Company Limited to ensure their securities are accepted as eligible for deposit, clearance and settlement in the Central Clearing and Settlement System in accordance with the General Rules of Central Clearing and Settlement System.

The securities market in Hong Kong adopts a T+2 settlement period. Dual-primary or secondary listed issuers normally have their principal share registers in their home market and a branch register in Hong Kong (or vice versa). To ensure liquidity in the Hong Kong registered shares, dual-primary or secondary listed issuers must ensure there are a sufficient number of registered shares on their Hong Kong share registers.

If withholding tax on distributable entitlements, or any other tax is payable (e.g., capital gains tax, inheritance or gift taxes), the listing applicant must bring this to the attention of the HKEx at the earliest possible opportunity prior to listing. An applicant must disclose in its prospectus or listing document details of the tax payable, and whether Hong Kong investors have any tax reporting obligations. It must also disclose this information on an on-going basis after listing.

(5) Suitability for Secondary Listing

An overseas company can apply for a secondary listing in Hong Kong if it has already been primary listed on another stock exchange, or it is unlisted and is applying to list simultaneously in multiple jurisdictions, which includes a secondary listing in Hong Kong. Apart from satisfying the general principle for listing in the Listing Rules, an overseas company seeking a secondary listing must satisfy the HKEx that its primary listing is, or will be, on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong.

The HKEx will grant extensive waivers from the Listing Rules to an entity seeking a secondary listing if it:

- Is a large company, normally with a long track record of clean regulatory compliance on its primary market.
- Has a primary listing on one of the recognised exchanges.
- Has a “centre of gravity” outside Greater China.

Listing on the HKEx Using a VIE Structure

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

The HKEx generally allows listing applicants using VIE structures to list in Hong Kong, subject to disclosure of the relevant details of the contractual arrangements of the VIE structures and the risks involved. As a general principle, the contractual arrangements should be narrowly tailored to achieve the applicant's business purposes, and minimise the potential for conflict with relevant PRC laws and regulations.

The Hong Kong IPO Process

Indicative Timetable

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

ABOUT 8 - 16 WEEKS ◀◀	<ul style="list-style-type: none"> • Making key structural decisions (including whether to include Rule 144A and Regulation S tranches and which part of the business to be listed) and kick-off 	STAGE 1: INITIAL PREPARATION- PREPARING A1 LISTING APPLICATION
	<ul style="list-style-type: none"> • Appointment of professional parties 	
	<ul style="list-style-type: none"> • Pre-listing reorganisation 	
	<ul style="list-style-type: none"> • Accounting audit/review 	
	<ul style="list-style-type: none"> • Internal control review 	
	<ul style="list-style-type: none"> • Legal and financial due diligence and verification 	
	<ul style="list-style-type: none"> • Undertaking sponsor's PN21 due diligence 	
	<ul style="list-style-type: none"> • Considering waiver applications 	
	<ul style="list-style-type: none"> • Prospectus drafting 	
	<ul style="list-style-type: none"> • Preparing profit forecast and cash flow forecast 	
	<ul style="list-style-type: none"> • Compiling A1 application pack 	
	<ul style="list-style-type: none"> • Pre-IPO placing (if needed) 	
Note: In a Hong Kong IPO that includes Rule 144A and Regulation S tranches, it is often more efficient to engage a law firm, like Mayer Brown JSM, that can provide both Hong Kong and US legal advice.		
SUBMISSION OF A1 APPLICATION TO THE HKEX		
ABOUT 5 - 12 WEEKS ◀◀	<ul style="list-style-type: none"> • Regulators reviewing listing application 	STAGE 2: REGULATORY VETTING - GETTING READY FOR THE LISTING APPROVAL HEARING ¹
	<ul style="list-style-type: none"> • Addressing regulators' comments and queries 	
	<ul style="list-style-type: none"> • Ongoing due diligence and verification 	
	<ul style="list-style-type: none"> • Processing waiver applications 	
	Note: Identifying and resolving issues ahead of the vetting process is the most effective way to ensuring a smooth vetting process. In this regard, being conversant in market practices is critical.	
LISTING HEARING		

¹ The later portion of Stage 2 runs concurrently with Stage 3.

ABOUT 5 – 8 WEEKS ▼▼	<ul style="list-style-type: none"> • Pre-marketing arrangements 	STAGE 3: MARKETING AND OFFERING - GETTING READY FOR THE IPO
	<ul style="list-style-type: none"> • Distribution of pre-deal research report and red-herring and posting of post hearing information pack (PHIP) 	
	<ul style="list-style-type: none"> • Roadshow, book building and international placing tranche launches and closes 	
	<ul style="list-style-type: none"> • Hong Kong public offer launches and closes 	
	<ul style="list-style-type: none"> • Price determination 	
	<ul style="list-style-type: none"> • Allocation and settlement 	
	<p>Note: The marketing and offering timeline is particularly sensitive to the availability of a market window. Sometimes it needs to be adjusted to cater to specific offering structure. In a spin-off situation where shareholders' approval at the parent company level is required, more time may be required before the roadshow commences. Conversely, in a listing by way of introduction where no marketing and offering is required, the listing date may be brought forward.</p>	
LISTING COMMENCES AND IPO CLOSES		

Stage 1: Initial Preparation – Preparing A1 Listing Application

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

BUILDING A TEAM

Sponsor

Completing an IPO is a team effort. Once a decision to seek an IPO in Hong Kong has been made, a sponsor is engaged by the issuer (as required by the Listing Rules) to represent the issuer in coordinating and making the listing application with the HKEx. The sponsor is normally an investment bank

with the requisite licences under the SFO and recognised by the HKEx. Usually, the sponsor will also act as the IPO global coordinator, to coordinate the marketing and offering process of the IPO together with a syndicate of underwriters.

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

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

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

Other Professional Parties

A reporting accountant must prepare the necessary accountants' report and report or provide comfort on other financial information, for example, pro forma information and a profit forecast. There are generally two teams of legal advisers, one acting for the issuer, and the other acting for the sponsor and the underwriters. Other professional parties involved include independent property valuers, internal control advisers, market research consultants, investors/public relations consultants, professional printers, receiving banks and share registrars. See also "Key Parties" above.

Internal Corporate Structure

At the outset of the IPO process, it is important to ensure that the board of directors of the listing applicant comprises members with the requisite experience, qualifications and competence in compliance with the Listing Rules, to perform their individual roles and to manage the listing applicant's business (see Appendix 5 – Corporate Governance). The directors should

understand their obligations and those of the listing applicant as an issuer under the Listing Rules and other legal and regulatory requirements relevant to their role (see Appendix 6 – Directors’ Duties).

KICK-OFF MEETING

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

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

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

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

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

Presentation by management: A presentation on the business, financial, and other aspects of the issuer is generally given by the senior management of the issuer.

PUBLICITY CONSIDERATIONS

General Guidelines

Publicity of the proposed listing or the IPO must be controlled tightly from this point onwards. Improper, uncontrolled or premature publicity could have severe adverse consequences on the issuer, the listing application and the IPO. The HKEx may refuse to process or delay a listing application if improper, or premature disclosure is made before, or during, the process, in particular before the listing hearing. Publicity also risks “improperly” conditioning or influencing the market before an IPO, and may trigger unnecessary prospectus-related obligations, result in a loss of exemptions

from the registration requirements of the US securities laws (e.g., Rule 144A and Regulation S), and lead to potential civil and criminal liabilities on the issuer, its directors and those making the publicity.

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

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

US Publicity Considerations

Relying on the exemptions provided by Rule 144A and safe harbour provisions of Regulation S precludes any “directed selling efforts,” “general solicitation” or “general advertising” made into the United States. Therefore, it is important to ensure that any publicity, if allowed to be made, will not constitute “general solicitation,” “general advertising” or “directed selling efforts” in order for the offering to rely on the above exemptions.

General solicitation or general advertising includes the following activities:

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

Any seminar or meeting in the United States whose attendees have been invited by general solicitation or advertisement.

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

In a combined offering that includes both a Regulation S offering outside the United States and a Rule 144A offering in the United States, it is necessary to observe the restrictions on both general solicitation and directed selling efforts. Combined offerings often involve significant publicity issues, since marketing activities prohibited in the United States may be permitted and customary in the foreign jurisdictions where the securities are being offered (such as Hong Kong). Measures must be taken to ensure that any publicity conducted in those jurisdictions does not leak into the United States.

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

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

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

Publicity Guidelines

To ensure compliance with all applicable securities laws and regulations, the company’s lawyers typically prepare “publicity guidelines” at the outset of the proposed offering. These guidelines are agreed with counsel to the underwriters. The company and other participants in the IPO need to ensure that they are familiar with the publicity guidelines. The respective parties – the company, the underwriters, PR advisers, and the directors, officers, and employees of the company – need to adhere to the provisions set out in the publicity guidelines. To avoid the legal risks of uncontrolled communication with the public, it is often advisable for the company to designate an individual as a single point of contact for the press and securities analysts. This individual should also be responsible for all broad-based communications during the IPO process, including any announcements that the company may wish to make. When in doubt whether a proposed communication is permissible or potentially problematic under the publicity guidelines, that individual can arrange for it to be reviewed by the company’s lawyers.

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

Publicity should be pre-approved internally before it is made

An internal committee or an officer (**publicity committee or publicity offer**) should be designated to pre-approve the timing, circulation methods and contents of any publicity not made in the ordinary course of the issuer's business and to decide whether the materials should be submitted to the HKEx for review before their release. If in doubt, early consultation with the HKEx is advised.

This pre-approval should cover all communications, including with the public, employees, analysts, potential investors, customers, suppliers, the press and the media.

Approved publicity should follow specific contents and circulation guidelines

Detailed publicity guidelines on contents and circulation methods should be followed when handling press releases, media briefings, presentations, advertisements, speeches and the contents of websites etc.

For example, "offer awareness" advertisement can be made in Hong Kong, prior to and during the offer period. However, its contents can only relate to the administrative and procedural aspects of the IPO process and its format should follow prescribed guidelines issued by the SFC.

All publicity should contain accurate and complete information

All publicity, if approved, should be verified to make sure that all statements therein are true and accurate and not misleading.

Don't respond to unsolicited inquiries

Unsolicited inquiries include personal visits, telephone calls or any other inquiries made without express invitation. Unless approved by the publicity committee, a "no comment" response is recommended.

No public events in the United States

To rely on the exemptions provided by Regulation S and Rule 144A, no public events relating to the IPO (e.g., press conferences, speeches, presentations, interviews or meetings with the press) may be held in the United States. No press releases or other announcements relating to the IPO may be issued or disseminated in the United States.

Public events held outside the United States should be controlled with particular care to ensure that they do not constitute an offer of securities for sale in the United States. Press conferences may be held outside the United States in accordance with local market practices and US journalists may be invited as long as access to the conference is granted to both US and non-US journalists.

While solicitation of institutional investors takes place during the book-building process, public events relating to the IPO should be held in Hong Kong after registration of the prospectus.

No non-prospectus information

Publicity should not provide information any not contained in the prospectus. For example, opinions on the relative merits of participating in the IPO and business and profit forecasts (except to the extent included in the prospectus) must not be made. Information on the issuer's websites and prospectus to ensure consistency.

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

THE DUE DILIGENCE REVIEW

General Guidelines

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

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

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

internal control defects are resolved before submitting the listing application.

The information received during the due diligence process facilitates the drafting process and helps to ensure that all material aspects of the issuer's business are properly disclosed. The due diligence exercise also helps to ensure that disclosure contained in the offering document is accurate and based on the most current data available. Verification is part of the larger due diligence exercise. It is a process to document all written evidence obtained for the verification of statements made in the prospectus, and a detailed verification note recording this evidence is produced at the end of the process. By the submission of the listing application, the prospectus must be in advanced proof stage and verification should be substantially completed.

The due diligence review also serves to establish a record that the underwriters have made a reasonable investigation upon which their defence against potential liability can be based. To that end, underwriters generally request legal counsel to issue a so-called "Rule 10b-5 letter," as discussed in more detail below. Obtaining comfort letters from the issuer's independent auditors is another procedure used by underwriters to establish a written record that they have made a reasonable investigation. Comfort letters serve to provide comfort on certain financial and accounting data contained in an offering document – for example unaudited financial statements and other information. For a discussion of comfort letter requirements, see "Key Documents – Comfort Letters" above.

