

▶ **Doing business in China and the Hong Kong SAR:
Key issues for Russian companies to consider**



February 2015

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Hong Kong – a leading international market



By market capitalisation, Hong Kong is the world's 7th largest and Asia's 3rd largest (after Japan & Shanghai) exchange

In terms of IPO funds raised, Hong Kong ranked 3rd worldwide in 2014 (after NYSE and LSE Group) and in world's top 5 for 13 consecutive years

Source: Data from World Federation of Exchanges (as at end of 31 December 2014). Figures for the London Stock Exchange Group include those of Borsa Italiana.

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China's Capital Markets

Mainland China's stock markets

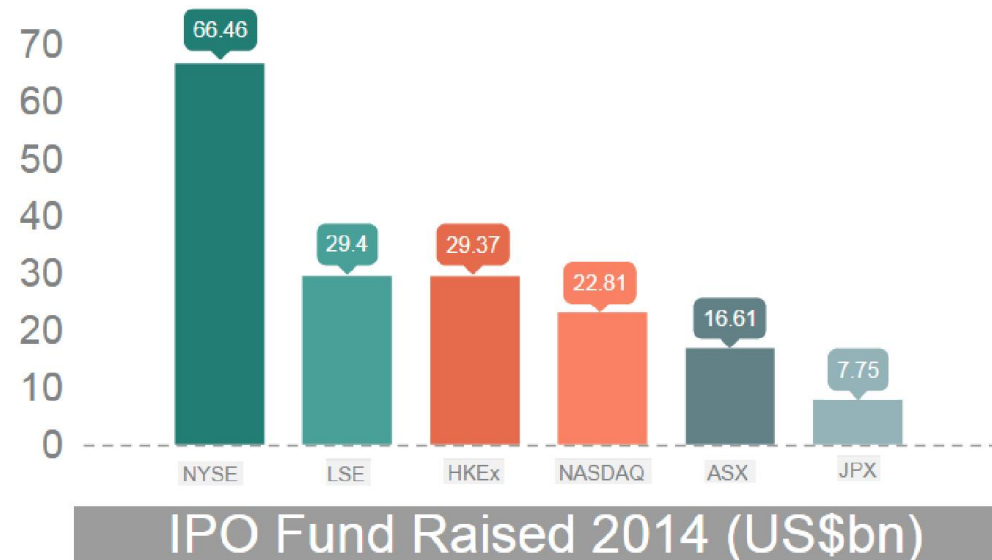
- ❖ Shanghai Stock Exchange – world's 5th largest by market cap in 2014
- ❖ Shenzhen Stock Exchange – world's 9th largest by market cap in 2014
- ❖ Shanghai & Shenzhen exchanges are domestic exchanges only
 - do not allow listing of foreign companies
 - restrict direct investment by foreign investors
 - limited degree of foreign investment allowed under the Qualified Foreign Institutional Investor (QFII) and Renminbi Qualified Institutional Investor (RQFII) programmes

Hong Kong Stock Exchange (HKEx)

- ❖ International exchange
 - full access for international investors
 - allows listing of foreign companies which meet its requirements
- ❖ Strategic position as gateway between Mainland China and rest of the world
- ❖ International listing venue of choice for Mainland China companies
- ❖ 876 Mainland Chinese companies listed on HKEx account for 60% of total market capitalisation (as at 31 Dec 2014)
- ❖ HKEx provides Mainland Chinese companies with access to international capital and offers international investors opportunity to invest directly in Mainland Chinese companies and participate in China growth story
- ❖ Increasing number of overseas companies listing on HKEx in recent years

Why List in Hong Kong?

- ▶ No. 1 International Financial Centre in Asia
- ▶ Access to Mainland Chinese investors currently through Qualified Domestic Institutional Investor programme
- ▶ Shanghai-Hong Kong Stock Connect launched in November 2014 allows Mainland Chinese investors to invest directly in HK listed stocks for the 1st time. Programme helps broaden investor base and add liquidity to HK market adding momentum to the market