"Rule 10b-5 Letter"

Offerings made under Rule 144A and Regulation S are exempt from the registration requirements of the Securities Act, but remain subject to the anti-fraud provisions of the Securities Act and the Exchange Act, including Rule 10b-5.

However, the exercise of reasonable care, in the form of a carefully conducted due diligence investigation, can be used as an affirmative defence to refute the existence of "scienter" (an intent to defraud, deceive or manipulate). As a result, underwriter due diligence has become a critical component

of a defence to liability in Rule 144A, and other offerings into the United States. As part of this effort, in the case of an IPO on the HKEx with a Rule 144A component, underwriters generally request legal counsel to issue a “Rule 10b-5 letter”, to help them fend against possible claims that may be brought under Rule 10b-5. A Rule 10b-5 letter is a letter from each of the issuer’s and the underwriters’ legal counsel addressed to the underwriters confirming that they have undertaken certain procedures and that, on that basis, have no reason to believe that an offering document contains an untrue statement of material fact, or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Conducting Due Diligence

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

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

The underwriters and their counsel provide the issuer with a list of documents they would like to review in preparation of the offering document. This due diligence request list is comprehensive and broad. As the requesting party is not fully apprised of the issuer’s documentation, the list necessarily includes a range of items that an underwriter would normally expect to find in the data room of a similar company in a similar industry.

After receiving a diligence request list, the issuer begins preparing a data room containing documents responsive to the diligence request list as well as any documents not on the diligence request list but deemed by the issuer to be material. The location of the data room itself varies, based on the location of the documents and the parties that need to review the documents. For most issuers, it is more efficient and economical to make the

documents available for review via a secure, password-protected website, accessible only to those parties involved in the offering. For certain issuers, it is most efficient and economical to set up a space at their place of business where all of the documents can be set aside for review.

In addition to documentary review, the sponsor conducts interviews with the major suppliers, subcontractors, customers and bankers of the issuer as well as experts and other professional parties engaged by the issuer.

Financial due diligence involves the issuer's finance, accounting and treasury departments. It typically includes a review of the issuer's full year and interim financial statements, results of operations, projections, cash flow, financial indebtedness and other aspects of the issuer's financial condition. Underwriters and their counsel focus their review on factors driving the issuer's finances, and significant changes in the issuer's financial position from year to year and period to period. In addition, financial due diligence focuses on the issuer's profit and working capital forecasts. It is also customary to have a due diligence meeting with the issuer's external auditors to discuss, among other things, auditor independence from the issuer, any problems identified during the audit or review process and comments on the issuer's internal accounting policies, controls and procedures.

During the due diligence and drafting processes, management and due diligence meetings are conducted with senior management of the issuer. These meetings afford the sponsors and their legal counsel the opportunity to understand the strategic aspects of the issuer's business and to raise issues identified in the due diligence process. Such meetings also serve to facilitate review and discussion of the issuer's prospectus.

PROSPECTUS DRAFTING

Prospectus Liability

The Companies Ordinance, the SFO and the Listing Rules set out specific prospectus content requirements for a prospectus, and impose an overriding "completeness" requirement. Before submitting the listing application, a sponsor should come to a reasonable opinion that the information contained in the Application Proof is substantially complete, except matters that by nature can only be addressed at a later date. Those responsible (or deemed to

be responsible) for a prospectus are potentially subject to civil and criminal liabilities if the prospectus is inaccurate, misleading or incomplete. Liability may be imposed not only on the issuer and its directors, but also on others who authorised the issue of the prospectus, such as the sponsor.

Prospectus Content

Contents of a prospectus can be broadly categorised as follows:

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

The prospectus generally serves two main purposes. It serves as the main document setting out the issuer's information in support of the listing application, based on which the regulators carry out the vetting process and approve the listing. In this sense it is also referred to as the listing document. The prospectus is also the master marketing and legal document. The prospectus prepared at this stage later becomes the “red herring” or “path finder” prospectus. This is distributed – without pricing information – in the book-building process and the prospectus with offer prices set at a range for the Hong Kong public offer tranche, and together with the “international wrap” as discussed below, the international offering circular – with the final offer price – for the international offer tranche.

As noted above, a typical Main Board IPO in Hong Kong consists of two tranches of offering: (i) a Hong Kong public offer tranche available to retail investors; and (ii) an international offer or “placing” tranche available to institutional investors. The offering document used for the international offer tranche includes additional significant disclosure in a section known as

an “international wrap” preceding the Hong Kong prospectus. The purpose of the international wrap is to provide additional disclosure relevant to investors in the international offer tranche, including risk factors specific to international investors, US federal tax considerations and plan of distribution. The Hong Kong prospectus and the international wrap, together constitute the international offering circular, which is the offering document used in the international offer tranche.

As discussed above, in the case of an IPO on the HKEx with a Rule 144A component, the underwriters generally expect their counsel, as well as counsel for the issuer, to issue Rule 10b-5 letters. In such letters, legal counsel confirm that they have undertaken certain procedures and that, on the basis of such procedures, have no reason to believe that an offering document contains an untrue statement of material fact, or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. To the extent that counsel are expected to issue Rule 10b-5 letters, they will insist on following as closely as possible the disclosure standards imposed in SEC-registered offerings.

Drafting Responsibility and Drafting Sessions

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

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

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

Stage 2: Regulatory Vetting – Getting Ready for the Listing Approval Hearing

REGULATORS' REVIEW

Once the listing application package has been submitted, the HKEx conducts an initial three-day check with limited qualitative assessment on the Application Proof submitted for vetting. Failure to include the matters under the three-day checklist, attached as Table B of HKEx-GL56-13, may lead to a listing application being returned. The HKEx and the SFC reserve the right to return a listing application during the initial three-day period if there are grounds rendering it substantially incomplete, even if it meets the disclosure and checklist requirements. This can create substantial delays, as an applicant can only submit a new listing application, together with a new Application Proof, eight weeks after the date of return of a listing application by the Listing Division.

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

Once the listing applicant has satisfied the three-day check, the HKEx notifies the sponsor to acknowledge receipt of the listing application. The Listing Division of the HKEx then reviews the listing application and either approves or rejects the application to move to a listing approval hearing (also known as a listing hearing) by the Listing Committee. Under the dual-filing system, the SFC also vets application for listing of shares on the HKEx, but the power to approve is vested with the Listing Committee of the HKEx. If, after a qualitative assessment, the regulators consider the Application Proof not substantially complete, the listing application form, the Application Proof and other documents will be returned to the applicant.

RESPONDING TO COMMENTS FROM THE REGULATORS

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

The prospectus is then revised and written submissions are made in response. During the review process, the prospectus should not be revised on a piece-meal basis and, unless as requested by the HKEx, is expected to be submitted at least five business days after a previous submission. If only one round of comments is raised, and the sponsor takes five business days to respond, a listing application can be brought to the Listing Committee for hearing around 25 clear business days from the A1 application.

If more than six months has elapsed since an A1 application, the initial listing fee paid is forfeited and a renewed application – or a new application, if made three months after lapsing – is required and a fresh listing fee is payable.

HEARING

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

Stage 3: Marketing and Offering – Getting Ready for the IPO

PRE-MARKETING AND PRE-DEAL RESEARCH

After the listing hearing, a post-hearing letter setting out the Listing Committee's comments and any conditions to the listing approval is sent to the sponsor. If the application is approved, or approved-in-principle, the pre-marketing or "investor education" stage then commences. Syndicate members meet with potential investors to determine investor demand for the securities being offered.

At this stage, syndicate members may prepare and finalise their own independent pre-deal research reports. Pre-deal research is not a marketing exercise. These reports are prepared independently from the issuer and

represent the relevant research analyst's independent view on the issuer. The circulation of these reports should follow relevant local securities' restrictions and the syndicate members' in-house compliance guidelines strictly. Generally the underwriters' counsel prepares guidelines regarding the review and distribution of research reports.

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

The guiding principles for interactions with research analysts include:

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

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

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

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

Research reports prepared by underwriters in connection with an offering conducted under Rule 144A and Regulation S must not be distributed,

directly or indirectly, in the United States or to any US person (as defined by Regulation S) from the time when the underwriters are engaged until either 40 days after the closing of an offering or upon the completion of the distribution of the securities, whichever is later.

BOOK-BUILDING AND ROADSHOW

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

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

A post-hearing information pack (**PHIP**), containing essentially the same information as the red-herring prospectus, will also be posted on the HKEx’s website. The PHIP is required by Hong Kong regulators to address the apparent inequality of information dissemination between institutional investors and retail investors who, without the PHIP, can only obtain information at a later stage when the Hong Kong public offer launches.

HONG KONG PUBLIC OFFER

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

PRICE DETERMINATION

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

ALLOCATION AND SETTLEMENT

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

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

An issuer, or sometimes selling shareholders, may grant greenshoe or over-allotment options to the global coordinator, offering additional shares representing up to 15 percent of the IPO offer shares to cover over-allocations in the international offer tranche. The global coordinator may also

cover any over-allocations by purchasing shares in the secondary market, or by a combination of purchases in the secondary market and a partial exercise of the over-allotment option. This option may be exercised within a period of 30 days after the Hong Kong public offer closes. During this time, the global coordinator or a designated stabilising manager may be appointed to carry out other permitted stabilisation activities in order to maintain or stabilise the market price of the shares at a level higher than might otherwise prevail in the open market. Stabilising bids must be made at any price at or below the offer price. Stock borrowing arrangements with controlling shareholders may also be put in place to facilitate settlement of over-allocations. See also “Key Documents – The Underwriting Agreement – Greenshoe Option” above.

Once allocation is complete, settlement of all IPO offer shares will take place and listing commences (subject to “force majeure”). “Settlement” or “closing” is the formal issuance and delivery of the shares by the company and the selling shareholders against payment therefore by the underwriters. It takes place a few business days – frequently three to five business days (referred to as “T+3” or “T+5”) – after pricing, to allow sufficient time to prepare the necessary documentation and collect payment for the shares from investors.

Listing in the United States

Section 5 of the Securities Act prohibits any sales or offers for sale of securities, unless a registration statement, including a prospectus that meets statutory requirements, has been filed with the SEC, or unless an exemption from such registration is available.

The following discussions assume that the company plans to conduct a public offering of new shares in the United States concurrent with its listing on a US stock exchange, such as the NYSE or Nasdaq. The following analysis and the process for “going public” in the United States would be very different if the company chose to list its shares only on a US stock exchange, without also conducting a concurrent public offering of new shares in the United States.

Publicity Considerations

The US securities laws impose various restrictions on publicity and the release of information generally in connection with proposed offerings of securities in the United States. “Publicity” for this purpose can be construed very broadly, and may include any form of communication, whether in written, oral or electronic form, that:

- Relates to or concerns the offering.
- Relates to the performance, assets, liabilities, financial position, revenues, profits, losses, trading record, prospects, valuation or market position of the company.
- Might affect an investor’s assessment of the financial position and prospects of the company, or
- Otherwise has the purpose, or reasonably could have the effect, of “conditioning the market” in a particular jurisdiction. (“Conditioning the market” means generating or promoting interest in the offering, or influencing or encouraging an investor’s interest in the company/the offering or a decision to purchase the securities in question).

The SEC maintains an active monitoring programme and may launch an enquiry if any publicity concerning an offering appears in the United States, particularly if statements are attributed to an offering participant. As a

practical matter, the SEC may delay or postpone an offering to enforce a “cooling-off” period to allow the effects of improper publicity to dissipate. The SEC also may demand that underwriters associated with dissemination of improper publicity be removed from the selling syndicate. In addition, a purchaser may bring a lawsuit to rescind the purchase of the securities, recovering the consideration paid plus interest, minus the amount of any income received there from, or to recover damages if the securities are no longer owned. Additional liability may arise if publicity relating to the offering is shown to contain a material misstatement or omission, or otherwise to violate the anti-fraud provisions of the US securities laws. See also “The Hong Kong IPO Process – Stage 1: Initial Preparation – Preparing A1 Listing Application – Publicity Considerations”.

Similar to an IPO on the HKEx, the company’s lawyers typically prepare “publicity guidelines” at the outset of a proposed listing in the United States. These guidelines are agreed with counsel to the underwriters, and the company and other participants in the IPO must ensure that they are familiar with and adhere to the publicity guidelines.

Shares vs. American Depositary Shares

Many foreign issuers with equity securities listed on a foreign stock exchange choose to list American depositary shares (**ADSs**) represented by American depositary receipts (**ADRs**), rather than list their ordinary shares directly when structuring their US listing.

ADRs are negotiable receipts issued by a US commercial bank functioning as a depository that holds the underlying shares of the issuer either directly or through a correspondent in the issuer’s home country serving as a custodian. A single ADR may represent a single underlying share or multiple underlying shares. Generally, an ADR holder has the right to exchange its ADR’s for underlying shares at any time, and holders of shares can deposit shares into the ADR facility and receive listed ADR’s. The flexibility of how many shares comprise an ADR enables the company to meet market norms for “per share” and “per ADR” trading norms and requirements across

different markets. In addition, it facilitates participation by new investors that may otherwise be unable to hold or own the underlying shares directly in the company's home market, whether for internal policy reasons or external regulatory limitations.

If a company decides to list and offer ADR's in the United States, it must enter into a depositary agreement with a depositary and set up a "sponsored level III ADR programme". There are thousands of existing sponsored and unsponsored ADR programmes. The relevant documentation and the mechanics of ADR programmes are therefore generally accepted and well understood by market participants.

On the downside, the deposit of shares into an ADR facility may trigger stamp duty or have other negative tax consequences in certain jurisdictions. In addition, depositary banks charge ADR holder fees for certain services that are not incurred by direct holders of the underlying shares (for example, cancellation or issuance of ADR's, currency conversion and payment of dividends and so forth). Depositaries therefore sometimes pay issuers for being selected as depositary on large and active ADR programmes. Depending on the size and the level of activity under the ADR programme (cancellation and issuance of ADR's), the relevant payments can be significant, and issuers may use these payments for their US-focused investor relations activities.

Depending on the applicable corporate law, if the foreign company's shares are only listed in the United States the company may be able to have its share registrar in the United States and may also be able to declare and pay dividends on its ordinary shares in US dollars rather than in the local currency of its jurisdiction of organisation. One of the frequently cited benefits of ADR programmes for US investors – automatic conversion of foreign currency dividends into US dollars by the depositary – would then not be relevant.

The company should therefore seek the advice of the underwriters as well as its legal advisers in the relevant jurisdictions early in the IPO process to be able to decide whether a listing of ADR's or ordinary shares would be preferable from a commercial/investor as well as a legal perspective.

Another important determination that needs to be made at the outset of a US IPO process is whether the company will be treated as a US domestic issuer, or whether the company will qualify as a so-called “foreign private issuer”, the differences in which are set forth below.

Foreign Private Issuer vs. US Domestic Issuer

“Foreign private issuer” means any foreign corporation or organisation other than a foreign government, unless it meets the following conditions:

- More than 50 percent of the outstanding voting securities of such issuer are directly, or indirectly, held of record by residents of the US.
- Any of the following:
 - » The majority of the executive officers or directors are US citizens or residents.
 - » More than 50 percent of the assets of the issuer are located in the US.
 - » The business of the issuer is administered principally in the US.

The company and its owners may decide to use a newly created US holding company as the issuing entity – so that the issuer won’t qualify as a foreign private issuer or to voluntarily comply with the stricter requirements applicable to IPOs by US domestic issuers.

Characterisation as a foreign private issuer vs. a US domestic issuer is significant for a number of reasons:

- The required disclosures in the IPO registration statement for foreign private issuers are significantly less stringent than those applicable to US domestic issuers.
- Periodic reporting requirements are significantly less burdensome for foreign private issuers than US domestic issuers (for example, executive compensation disclosure requirements).
- Foreign private issuers may prepare their financial statement in accordance with IFRS rather than US GAAP.
- With certain exceptions, foreign private issuers are largely permitted to follow the corporate governance standards of their home jurisdiction.

- Various other provisions of the federal securities laws are not applicable to foreign private issuers, for example, the “proxy rules” relating to disclosure and certain procedures for the solicitation of shareholder votes (including requirements to conduct “say-on-pay” and “frequency” votes, the publicity rules contained in Regulation FD, and the beneficial ownership reporting and short-swing profit liability rules under Section 16 of the Exchange Act).

In our experience, US investors are very familiar and comfortable with the special disclosure rules and accommodations the SEC has made available to foreign private issuers. We are not aware of any conclusive empirical data that would support better valuations in the US markets for securities issued by US domestic issuers as compared to foreign private issuers. However, we would encourage companies to ask the underwriters for a proposed US IPO to express a view, from a commercial/investor perspective, on the two alternatives.

To the extent a company does decide to register with the SEC as a foreign private issuer, it may have to monitor its shareholder structure closely to ensure it continues to qualify as a foreign private issuer. With a sole listing on a US stock exchange and potential future follow-on offerings in the United States, it is likely that the percentage of US record holders will increase over time. Should this percentage ever exceed 50 percent, the company will have to ensure that it does not meet any of the tests under the second prong of carve-out from the definition of “foreign private issuer” set forth above. Should the company ever cease to qualify as a “foreign private issuer”, it will become subject to the same ongoing reporting and SEC filing obligations as regular US domestic issuers as described elsewhere in this guide.

Emerging Growth Companies

In addition to the potential accommodations for foreign private issuers, certain companies may benefit from the JOBS Act regime for emerging growth companies, or EGCs. Among other things, EGCs benefit from confidential SEC staff review of their IPO registration statements, scaled registration statement disclosure requirements and fewer restrictions on test-the-waters and research communications around the time of securities

offerings. From a policy perspective, these concessions attempt to facilitate EGC's access to capital following the Global Financial Crisis, while balancing this motivation against long-standing efforts for investor and market protection.

“Emerging growth company” means a company with annual gross revenues of less than US\$1 billion during its most recent fiscal year. An issuer remains an EGC until the earliest of:

- The last day of the fiscal year during which it had total annual gross revenues of US\$1 billion or more.
- The last day of the fiscal year following the fifth anniversary of its initial public offering date.
- The date on which it has, during the previous three-year period, issued more than US\$1 billion in non-convertible debt.
- The date on which it is deemed to be a “large accelerated filer” (meaning the common equity held by non-affiliates has a market value of more than US\$700 million).

If a company chooses to take advantage of any of the benefits available to EGC's, it loses any such benefits as soon as it ceases to qualify as an EGC, at most, five years after its US IPO.

Sec Registration Process

As explained above, under Section 5 of the Securities Act, each issuer that wishes to offer securities to the public in the United States must first file a registration statement with the SEC and wait until this registration statement has been declared effective by the SEC before it can sell any securities.

FORM S-1 VS. FORM F-1

US domestic issuers must file a registration statement on Form S-1, while foreign private issuers may, but are not required to, use a registration statement on Form F-1. The disclosure rules under Form F-1 are significantly less onerous than those under Form S-1. In particular, Form F-1 integrates with the international disclosure standards of Form 20-F, which will normally make it easier for non-US issuers to prepare the registration

statement. See also “Ongoing Obligations as a Public Company – Ongoing Obligations of Listed Companies in the US” below. For a general description of the content requirements for prospectuses included in SEC registration statements, see also “Key Documents – The Prospectus” above.

In any case, the process of preparing the IPO registration statement, including the relevant financial information, and obtaining SEC clearance, is a key driver in determining the overall timing and costs of the proposed IPO.

If the company lists ADRs rather than ordinary shares, the company is also required to file a separate registration statement on Form F-6. The Form F-6 is a relatively short and technical filing and would not have any significant impact either on the timing or costs of the proposed IPO.

NON-PUBLIC SUBMISSIONS: CONFIDENTIAL SEC REVIEW

The review process for SEC registration statements is normally fully public. This means that unless the particular offering qualifies for confidential review, all filings of registration statements with the SEC are normally publicly accessible in real-time via the SEC’s EDGAR system (including the initial filing, all subsequent versions as well as any SEC comments, and the issuer’s responses). This applies to all filings of registration statements, including IPO registration statements, by US domestic issuers that do not qualify as emerging growth companies under the JOBS Act as well as all filings by foreign private issuers and emerging growth companies in connection with any follow-on offerings (offerings subsequent to their US IPO).

However, the SEC has long recognised that foreign private issuers often face unique circumstances when accessing the US public markets with the initial registration of their securities with the SEC. The SEC has therefore afforded to foreign private issuers the ability to submit registration statements and amendments on a non-public basis for their first-time registration with the SEC. This permits the SEC’s staff to review and comment on disclosure, and the issuer to respond to staff comments (and for such initial disclosure modifications to occur privately and away from potential investors and the press), before a public filing is made through the SEC’s EDGAR system.

The SEC's policy allowing the non-public submission of initial registration statements by foreign issuers is limited to circumstances where the foreign private issuer either:

- Is listed or is concurrently listing its securities on a non-US securities exchange.
- Is being privatised by a foreign government.
- Can demonstrate that the public filing of an initial registration statement would conflict with the law of an applicable foreign jurisdiction.

Shell companies, blank check companies and issuers with no (or substantially no) business operations are not permitted to use the non-public submission procedure.

The SEC's policy statement on non-public submissions by foreign private issuers further includes the following reminders for foreign private issuers:

- Under certain circumstances, the SEC's staff may request a foreign issuer to publicly file its registration statement even though it comes within the general parameters of the policy, for example, in connection with a competing bid in an acquisition transaction or publicity about a proposed offering or listing.
- When non-public registration statements are submitted to the SEC's staff, the document must be complete. The timing and scope of staff review of non-public submissions of registration statements are generally the same as for publicly filed registration statements.
- The non-public submission of a registration statement under the policy does not constitute the filing of a registration statement under the Securities Act. Under Section 5(c) of the Securities Act, offers of securities cannot be made in the United States until a registration statement is publicly filed with the SEC using the EDGAR system.

The non-public submission policy for foreign private issuers is separate from the confidential registration statement review procedures available to EGCs. However, foreign private issuers that meet the requirements in the JOBS Act are eligible to be treated as EGCs and can therefore choose between the two different options.

Foreign issuers that are eligible under the SEC's policy for non-public submissions must submit their draft registration statements in the same manner as EGCs. Foreign private issuers that seek to be treated as EGCs must, among other things, follow the procedures applicable to EGCs for both confidential submissions and the timing of the public filing of their registration statements.

In addition, foreign private issuers, whether submitting draft registration statements pursuant to the foreign issuer non-public submission policy or as an EGC, must publicly file their registration statements and at the same time publicly file their previously submitted draft registration statements and resubmit all previously submitted response letters to staff comments as correspondence on EDGAR. All staff comment letters and issuer response letters are posted on the EDGAR system in accordance with SEC staff policy.

SEC REVIEW PROCESS

After the registration statement is filed with or confidentially submitted to the SEC; it is assigned to a team of reviewers who process the registration statement through to effectiveness. The initial SEC review takes approximately 30 days and results in a set of written comments. The registrant then prepares and files an amended registration statement responding to the comments and otherwise updating the information set out in the registration statement. This process is often repeated for several rounds of comments but the SEC response time usually becomes shorter with each consecutive amendment. The confidential SEC review process described above is not substantially different from this process, except that the initial filing and subsequent amendments are not immediately available to the public.

Once the SEC is satisfied that an amended registration statement adequately addresses its comments and upon written request of the registrant and the managing underwriter, the SEC declares the registration statement effective on a date requested by the parties. Sales to the public may commence as soon as the registration statement becomes effective, although offers and other publicity about the proposed IPO are technically permissible as soon as the registration statement has been filed.

The entire SEC process from the initial kick-off meeting for an IPO to final SEC clearance typically takes between three and five months. For a more detailed indicative timeline of both the regular, public SEC review process and the confidential SEC review process, see “Indicative US IPO Timetable” below.

PROSPECTUS LIABILITY

If the registration statement, at the time it becomes effective, contains any untrue statement of a material fact or omits to state a material fact that is necessary for the registration statement not to be misleading, the company, its officers and directors, the underwriters and certain other persons may be liable to any purchaser of a security covered by the registration statement. See also “Key Documents – Legal Opinions and Disclosure Letters” and “Key Documents – Comfort Letters” above.

SEC FILING FEES

The amount of SEC filing fees payable in connection with the IPO depends on the value of the securities to be newly issued in connection with the IPO. The current fee rate is US\$128.80 per US\$1,000,000 of securities registered.

Exempt Transactions: Rule 144A and Regulation S

Generally, issuers conducting a Main Board IPO in Hong Kong offer their securities to institutional and other investors in reliance on one or more exemptions from the registration requirement under Section 5 of the Securities Act. In particular, these IPO’s are marketed:

- In the United States exclusively to qualified institutional buyers (QIBs) in reliance on Rule 144A under the Securities Act.
- Outside the United States in reliance on Regulation S under the Securities Act.

Rule 901 of Regulation S contains a general statement of the applicability of the registration requirements of the Securities Act. It clarifies that any offer, offer to sell, sale, or offer to buy that occurs “within the United States” is subject to the registration requirements of Section 5 of the Securities Act, while any offer or sale that occurs “outside the United States” is not subject

to Section 5. The determination whether or not a transaction occurs “outside the United States” is based on the facts and circumstances of each case.

Helpfully, Regulation S also contains a number of more specific “safe harbour” provisions, including most notably the safe harbour provided by Rule 903 of Regulation S. The effect of Rule 903 is that an offer or sale of a security is deemed to occur “outside the United States” if:

The offer or sale are made in “offshore transactions”; and

No “directed selling efforts” are made in the United States by the issuer, the underwriters, any other distributor, any of their respective affiliates, or any person acting on their behalf.

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

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

these two extremes.

Rule 144A provides a safe harbour that permits re-sales of securities, including re-sales by the underwriters in a securities offering, only to qualified institutional buyers, or QIB's, in the United States. "Qualified institutional buyers" include various enumerated categories of sophisticated institutional investors with at least US\$100 million of securities of non-affiliates under management as well as SEC-registered broker-dealers owning and investing at least US\$10 million in securities of non-affiliates. In addition, to be eligible for the Rule 144A safe harbour, purchasers must be notified that a proposed sale is made pursuant to Rule 144A. This is normally done by way of appropriate legends and disclaimers in the offering memorandum. Finally, the relevant securities must not be:

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

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

Indicative US IPO Timetable – Public SEC Review Process

The following is an indicative US IPO timetable. It assumes a public filing of the Form S-1/F-1 registration statement as part of the regular public SEC review process and a reasonably fast overall process. This requires a high level of preparedness by the company and no material, or unusually

extensive SEC comments, following the formal kick-off meeting. A company will normally have spent significant time and effort getting ready for an IPO before the formal kick-off meeting. See “Getting Ready” above.

WEEK	PUBLIC SEC REVIEW PROCESS
0	<ul style="list-style-type: none"> • Kick-off meeting • Discuss timing and marketing mechanics
1	<ul style="list-style-type: none"> • Perform due diligence
2	<ul style="list-style-type: none"> • Begin drafting Form S-1/F-1
3	<ul style="list-style-type: none"> • Continue due diligence • Continue drafting Form S-1/F-1 • Draft underwriting agreement • Draft comfort letters • Draft legal opinions • Draft stock exchange application • Select co-managers/syndicate • Obtain board approval
4	<ul style="list-style-type: none"> • Finalise due diligence • Continue drafting underwriting agreement • Continue drafting comfort letters • Continue drafting legal opinions • File S-1/F-1 with SEC • File with FINRA
5	<ul style="list-style-type: none"> • Prepare free writing prospectus
6	<ul style="list-style-type: none"> • Prepare roadshow materials
7	<ul style="list-style-type: none"> • Finalise under writing agreement • Finalise comfort letter • Finalise legal opinions • Co-manager due diligence • Obtain lock-ups
8	<ul style="list-style-type: none"> • Receive and prepare to respond to SEC comments
9	<ul style="list-style-type: none"> • Respond to SEC comments and file Amendment No. 1
10	<ul style="list-style-type: none"> • File Amendment No.1 with FINRA and respond to FINRA comments, if any • Finalise free writing prospectus • Finalise roadshow materials
11	<ul style="list-style-type: none"> • Receive SEC comments on Amendment No.1 • Finalise valuation, determine price range • Respond to SEC comments and file Amendment No.2 • Print red herrings

WEEK	PUBLIC SEC REVIEW PROCESS
12	<ul style="list-style-type: none"> • Commence roadshow • Sales force meetings • Send FWP to accounts electronically (with link to 10 (a) prospectus) • File FWP with SEC
13	<ul style="list-style-type: none"> • Receive SEC comments on Amendment No.2 • Respond to SEC comments and file Amendment No.3
14	<ul style="list-style-type: none"> • Roadshow continues
15	<ul style="list-style-type: none"> • Clear SEC • Clear FINRA • Clear stock exchange • File Forms 3 (if US domestic issuer) • Declare Form S-1/F-1 “effective” • Bringdown due diligence • Pricing • Sign underwriting agreement • Deliver comfort letter • File 424 prospectus with SEC
16	<ul style="list-style-type: none"> • Bringdown due diligence call • Close and settle IPO

Indicative US IPO Timetable – Confidential SEC Review Process

The expected timeline under the confidential SEC review process is similar to the timeline for the regular (public) SEC review process outlined above. However, under the confidential SEC review process, the (public) roadshow for the IPO cannot commence until the registration statement has been formally filed with the SEC. Despite this, if the company qualifies as an EGC, it and any authorised person acting on its behalf may engage in “test-the waters” communications with potential investors that are QIBs (as defined in Rule 144A) or institutions that are “accredited investors” (as defined in Rule 501). See also “SEC Registration Process” above.

The following indicative timetable assumes that the company makes its first public filing of the IPO registration statement once:

The bulk of SEC comments have been resolved through the confidential review process and there is a strong expectation that it will be possible to complete the review process and finalise the registration statement in relatively quickly.

The underwriters advise the company that market conditions are favourable for a successful IPO and that it is advisable to commence the roadshow.

The following indicative timetable also assumes that the company makes its first public filing in week 12 to permit commencement of a public roadshow, consistent with the indicative timetable for the regular, public SEC review described above:

WEEK	CONFIDENTIAL SEC REVIEW PROCESS
0	<ul style="list-style-type: none"> • Kick-off meeting • Discuss timing and marketing mechanics • Decide on either Option A or Option B
1	<ul style="list-style-type: none"> • Perform due diligence
2	<ul style="list-style-type: none"> • Draft Form S-1/F-1
3	<ul style="list-style-type: none"> • Continue due diligence • Continue drafting Form S-1/F-1 • Draft underwriting agreement • Draft comfort letters • Draft legal opinions • Draft stock exchange application • Select co-managers/syndicate • Obtain board approval
4	<ul style="list-style-type: none"> • Finalise due diligence • Continue drafting underwriting agreement • Continue drafting comfort letters • Continue drafting legal opinions • Initial confidential submission of draft Form S-1/F-1 to SEC • File with FINRA
5	<ul style="list-style-type: none"> • Prepare free writing prospectus
6	<ul style="list-style-type: none"> • Prepare roadshow materials
7	<ul style="list-style-type: none"> • Finalise under writing agreement • Finalise comfort letter • Finalise legal opinions • Co-manager due diligence • Obtain lock-ups
8	<ul style="list-style-type: none"> • Receive and prepare to respond to SEC comments
9	<ul style="list-style-type: none"> • Respond to SEC comments and confidentially submit Amendment No.1

WEEK	CONFIDENTIAL SEC REVIEW PROCESS
10	<ul style="list-style-type: none"> • File Amendment No.1 with FINRA and respond to FINRA comments, if any • Finalise free writing prospectus • Finalise roadshow materials
11	<ul style="list-style-type: none"> • Receive SEC comments on Amendment No.1 • Finalise valuation, determine price range • Respond to SEC comments and file Amendment No.2 (FIRST PUBLIC FILING OF IPO REGISTRATION STATEMENT) • Print red herrings
12	<ul style="list-style-type: none"> • Commence roadshow • Sales force meetings • Send FWP to accounts electronically (with link to 10(a) prospectus) • File FWP with SEC
13	<ul style="list-style-type: none"> • Receive SEC comments on Amendment No.2 • Respond to SEC comments and publicly file Amendment No.3
14	<ul style="list-style-type: none"> • Roadshow continues
15	<ul style="list-style-type: none"> • Clear SEC • Clear FINRA • Clear stock exchange • Declare Form S-1/F-1 “effective” • Bringdown due diligence • Pricing • Sign underwriting agreement • Deliver comfort letter • File 424 prospectus with SEC
16	<ul style="list-style-type: none"> • Bringdown due diligence call • Close and Settle IPO

Ongoing Obligations as a Public Company

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

Listed companies must ensure appropriate transparency for investors through a regular flow of information. This is important not only because they may be required to do so under applicable listing rules or legislation, but also to build strong investor relations in order to be able to fully reap the potential benefits of being a public company, such as ready access to the capital markets. To the same end, shareholders, or natural persons or legal entities holding voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights, will typically also be required to inform issuers of the acquisition of or other changes in major holdings in listed companies so that the latter are in a position to keep the public informed.

The specific nature and extent of the obligations that apply to the company post IPO is dictated by:

- The listing venue chosen by the company (that is, the stock exchange upon which its securities are listed).
- The type of listing.
- The type of securities listed (e.g., shares or depositary receipts).
- The applicable legislation in the relevant jurisdiction.

However, in general, there are laws in both Hong Kong and the United States that establish minimum reporting requirements for both listed companies and their significant shareholders.

Ongoing Obligations of Listed Companies in Hong Kong

Once its shares are listed on the HKEx, an issuer must comply with the continuing obligations set out in the Listing Rules and the SFO. The continuing obligations are intended to safeguard a fair and orderly market in securities and to ensure that all market participants have simultaneous

access to the same information. Failure by a listed issuer to comply with the continuing obligations laid down in the Listing Rules may result in the HKEx taking disciplinary actions as well as suspending or cancelling a listing. The directors of a listed issuer are collectively and individually responsible for ensuring the issuer's full compliance.

COMPLIANCE ADVISER

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

- Before the publication of any regulatory announcement, circular or financial report.
- Where a notified or connected transaction is contemplated, including share issues and repurchases.
- Where it proposes to use the IPO proceeds differently from the prospectus disclosure.
- Where the HKEx enquires about unusual trading movements in its listed securities.

DISCLOSURE OBLIGATIONS

One of the most important ongoing obligations of a listed issuer is the duty of disclosure. The disclosure of information regime is primarily laid down in Part XIVA of the SFO (**Statutory Disclosure of Information Regime**). Failure to comply with these statutory provisions may result in investigation by the SFC, which may directly instigate legal proceedings before the Market Misconduct Tribunal. If a listed issuer is found to be in breach of its disclosure requirements, the listed issuer, its directors and chief executive

may be subject to a fine of up to HK\$8,000,000. The relevant officer of the listed issuer may also be barred from being a director or manager of a listed issuer for a period of up to five years.

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

Alongside the Statutory Disclosure of Information Regime, the HKEx assumes the role to monitor the market. It may make enquiries and halt trading of listed securities of an issuer if, in its view, there is likely to be a false market. Under the Listing Rules, where the HKEx believes that there is, or there is likely to be, a false market in an issuer’s securities, a listed issuer must announce the information necessary to avoid a false market as soon as reasonably practicable after consultation with the HKEx. Where the HKEx makes enquires regarding unusual movements in the price or trading volume of the securities of a listed issuer, or the possible development of a false market, the listed issuer must respond promptly by providing the relevant information to the HKEx and announce it to the market to clarify the situation if the HKEx so requests. If directors of the listed issuer, having made enquiry to the listed issuer, are not aware of any matter that is relevant to the unusual trading movement, or any information necessary to avoid a false market, the HKEx may require the listed issuer to make a standard negative announcement prescribed under the Listing Rules.

The listed issuer must apply to the HKEx for a trading halt or trading suspension in cases where:

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

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

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

DISCLOSURE OF SPECIFIC MATTERS

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

- Advances to an entity.
- Financial assistance and guarantees to affiliated companies of a listed issuer.
- Pledging of shares by the controlling shareholder.
- Loan agreements with covenants relating to specific performance of the controlling shareholder.
- Breach of a loan agreement by a listed issuer.
- Notifiable transactions.
- Connected transactions.
- Takeovers.
- Share repurchases.

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

RESULTS ANNOUNCEMENTS AND FINANCIAL REPORTS

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

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

Ongoing Obligations of Listed Companies in the US

The following section provides an overview of ongoing obligations applicable to companies choosing to conduct a US IPO. It is not intended to be exhaustive.

Ongoing obligations of listed companies in the US include:

- SEC reporting.
- Beneficial ownership reporting.
- Compliance with corporate governance rules (for example, stipulating numbers of independent directors).
- Disclosure rules (for example, Regulation FD and rules governing Non-GAAP financial measures).
- FCPA compliance.

ONGOING SEC REPORTING

As a result of either a public offering of securities under the Securities Act or a listing of a company's shares on a stock exchange in the United States, issuers become subject to periodic and ongoing public reporting as well as other obligations under the Exchange Act. These reporting obligations commence immediately upon the effectiveness of a registration statement or a listing and include the filing of an annual report with respect to the fiscal year in which the registration statement or listing became effective. The requirement to file an annual report is ongoing unless and until the issuer successfully de-registers or its reporting obligation is suspended. The ongoing SEC reporting obligations for foreign private issuers, however, are significantly less onerous than those for US domestic issuers.

US domestic issuers must prepare and file annual reports on Form 10-K, quarterly reports on Form 10-Q, interim reports on Form 8-K as well as a proxy statement in connection with the solicitation of votes for their shareholder meetings. The information that must be provided, on a periodic and ongoing basis, is broadly identical to the information required to be included in the initial registration statement on Form S-1. In addition, the directors, officers and beneficial owners of more than 10 percent of the equity securities registered under the Exchange Act of US domestic issuers – but not those of foreign private issuers – must file statements of beneficial ownership, under Forms 3 and 4 pursuant to Section 16 of the Exchange Act.

Foreign private issuers, on the other hand, must only prepare and file annual reports on Form 20-F and furnish certain interim reports on Form 6-K. Form 20-F was revised in 2000 to be consistent with the International Disclosure Standards for Cross-Border Offers and Initial Listings, established in 1998 by the International Organization of Securities Commissions (IOSCO) and are substantially similar to those of other jurisdictions for offerings of common stock. Under cover of the Form 6-K, a foreign private issuer must also “promptly” furnish to the SEC whatever material information it (i) makes, or is required to make, public, pursuant to the law of the jurisdiction of its domicile, or in which it is incorporated or organised, (ii) files, or is required to file, with a stock exchange on which its securities are traded, and which was made public by that exchange or (iii) distributes, or is required to distribute, to its security holders. In addition, foreign private issuers should be, and typically are, careful to report promptly on Form 6-K any extraordinary events, such as material changes in the business, material acquisitions or material dispositions. However, other than US domestic issuers, which are subject to strict, and very short, filing deadlines with regard to the material events enumerated in Form 8-K, foreign private issuers are not subject to precise deadlines by which a Form 6-K must be furnished; rather they must “promptly” furnish information that has already been made public.

BENEFICIAL OWNERSHIP REPORTING

Acquisition or accumulation of a significant stake – more than five percent – in the equity securities of a US public company or a non-US public company with shares listed in the US gives rise to specific disclosure and filing requirements under US law. Disclosure requirements under Sections 13(d) and 13(g) of the Exchange Act are intended to provide public companies, their stockholders and the marketplace in general with information about actual and potential changes in beneficial ownership by significant stockholders and any plans that such stockholders may have to change or influence the control or management of the issuer.

Section 13(d)(1) of the Exchange Act and Rule 13d-1 requires any “person” who acquires, directly or indirectly, the “beneficial ownership” of more than five percent of a class of equity securities registered under Section 12 of the

Exchange Act to file a Schedule 13D with the SEC disclosing certain specified information and send copies of the filing to the issuer of such equity securities and each securities exchange where the securities are traded within calendar 10 days of the acquisition. In certain circumstances, investors who have acquired shares without the purpose or effect of changing or influencing the control of the issuer may qualify to file a short form (much less detailed and onerous) report on Schedule 13G, instead of filing a Schedule 13D. Notwithstanding Section 13(d)(1), an investor that has not acquired more than two percent of the class of registered equity securities within the preceding 12 months need not file a Schedule 13D, even if such investor's acquisitions within such period – when added to shares acquired more than 12 months previously – exceed five percent of the class. As discussed below, however, such investors must file a Schedule 13G not later than 45 days after the end of the calendar year.

A Schedule 13D must be amended “promptly” if there is any material change in the facts that have been disclosed. An acquisition, or disposition, of one percent or more of the class of securities is deemed material, but smaller acquisitions and dispositions, and other changes of plans, could be material, depending on the circumstances. The SEC takes the position that “prompt” means as soon as the following business day. The Schedule 13G amendment requirements vary depending on the nature of the filer.

Beneficial Ownership

Rule 13d-3(a) provides that a person “beneficially owns” a security if it, directly or indirectly, through any contract, arrangement or otherwise, has or shares (1) voting power, which includes the power to vote, or to direct the voting of, such security or (2) investment power, which includes the power to dispose, or to direct the disposition of, such security, or both. In addition, a person is deemed to be the beneficial owner of a security if that person has the right to acquire beneficial ownership of such security within 60 days, for example through the exercise of an option, or through the conversion of another security. It follows from these provisions that a security may have multiple beneficial owners – for example, the person who owns the security, and the person who has an option to acquire that same security within 60 days. All beneficial owners must disclose if otherwise required under Section

13(d). In addition, multiple entities within a given corporate group may be deemed to own the same shares, and may be required to file jointly.

“Person” and “Groups”

“Person” is defined broadly and includes corporations and other entities, as well as individuals. Section 13(d)(3) further provides that, when two or more persons act as partners of a general or limited partnership, syndicate, or other group, for the purpose of acquiring, holding, or disposing of securities of an issuer, such group will be deemed one single “person” for purposes of Section 13(d). This means that if these persons, in the aggregate, acquire more than five percent of the equity securities of the issuer, they will either need to file one joint Schedule 13D, or each group member may file a separate Schedule 13D. Individual persons will only be deemed to constitute a group, and thus one single person under Section 13(d)(3), if they have some kind of formal or informal agreement to act together with respect to the equity securities. However, the case law concerning what actions constitute the formation of a group is unsettled. The existence of a group depends on the specific facts and circumstances of the case.

Required Information

The information to be disclosed on Schedule 13D includes information about the identity or identities of the beneficial owner(s) of the acquired securities, the sources, and amount of funds used in making the purchases, and the number of shares of such security owned by the beneficial owner(s). In addition, the person filing Schedule 13D is also required to disclose the purpose of the acquisition of the securities and any plans or proposals that the reporting person may have that relate to (i) the acquisition by any person of additional securities of the issuer, or disposition of such securities, (ii) an extraordinary corporate transaction, such as merger, reorganisation or liquidation, involving the issuer or any of its subsidiaries, (iii) a sale, or transfer, of a material amount of assets of the issuer or of any of its subsidiaries, (iv) any change in the present board of directors, or management of the issuer, including any plans or proposals to change the number or term of directors, or to fill any existing vacancies on the board, (v) any material change in the present capitalisation or dividend policy of the issuer, (vi) any other material change in the issuer’s business or corporate structure, (vii)

changes in the issuer's charter, bylaws, or instruments corresponding thereto, or other actions which may impede the acquisition of control of the issuer by any person, (viii) causing a class of securities of the issuer to be de-listed or to cease to be authorized to be quoted, (ix) a class of equity securities of the issuer becoming eligible for termination of registration with the SEC, under the Exchange Act, or (x) any action similar to any of those enumerated above. In addition, Schedule 13D must also describe any contracts, arrangements, understandings, or relationships, with respect to any securities of the issuer – including the transfer or voting of any security, loan or option arrangements, puts or calls, and name of the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Finally, the exhibits that the reporting person must file with the Schedule 13D include copies of all agreements relating to the sources of funds used to finance the acquisition of the securities, and copies of all agreements relating to the transactions described above.

Schedule 13G

As mentioned above, certain types of investors acquiring beneficial ownership of more than five percent of a class of registered equity securities may, rather than filing a Schedule 13D within 10 days after the acquisition, file a short-form disclosure statement on Schedule 13G. The main advantage of filing on a Schedule 13G is that it requires significantly less information to be disclosed and therefore is less burdensome to prepare. The required disclosure is essentially limited to information regarding the identity of the filer and the number of shares owned. In addition, the requirements for periodically updating the filing are more limited and depend on the identity of the filer.

Schedule 13G is available to three types of investors: domestic US “Qualified Institutional Investors” (“**QII's**”), “exempt investors” and “passive investors”. In addition, foreign – non-US – institutional investors may be able to file a Schedule 13G under one of these categories. Investors that qualify as QII's include US registered broker-dealers, banks, savings associations, registered investment companies and employee benefit plans, as well as control persons of such entities. Foreign institutional investors typically do not qualify as QII's. To qualify for a Schedule 13G, as opposed to a Schedule 13D filing, a QII must be able to certify that the securities were acquired in the ordinary

course of business and without having had a purpose or effect of changing or influencing the control of the issuer. An “exempt investor” is a person who holds more than five percent of a class of equity securities at the end of a calendar year, but who has not made any “acquisition” subject to Section 13(d). This includes persons who acquired their securities prior to the issuer registering the securities under the Exchange Act – for example, key founding shareholders that acquired shares prior to a potential US IPO, persons who acquired securities in a registered stock-for-stock exchange and persons who have not acquired more than two percent of a class of securities within a 12-month period. “Passive investors” may qualify to file a Schedule 13G if they own more than five percent but less than 20 percent of a class of registered equity securities and can certify that the securities were not acquired, or held, with the purpose or effect of changing or influencing the control of the issuer.

If, after filing a Schedule 13G, a QII, or a passive investor, subsequently determines that it intends to change or influence the control of the issuer, or if a passive investor’s ownership reaches or exceeds 20 percent of the class of equity securities, then such person must file a full Schedule 13D within 10 days of this occurrence, and would be subject to a 10-day “cooling off” period during which the securities may not be voted and beneficial ownership of additional securities may not be acquired.

CORPORATE GOVERNANCE

General

US domestic issuers are subject to a host of corporate governance rules under applicable US securities laws, SEC rules and the rules of the relevant US stock exchanges. These rules cover matters including to director independence, required board committees, committee charters, code of ethics, disclosure controls and procedures, loans to insiders, whistle-blower policies and complaint-handling procedures, communication policies (e.g., Regulation FD) and insider trading policies. The JOBS Act exempts EGC’s from the requirement to hold “say-on-pay”, “say-on-frequency” and “say-on-golden parachute” votes, as well as from certain other requirements such as CEO pay ratio disclosures. It also permits EGC’s to comply with less

burdensome executive compensation disclosure rules than other US domestic issuers.

Independent Directors

Under SEC rules, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform Act of 2010 as well as both NYSE and Nasdaq listing rules US domestic issuers are required to have independent directors on their boards of directors and three standing committees comprised solely of independent directors – audit, compensation and nomination/governance. Phase-in rules require only one independent director upon closing of the IPO, two within 90 days and three within one year, in addition to a majority of independent directors within one year of the IPO closing. Even significant ownership of shares in the company does not preclude a director being considered independent, as independence from executive management is seen as the primary issue. However, this does not apply to audit committee members, for which the fully diluted stockownership of a director, and entities with which he or she is affiliated, should not exceed 10 percent of the total shares of the company outstanding.

As a practical matter, the company and the underwriters, with the assistance of their legal advisers, will confirm the independence status of the current directors of an IPO candidate prior to commencing the application process, based on a variety of regulatory standards and responses to director questionnaires prepared by the issuer’s lawyers. Depending on the outcome, it may then be necessary to make changes to the composition of the company’s board of directors and to elect new independent directors in connection with the IPO. At least one of the directors should also qualify as an “audit committee financial expert” as defined by SEC rules.

Foreign Private Issuers

Both the NYSE and Nasdaq listing rules allow foreign private issuers to follow home country practice in lieu of most of their corporate governance requirements. However, if a foreign private issuer decides to make use of this option, and the relevant home country corporate governance practices differ significantly from the corporate governance rules for US domestic issuers, the foreign private issuer must disclose those differences in the IPO

registration statement and in the issuer’s annual report on Form 20-F. All US-listed companies, including foreign private issuers, must comply with the audit committee independence requirements of Rule 10A-3 under the Exchange Act.

The company should consult with the underwriters selected for the IPO about whether to voluntarily adopt at least some of the additional corporate governance standards required for US domestic issuers.

OTHER CONSIDERATIONS

Regulation Fair Disclosure (Regulation FD)

Regulation FD generally requires SEC-registered companies to provide all investors with the same information at the same time (that is, selective disclosure to individual investors is prohibited) if the information is material and not previously available to the public. Even though Regulation FD does not technically apply to foreign private issuers, the basic framework of Regulation FD is perceived as being an international best practice for listed companies.

As a result, no company spokesperson, including senior management and members of the board of directors of companies listed on a US securities exchange, should personally disclose any information that is material and that has not previously been publicly disclosed as part of a general announcement by press release. This does not mean that company spokespeople may only repeat words that have been lifted verbatim from press releases, but it does mean that no new material information should be provided unless it has previously been disclosed by press release or other broad dissemination. These rules apply separately from various state and federal laws that impose both civil and criminal liability for “insider trading”, including “tipping”. Best practice is for a Disclosure Committee to be established comprising participants from the investor relations, finance, legal and other functions in order to consider and recommend to the board any material information the Disclosure Committee believes should be available to all investors.

Non-GAAP Financial Measures

Many companies disclose “Non-GAAP financial measures”, or financial measures not taken directly from their primary audited financial statements. For issuers reporting in accordance with IFRS, “Non-GAAP” can be taken to mean “Non-IFRS”.

The SEC has adopted a series of regulations – sometimes generically referred to as “Reg. G” – designed to address this practice in SEC filings. It has taken this step because of perceived abuses and the habit of some companies to disclose what the SEC has humorously called “EBT-BS” or “earnings before the bad stuff”. Among other things, the relevant rules require companies to:

- Reconcile any “non-GAAP” financial measure to the most directly comparable GAAP measure in any press release or other public statement by the company.
- In its periodic reports – for example the Form 20-F for foreign private issuers – provide equal, or greater prominence, to the GAAP measure and explain why management believes the non-GAAP financial measure provides meaningful additional information to investors.

Foreign Corrupt Practices Act

One of the highest profile and potentially largest dollar compliance risks associated with the US securities laws is the Foreign Corrupt Practices Act (**FCPA**). The FCPA generally prohibits corrupt payments or gifts to foreign (non-US) officials to obtain or retain business. “Foreign officials” includes employees of state-owned entities such as public hospitals, utilities or universities. Companies with US listings, and thus registrations with the SEC, are subject to potential liability under the FCPA for their worldwide operations. Illegal payments or gifts by a non-US employee, or agent of the company, to an official in a developing country, for example, could expose the company to expensive and time-consuming investigations by the SEC or the US Department of Justice (**DOJ**).

Consequences for a breach of FCPA include large monetary penalties and a variety of other sanctions in the US, including a potential suspension of the right to do business with the US government. Prohibited payments or gifts are often made through middlemen, so the FCPA is drafted broadly to pick

up the actions of distributors, brokers, suppliers and other agents. As a result, companies listed in the United States could incur significant liability as a result of actions taken by its contract counterparties. For that reason, FCPA compliance efforts cannot stop at a company's own doorstep but must extend to its business partners.

To avoid being held liable for corrupt payments made by third parties, the DOJ encourages companies to exercise due diligence and to take all necessary precautions to ensure that they have formed a business relationship with reputable and qualified partners and representatives.

In addition, companies should also be aware of so-called "red flags," including:

- Unusual payment patterns or financial arrangements.
- A history of corruption in the country.
- A refusal by the foreign joint venture partner or representative to provide a certification that it will not take any act that would cause a violation of the FCPA.
- Unusually high commissions, or unusual payment terms/deal structures.
- Lack of transparency in expenses and accounting records.
- Apparent lack of qualifications or resources on the part of the joint venture partner or representative to perform the services offered.
- Whether the joint venture partner or representative has been recommended by an official of the potential governmental customer.

Appendix 1

Hkex Listing Criteria

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

	MAIN BOARD	GEM
TRADING RECORD/ OPERATIONS	Applicant must generally have a trading record of at least three financial years.	Applicant must generally have a trading record of at least two financial years.
MANAGEMENT CONTINUITY	Under substantially the same management for at least the three preceding financial years.	Under substantially the same management throughout the preceding full financial year.
OWNERSHIP CONTINUITY AND CONTROL	With ownership continuity and control for at least the most recent audited financial year.	With ownership continuity and control throughout the preceding full financial year.
PROFITABILITY/ FINANCIAL STANDARDS	<p>Applicant must fulfil one of the three financial criteria:</p> <ul style="list-style-type: none">● Profit test:<ul style="list-style-type: none">» Profits of HK\$50 million in the last three years – with HK\$20 million in the most recent year and an aggregate of HK\$30 million in the two preceding years.» Market capitalisation of at least HK\$200 million at the time of listing.● Market capitalisation/revenue/cash flow test:<ul style="list-style-type: none">» Market capitalisation of at least HK\$2,000 million at the time of listing.» Revenue of at least HK\$500 million for the most recent audited financial year.» Positive cash flow from operating activities of at least HK\$100 million in aggregate for the 3 preceding financial years.	<p>Applicant must fulfil the following financial criteria:</p> <ul style="list-style-type: none">● Market capitalisation of at least HK\$100 million at the time of listing.● Positive cash flow from operating activities of at least HK\$20 million in aggregate for the two preceding financial years.

	MAIN BOARD	GEM
	<ul style="list-style-type: none"> ● Market capitalisation/revenue test: <ul style="list-style-type: none"> » Market capitalisation of at least HK\$4,000 million at the time of listing. » Revenue of at least HK\$500 million for the most recent audited financial year. 	
MARKET CAPITALISATION	<p>Minimum market capitalisation of at least:</p> <ul style="list-style-type: none"> ● HK\$200 million for applicants under the profit test. ● HK\$4,000 million for applicants under the market capitalisation/revenue test. ● HK\$2,000 million for applicants under the market capitalisation/revenue/cash flow test, at the time of listing. <p>Please refer to “Profitability/financial standards” for other financial requirements related to the above mentioned tests.</p>	<p>Minimum market capitalisation of HK\$100 million at the time of listing.</p>
SHORTER TRADING PERIOD	<p>The HKEx may accept a shorter trading record for:</p> <ul style="list-style-type: none"> ● Applicants applying under the Market capitalisation/revenue test, when the applicants’ directors and management have sufficient and satisfactory experience of at least three years in the line of business and industry of the applicant and new applicant has management continuity for the most recent audited financial year. ● Mineral companies (see Appendix 2 – Mining and Mineral Companies). ● Newly formed “project” companies. 	<p>The HKEx may accept a shorter trading record for:</p> <ul style="list-style-type: none"> ● Mineral companies. ● Newly formed “project” companies, <i>provided</i> the applicant can meet the requirement of positive cash flow from operating activities of at least HK\$20 million for the shorter trading period.
AGE OF ACCOUNTS DISCLOSED IN LISTING DOCUMENTATION	<p>Latest financial period reported on must not have ended more than six months before the date of the listing document.</p>	

	MAIN BOARD	GEM
SHARES IN PUBLIC HANDS	<p>At least 25 percent of shares subject to a minimum of HK\$50 million must be in public hands.</p> <p>For applicants with an expected market capitalisation of over HK\$10 billion at the time of listing, the HKEx may accept a lower percentage of between 15 percent and 25 percent.</p> <p>The minimum public float must be maintained at all times.</p>	<p>At least 25 percent of shares subject to a minimum of HK\$30 million must be in public hands.</p> <p>For applicants with an expected market capitalisation of over HK\$10 billion at the time of listing, the HKEx may accept a lower percentage of between 15 percent and 25 percent.</p> <p>The minimum public float must be maintained at all times.</p>
COMPETING BUSINESS	<p>Competing businesses of directors and controlling shareholders of the applicant are allowed, <i>provided</i> full disclosure is made in the prospectus at the time of listing and on an ongoing basis.</p>	<p>Competing businesses of directors and controlling shareholders of the applicant are allowed, <i>provided</i> full disclosure is made in the prospectus at the time of listing and on an ongoing basis.</p> <p>For a competing business of a substantial shareholder, full disclosure is only required to be made in the prospectus at the time of listing.</p>
SUFFICIENT MANAGEMENT PRESENCE	<p>At least of two of the executive directors must be ordinarily resident in Hong Kong.</p>	<p>Not applicable.</p>
FREE TRANSFERABILITY OF SHARES	<p>Shares must be freely transferable.</p>	
ELECTRONIC SETTLEMENT	<p>All securities newly listed on the HKEx must be eligible for deposit, clearance and settlement in the Central Clearing and Settlement System, established and operated by Hong Kong Securities Clearing Company Limited, from the date on which dealings in such securities are to commence.</p>	
CORPORATE GOVERNANCE REQUIREMENTS	<p>See “Appendix 5 - Corporate Governance”.</p>	
REPORTING STANDARDS FOR ACCOUNTS DISCLOSED IN LISTING DOCUMENTATION	<p>HKFRS, IFRS or other accounting standards acceptable to the HKEx under certain circumstances. PRC companies applying for listing in Hong Kong may adopt CASBE to prepare their financial statements for IPOs.</p>	

Appendix 2

Mining and Mineral Companies

The HKEx has built an international reputation largely on the strength of its listed financial, property and manufacturing companies. Seeking to expand this base and encourage new listings by mineral companies, the HKEx amended Chapter 18 of the Listing Rules in June 2010 to encourage listings by overseas mining and petroleum companies (**Updated Rules**).

The amendments brought Hong Kong more in line with globally recognised standards, and provided greater clarity to the disclosure requirements for mining and petroleum companies seeking to list. In addition to listing applicants, the Updated Rules affect existing listed mineral companies and other listed issuers that acquire or dispose of significant mineral or petroleum assets.

This section provides an overview of the key changes brought about by the Updated Rules.

APPLICATION OF THE UPDATED RULES

The most significant impact of the Updated Rules is on listing applicants that satisfy the definition of a “Mineral Company” (new applicants whose Major Activity is the exploration for and extraction of minerals or petroleum products). A “Major Activity” is one that represents 25 percent or more of the total assets, revenue, or operating expenses, of the listed issuer and its subsidiaries. Existing listed issuers in the resources section are not treated as Mineral Companies for the purposes of the Updated Rules unless they complete a qualifying transaction acquiring mineral or petroleum assets after the Updated Rules came into effect. Certain continuing disclosure obligations will apply to listed issuers who currently disclose information regarding their mineral or petroleum resources.

NEW LISTINGS

The Updated Rules allow Mineral Companies, with at least a meaningful portfolio of Contingent Resources – for petroleum companies, referring to

those quantities of petroleum products estimated, at a given date, to be potentially recoverable from known accumulations by application of development projects but which are not currently considered to be commercially recoverable due to one or more contingencies – and Indicated Resources – for mining companies, referring to that part of a mineral resource for which tonnage, densities, shape, physical characteristics, grade and mineral content can be estimated with a reasonable level of confidence – to list. Importantly, however, although the Updated Rules now provide an alternative qualifying route for Mineral Company applicants who are unable to meet current financial track record requirements, early-stage exploration companies without identifiable mineral or petroleum reserves or resources will not be deemed to qualify as suitable listing candidates. Amongst other changes, the Updated Rules provide guidance regarding: (1) capitalisation requirements; (2) requirements for demonstrating the right to explore and extract resources and control of assets; and (3) acceptable reporting standards for technical and valuation reports.

To qualify for listing, a new Mineral Company applicant must demonstrate that it has available working capital for 125 percent of its working capital needs, for at least the next 12 months. The analysis of an applicant's working capital needs must include, at a minimum: general, administrative and operating costs, property holding costs and the costs of proposed exploration and development. Where a Mineral Company has not yet begun production, it must disclose its plans to proceed to production with indicative dates and costs.

New Mineral Company applicants must demonstrate in one of two ways that they have adequate rights to participate actively in the exploration and extraction of the relevant resources. First, a Mineral Company applicant should demonstrate that it has either control over a majority, by value, of the assets in which it has invested, together with adequate rights over the exploration for and extraction of the relevant resources.

Alternatively, a Mineral Company applicant should demonstrate that it has adequate rights to provide it with sufficient influence in decisions over the exploration for and the extraction of those resources. The HKEx will also recognise rights granted under government mandates.

The Updated Rules also require Mineral Company applicants to provide an independent technical report substantiating the relied upon resources under a recognised reporting standard. The report must be prepared by a Competent Person (a “Competent Person’s Report”). A “Competent Person” is someone who has at least five years’ relevant experience, and appropriate professional qualifications. The Competent Person submitting the report must also be independent of the applicant and its directors, senior management and advisers.

Mineral Company applicants, who are unable to meet the traditional financial track record requirements, may now take advantage of an alternative option to comply with the track record requirements. Such companies may comply by demonstrating that their boards and senior management, taken together, have sufficient experience in the type of exploration and extraction activity that the Mineral Company is pursuing. Such individuals must possess a minimum of five years’ relevant industry experience and details of the relevant experience must be disclosed in the applicant’s listing document.

DISCLOSURE REPORTING STANDARDS

The Updated Rules have adopted internationally accepted reporting standards, including for mineral resources the JORC Code, NI 43-101 and the SAMREC Code – as modified by the Updated Rules. For petroleum resources and reserves, the Updated Rules provide that the Mineral Company must disclose information regarding such resources under PRMS – as modified by the Updated Rules. The HKEx may allow other reporting standards to be used; however, the Mineral Company must then provide a reconciliation to an adopted code. Currently, the Russian and Chinese standards are not recognised and reconciliations to another reporting standard would be required.

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

CONTINUING OBLIGATIONS

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

Appendix 3

Waivers

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

If an applicant can demonstrate to the HKEx's satisfaction that it is burdensome for it to comply with certain rules or regulations, or that compliance with these rules or regulations is contrary to the laws in the country of its incorporation, the HKEx and the SFC may at their discretion grant waivers from certain requirements.

The HKEx had previously granted waivers to Main Board listed issuers from strict compliance from the following rules and regulations. Some examples are set out below, but this list is not exhaustive.

WAIVERS PREVIOUSLY GRANTED TO PRIMARY LISTED ISSUERS WITH RESPECT TO THE FOLLOWING REQUIREMENTS:

1. Listing Rules

- a. *Prospectus Disclosure Requirements*
 - » Disclosure of Pre-Acquisition Financial Information of Material Business – disclosure of pre-acquisition financial information on any material subsidiary, or business acquired during the trading record period.
 - » Disclosure of Financial Information – financial information in listing documents should be disclosed in accordance with best practice, which is the least required to be disclosed in respect of specific matters in the accounts of an issuer under the CO and the HKFRS, or the IFRS.
 - » Disclosure of Share Capital Changes – the listing document should include particulars of alterations in capital of any member of the listing group within two years immediately preceding the issue of the listing document.

- » Disclosure of Commission, Brokerage and Discounts etc. – the listed issuer should include in its listing document particulars of any commissions, discounts, brokerage or other special terms granted within the two years immediately preceding the issue of the listing document in connection with the issue or sale of any capital of any member of the listing group, together with the names of any directors or proposed directors, promoters or experts who received any such payment or benefit and the amount or rate of the payment.
- » Property Valuation Report – disclosure requirements for property valuation reports for inclusion in the listing document.
- » Summary of Regulatory Provisions – the listing document to be issued by the overseas listed issuer should contain a summary of the regulatory provisions of the jurisdiction in which it is incorporated.
- » Profit Forecast Memorandum – where the listing document does not contain a profit forecast, two copies of a draft of the board’s profit forecast memorandum covering the period up to the forthcoming financial year-end date, after the date of listing, and cash flow forecast memorandum covering at least 12 months from the expected date of publication of the listing document with principal assumptions, accounting policies and calculations for the forecasts are required to be submitted to the HKEx.
- » Disclosure Relating to Share Options – disclosure requirements for information of share options for inclusion in the listing document.
- » Disclosure of Interests – requirements on disclosure of interests in the listing document.

b. *Qualification for Listings*

- » Management Presence – the new listing applicant should have a sufficient management presence in Hong Kong. This will normally mean that at least two executive directors must be ordinarily resident in Hong Kong.
- » Management Continuity – the new listing applicant should have, among other things, management continuity for at least the two preceding financial years.

- » Company Secretary Qualifications – the company secretary must be a person who is ordinarily resident in Hong Kong, and who has the requisite knowledge and experience to discharge the functions of a secretary of a listed issuer and who is (i) an ordinary member of The Hong Kong Institute of Chartered Secretaries, a solicitor or barrister or a professional accountant; or (ii) by virtue of his or her academic or professional qualifications or relevant experience, in the opinion of the HKEx, capable of discharging those functions.
- » Appointment of Independent Non-Executive Directors – the listed issuer’s board of directors should include at least three independent non-executive directors representing at least one third of the board, and at least one independent non-executive director must have the appropriate professional qualifications or accounting or related financial management expertise.
- » Public Float Requirement – at least 25 percent of the listed issuer’s total issued share capital should at all times be held by the public.
- » Minimum Number of Shareholders Requirement – the listed issuer should have at least 300 shareholders in the public tranche as at the listing date.
- » Number of Shareholders in an Offering – there should be not less than three shareholders for every HK\$1,000,000 placed in the global offering.
- » Clawback Mechanism – a clawback mechanism should be put in place to implement minimum allocation of shares from the placing tranche to the public subscription tranche, if certain prescribed total demand levels with respect to the public subscription tranche are reached.
- » Preferential Offer – normally no more than 10 percent of any securities being marketed for which listing is sought may be offered to employees or past employees of the listed issuer or its subsidiaries or associated companies and their respective dependents or any trust, provident fund or pension scheme for the benefit of such persons on a preferential basis.
- » List of Places – in the case of placing of securities, each placing broker should provide a list setting out the names, addresses and

identity card or passport numbers of placees and beneficial owners and the amount of shares taken up by each of the placees.

c. *Dealings in Shares*

- » Restrictions on Further Issue of Securities – further issue of securities within the first six months from the listing date is restricted.
- » Directors' Authority to Allot Shares – if a proposed rights issue would increase, either the issued share capital or the market capitalisation of the listed issuer by more than 50 percent, it must be made conditional on approval by shareholders and set out in the shareholders' circular.

d. *Continuing Obligations*

- » Publication of Announcements with Price Sensitive Information – announcements should not be submitted to the HKEx between 9:00 a.m. – 12:30 p.m. and 2:00 p.m. – 4:15 p.m., on a normal business day, unless they fall within certain exemptions contained in the rule.
- » Amendment of Share Capital Amount in the Articles of Association – the listed issuer should inform the HKEx if there is any proposed alteration of its articles of association. The listed issuer should also issue a circular to the shareholders containing the proposed amendments and obtain shareholders' approval.

2. Companies Ordinance

a. *Prospectus Disclosure Requirements*

- » Valuation Report Requirements – the Third Schedule of the CO contains certain property valuation report requirements.
- » Disclosure of Director's Address – the Third Schedule of the CO requires disclosure of names and addresses and description of directors and proposed directors.

WAIVERS PREVIOUSLY GRANTED TO SECONDARY LISTED ISSUERS WITH RESPECT TO THE FOLLOWING REQUIREMENTS:

1. Listing Rules

a. *Continuing Obligations*

- » Inclusion of Names of Allottees – any announcement of a placement to less than six allottees should include the names of such allottees.

- » Two-Way Proxy Forms – the listed issuer should send, with the notice convening a meeting of holders of listed securities to all persons entitled to vote at the meeting, proxy forms with provision for two-way voting on all resolutions which are intended to be proposed at a meeting.
- » Vote by Poll – any vote of shareholders at a general meeting should be taken by poll.
- » Poll Results Announcement – if voting at a general meeting is taken on a poll, the listed issuer should announce the results of the poll in accordance with the specified requirements.
- » Voting of Directors at Board Meeting – a director of the listed issuer should not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest, nor will he be counted in the quorum present at the meeting.
- » Simultaneous Release of Information – the listed issuer should simultaneously inform the HKEx of any information released to the other stock exchange and ensure such information be released to the market in Hong Kong at the same time as it will be released to the other markets.
- » Other Disclosure Requirements – disclosure of information in relation to specified matters relevant to the listed issuer’s business, including in relation to advances to an entity, financial assistance and guarantees to affiliated companies of a listed issuer, pledging of shares by the controlling shareholder, loan agreements with covenants relating to specific performance of the controlling shareholder and breach of loan agreement by the listed issuer.
- » Option to Vote Against Resolutions by Shareholders who are Required to Abstain From Voting – options to vote against resolutions by shareholders at the general meetings who are required to abstain from voting in favour of such resolutions.
- » Compliance with Chapters 14 and 14A of the Listing Rules and the Takeovers Code – the listed issuer should comply with Chapters 14 and 14A of the Listing Rules as well as the Takeovers Code.

2. The Codes on Takeovers and Mergers and Share Buy-backs

- » Application of the Takeovers Code – the Takeovers Code applies to takeovers, mergers and share repurchases affecting public companies in Hong Kong, and companies with a primary listing in Hong Kong.

WAIVERS PREVIOUSLY GRANTED TO BOTH PRIMARY LISTED ISSUERS AND SECONDARY LISTED ISSUERS WITH RESPECT TO THE FOLLOWING REQUIREMENTS:

1. Listing Rules

- a. *On Prospectus Disclosure Requirements*
 - » Accounts in Listing Documents – the listing document should include combined results in respect of each of the three financial years (full year), immediately preceding the issue of the listing document.
- b. *Qualification for Listings*
 - » Basic Conditions in Relation to Qualifications for Listing – the new listing applicant should satisfy 1 of the three tests in relation to: (i) profit; (ii) market capitalisation, revenue and cash flow; or (iii) market capitalisation and revenue requirements.
- c. *Dealings in Shares*
 - » Restrictions on Disposal of Shares – the controlling shareholders should not (i) in the period commencing on the date of the prospectus, and ending on the date which is 6 months from the listing date, dispose their shares in any way; and (ii) within the first six months from the expiry of such period referred to in (i) above dispose their shares if immediately following such disposal they would cease to be controlling shareholders.
 - » Dealings in Shares by Connected Persons Prior to Listing – there should be no dealing in the securities by any connected person of the listed issuer (i) from the time of submission of the formal application of listing until listing is granted – in the case of listing application by listed issuers; and (ii) from four clear business days before the expected hearing date until listing is granted, in the case of a new listing applicant.

- » Subscription for Shares by Existing Shareholders – the existing shareholders may only subscribe for securities provided that no securities will be offered on a preferential basis and no preferential treatment will be given to them in the allocation of the securities.
- » Making Allocation to Existing Shareholders – no allocation should be permitted to be made to the existing shareholders of the listing applicant, or its associates.

d. *Continuing Obligations*

- » Notifiable and Connected Transactions Requirements – wide range of continuing obligations are imposed in respect of notifiable transactions, continuing connected transactions and related parties transactions – e.g., disclosure, announcement, reporting, annual review and shareholders’ approval requirements.
- » Inspection of Legislation and Regulations – the overseas listed issuer should offer for inspection any statutes or regulations of the jurisdiction in which it is incorporated.
- » Articles of Association Requirements – articles of association or equivalent document should conform with the articles’ requirements set out in Appendix 3 of the Listing Rules.
- » Share Repurchase and Treasury Shares – the listed issuer should ensure that the documents of title of purchased shares are automatically cancelled and destroyed as soon as reasonably practicable, following settlement of any such purchase.
- » Share Option Schemes – share option schemes should comply with the relevant requirements.
- » Sending Financial Reports to Shareholders – the listed issuer should send copies or summaries of its interim reports and annual reports to shareholders.

2. Companies Ordinance

a. *On Prospectus Disclosure Requirements*

- » Financial Information in Prospectus – the listed issuer should set out in its prospectus a statement as to the gross trading income, or sales

turnover during the three financial years (full year) preceding the date of the prospectus, including an explanation of the method used for the computation of such income or turnover, and the reasonable breakdown between the more important trading activities.

- » Financial Information in Prospectus – the listed issuer should include in its prospectus a report by the auditors with respect to the profits and losses, and assets and liabilities, of the listed group in respect of each of the three financial years (full year) preceding the date of the prospectus.
- » Inclusion of Names and Addresses of Option Holders in Prospectus – the listed issuer should include addresses of option holders of their usual residence.

3. Securities and Futures Ordinance

- » Disclosure of Interests – Part XV of the SFO imposes duties of disclosure of interests in shares.

Appendix 4

Connected Transactions

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

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

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

WHAT ARE THE DISCLOSURE AND OTHER OBLIGATIONS?

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

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

and, except in special circumstances, must not exceed three years.

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

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

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

WHAT DO “CONNECTED PERSON” AND “ASSOCIATE” MEAN?

1. **“Connected Person”** Includes:

- a. A director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries.
- b. Any person who was a director of the listed issuer or any of its subsidiaries within the preceding 12 months.
- c. A supervisor of a PRC issuer or any of its subsidiaries.
- d. An associate of a person referred to above.
- e. A connected subsidiary – i.e., a non wholly-owned subsidiary of the listed issuer where any connected person(s) at the issuer level can exercise or control the exercise of 10 percent or more of the voting power at the subsidiary's general meeting, or any subsidiary of such a non wholly-owned subsidiary.
- f. A person deemed to be connected by the HKEx.

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

- a. *In relation to an individual includes: Immediate family member*
- i. His or her spouse, his or her (or his or her spouse's) child or step-child, natural or adopted, under the age of 18 years – each an “*immediate family member*”).
 - ii. The trustees, acting in their capacity as trustees of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is a discretionary object – other than a trust which is an employees' share scheme or occupational pension scheme established for a wide scope of participants and the connected persons' aggregate interests in the scheme are less than 30 percent (the *trustees*)
 - iii. A *30 percent-controlled* company – i.e., a company held by a person who can exercise or control the exercise of 30 percent, or an amount for triggering a mandatory general offer under the Takeovers Code, or more of the voting power at general meetings, or control the composition of a majority of the board of directors – held by the individual, his immediate family members or the trustees or any of its subsidiaries;

Family Member

- iv. A person cohabiting with him or her as a spouse, or his or her child, step-child, parent, step-parent, brother, step-brother, sister or step-sister (each a “*family member*”).
 - v. A majority-controlled company – i.e., a company held by a person who can exercise or control the exercise of more than *50 percent* of the voting power at general meetings, or control the composition of a majority of the board of directors – held, directly or indirectly, by the family members or held by the family members together with the individual, his immediate family members or the trustees, or any of its subsidiaries.
- b. *In relation to a company includes:*

- i. Its subsidiary or holding company, or a fellow subsidiary of the holding company.
- ii. The trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is a discretionary object (the trustees).
- iii. A 30 percent-controlled company held, directly or indirectly, by the company, the companies referred to in (i) above, or the trustees or any of its subsidiaries.

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

WHAT ARE THE EXEMPTIONS FOR CONTINUING CONNECTED TRANSACTIONS? THE EXEMPTIONS ARE BROADLY DIVIDED INTO TWO CATEGORIES:

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

The HKEx has the discretion to specify that an exemption will not apply to a particular transaction:

TYPES OF EXEMPT TRANSACTIONS	FULLY EXEMPT TRANSACTIONS	EXEMPT FROM CIRCULAR (INCLUDING INDEPENDENT FINANCIAL ADVICE) AND SHAREHOLDERS' APPROVAL REQUIREMENTS
<p>DE MINIMIS TRANSACTION (APART FROM AN ISSUE OF NEW SECURITIES BY THE LISTED ISSUER)</p>	<p>The transaction is conducted on normal commercial terms or better.</p> <p>If all the percentage ratios – other than the profits ratio – are:</p> <ol style="list-style-type: none"> 1. Less than 0.1 percent. 2. Less than one percent and the transaction is a connected transaction only because it involves connected person(s) at the subsidiary level. 3. Less than five percent and the total consideration is less than HK\$3,000,000. 	<p>The transaction is conducted on normal commercial terms or better.</p> <p>If all the percentage ratios (other than the profits ratio) are:</p> <ol style="list-style-type: none"> 1. Less than 5 percent. 2. Less than 25 percent and the total consideration is less than HK\$10,000,000.
<p>FINANCIAL ASSISTANCE</p>	<p>Provided by the listed issuer's group to a connected person, or commonly held entity² if the transaction is conducted:</p> <ol style="list-style-type: none"> 1. On normal commercial terms or better. 2. In proportion to the equity interest directly held by the listed issuer, or its subsidiary, in the connected person or commonly held entity. Any guarantee given must be on a several, and not a joint and several basis. <p>Received by a listed issuer's group from a connected person or commonly held entity if:</p> <ol style="list-style-type: none"> 1. The transaction is conducted on normal commercial terms or better. 2. It is not secured by the assets of the listed issuer's group. <p>Providing an indemnity for a director of the listed issuer or its subsidiaries for liabilities that may be incurred in the course of performing his duties, provided that the indemnity is in a form permitted under the laws in Hong Kong or other relevant jurisdiction.</p>	

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

TYPES OF EXEMPT TRANSACTIONS	FULLY EXEMPT TRANSACTIONS	EXEMPT FROM CIRCULAR (INCLUDING INDEPENDENT FINANCIAL ADVICE) AND SHAREHOLDERS' APPROVAL REQUIREMENTS
ISSUE OF NEW SECURITIES BY THE LISTED ISSUER OR ITS SUBSIDIARY TO A CONNECTED PERSON	Under certain situations such as pro rata entitlement, subscription for securities in rights issue/open offer, securities issued under a share option scheme or a "top-up placing and subscription" (subject to satisfaction of specified conditions).	
DEALINGS IN SECURITIES ON STOCK EXCHANGES BY THE LISTED ISSUER'S GROUP	Subject to satisfaction of certain specified conditions, dealing in securities of a target company – referring to a company which the listed issuers' group is acquiring from a person who is not a connected person, but the transaction may amount to a connected transaction if various conditions are fulfilled.	
REPURCHASES OF SECURITIES BY THE LISTED ISSUER OR ITS SUBSIDIARY	If it is made on the HKEx or a recognised stock exchange, except where the connected person knowingly sells the securities to the listed issuer's group, or in a general offer.	
DIRECTORS' SERVICE CONTRACTS AND INSURANCE	A director entering into a service contract with the listed issuer or its subsidiary. Purchase and maintenance of insurance for a director of the listed issuer, or its subsidiaries, against liabilities to third parties that may be incurred in the course of performing his duties, if it is permitted under the laws of Hong Kong or other relevant jurisdiction.	
BUYING OR SELLING OF CONSUMER GOODS OR SERVICES FROM OR TO A CONNECTED PERSON	If the transaction is on normal commercial terms or better in its ordinary and usual course of business.	
SHARING OF ADMINISTRATIVE SERVICES BETWEEN THE LISTED ISSUER'S GROUP AND A CONNECTED PERSON	If it is on a cost basis, <i>provided</i> that the costs are identifiable and allocated to the parties involved on a fair and equitable basis.	

TYPES OF EXEMPT TRANSACTIONS	FULLY EXEMPT TRANSACTIONS	EXEMPT FROM CIRCULAR (INCLUDING INDEPENDENT FINANCIAL ADVICE) AND SHAREHOLDERS' APPROVAL REQUIREMENTS
TRANSACTIONS BETWEEN THE LISTED ISSUER'S GROUP AND AN ASSOCIATE OF A PASSIVE INVESTOR	The passive investor is a connected person only because it is a substantial shareholder of the listed issuer or any of its subsidiaries – also subject to satisfaction of other specified conditions.	
TRANSACTIONS BETWEEN THE LISTED ISSUER'S GROUP AND A CONNECTED PERSON AT THE SUBSIDIARY LEVEL		If the transaction is conducted on normal commercial terms or better, the listed issuer's board of directors has approved the transaction and the independent non-executive directors have confirmed that the terms of the transaction are fair and reasonable, on normal commercial terms or better and in the interests of the listed issuer and its shareholders as a whole.

The HKEx may also grant waivers from any requirements in individual cases, subject to conditions which it may impose.

WHAT ARE THE PERCENTAGE RATIOS?

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

1. Assets ratio – the total assets that are the subject of the transaction divided by the total assets of the listed issuer.
2. Profits ratio – the profits attributable to the assets that are the subject of the transaction divided by the profits of the listed issuer.
3. Revenue ratio – the revenue attributable to the assets that are the subject of the transaction divided by the revenue of the listed issuer.

4. Consideration ratio – the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer’s securities as stated in the HKEx’s daily quotations sheets for the five business days immediately preceding the date of the transaction.
5. Equity capital ratio – the nominal value of the listed issuer’s equity capital, issued as consideration divided by the nominal value of the listed issuer’s issued equity capital immediately before the transaction³.

³ For listed issuers whose shares have no nominal value, e.g., Hong Kong-incorporated issuers, the equity capital ratio should be computed by comparing the number of equity shares issued by the listed issuer as consideration with the listed issuer’s total number of shares in issue immediately before the transaction.

Appendix 5

Corporate Governance

	MAIN BOARD	GEM
INDEPENDENT NON-EXECUTIVE DIRECTORS	<p>Listed issuers are required to appoint at least three independent non-executive directors representing at least one-third of the board.</p> <p>At least one of the independent non-executive directors must have appropriate professional qualifications, or accounting, or related financial management expertise.</p>	
COMPANY SECRETARY	<p>The issuers are required to appoint an individual who, by virtue of his or her academic or professional qualifications or relevant experience, is capable of discharging the functions of company secretary.</p>	
AUTHORISED REPRESENTATIVES	<p>The issuers are required to appoint two authorised representatives as the principal channel of communication with the HKEx. The two authorised representatives must be either two directors or a director and the company secretary.</p>	<p>The issuers are required to appoint authorised representatives. The authorised representatives must be two individuals from amongst the executive directors and the company secretary.</p>
COMPLIANCE OFFICER	<p>Not applicable.</p>	<p>Listed issuers are required to designate one of its executive directors as the compliance officer to ensure compliance with the GEM listing rules.</p>
AUDIT COMMITTEE	<p>Listed issuers are required to establish an audit committee comprising only non-executive directors.</p> <p>The audit committee must comprise a minimum of three members, at least one of whom is an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise.</p> <p>The majority of the audit committee members must be independent non-executive directors and must also be chaired by an independent non-executive director.</p>	
REMUNERATION COMMITTEE	<p>Listed issuers are required to establish a remuneration committee comprising a majority of independent non-executive directors and chaired by an independent non-executive director.</p>	
CORPORATE GOVERNANCE CODE	<p>Listed issuers are expected to comply with the code provisions under the Corporate Governance Code, or to explain with considered reasons on any deviations. The code provisions include requirements for board meeting procedures, separation of the roles of chairman and chief executive officer, board composition, appointment, re-election and removal of directors, establishment of remuneration committee and audit committee, internal control review, delegation and voting by poll etc.</p>	

Appendix 6

Directors' Duties

GENERAL

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

DUTIES GENERAL TO ALL DIRECTORS OF HONG KONG COMPANIES

The following outlines the general principles which a director should observe in the performance of his functions and exercise of his powers as set out in the publication named "A Guide on Directors' Duties" issued by the Hong Kong Companies Registry, which apply to directors of a company incorporated in Hong Kong and generally under the common law:

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

- Duty to observe the company's constitution and resolutions.
- Duty to keep accounting records.

DUTIES SPECIFIC TO DIRECTORS OF LISTED ISSUERS

1. The Listing Rules

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

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

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

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

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

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

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

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

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

4. Market Misconduct Under the SFO

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

Market Misconduct Tribunal (MMT)- the civil regime

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

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

- a. Insider dealing.
- b. False trading.
- c. Price rigging.
- d. Disclosure of information about prohibited transactions.
- e. Disclosure of false or misleading information inducing transactions.
- f. Stock market manipulation.

Offences Relating to Dealings in Securities and Futures Contracts – The Criminal Regime

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

The maximum sanction is either 10 years’ imprisonment, a fine of up to HK\$10 million or both. Those who suffer pecuniary loss as a result of the

conduct in breach of the criminal offences would also have a private right of civil action.

General Provisions Regarding Liabilities

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

5. Disclosure of Interests

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

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

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

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

Commencing on 1 July 2014, so far as the Listing Rules are concerned, subject to satisfaction of certain conditions, any arrangement for a listed issuer to provide an indemnity or insurance for the benefit of a director would be a fully exempt connected transaction – i.e., fully exempt from shareholders' approval, annual review and all disclosure requirements.

Pursuant to the Listing Rules, the articles of association of a listed issuer must provide that a director shall not vote on any board resolution approving any contract, or arrangement or any other proposal, in which he or any of his associates has a material interest, nor shall he be counted in the quorum present at the meeting; although an exception may be provided from the general prohibition if the proposed contract or arrangement or proposal relates to the giving of any security or indemnity to the director, in respect of any obligations undertaken by him for the benefit of the listed issuer or any of its subsidiaries. Regardless of there being no express prohibition in the articles of association of the listed issuer, or applicable companies law against a director being present at a meeting to discuss and vote in relation to any such arrangements, one may argue that it is wise for such director to abstain from any deliberations or vote on his own arrangements, to avoid breaching his general duties owed to the listed issuer.

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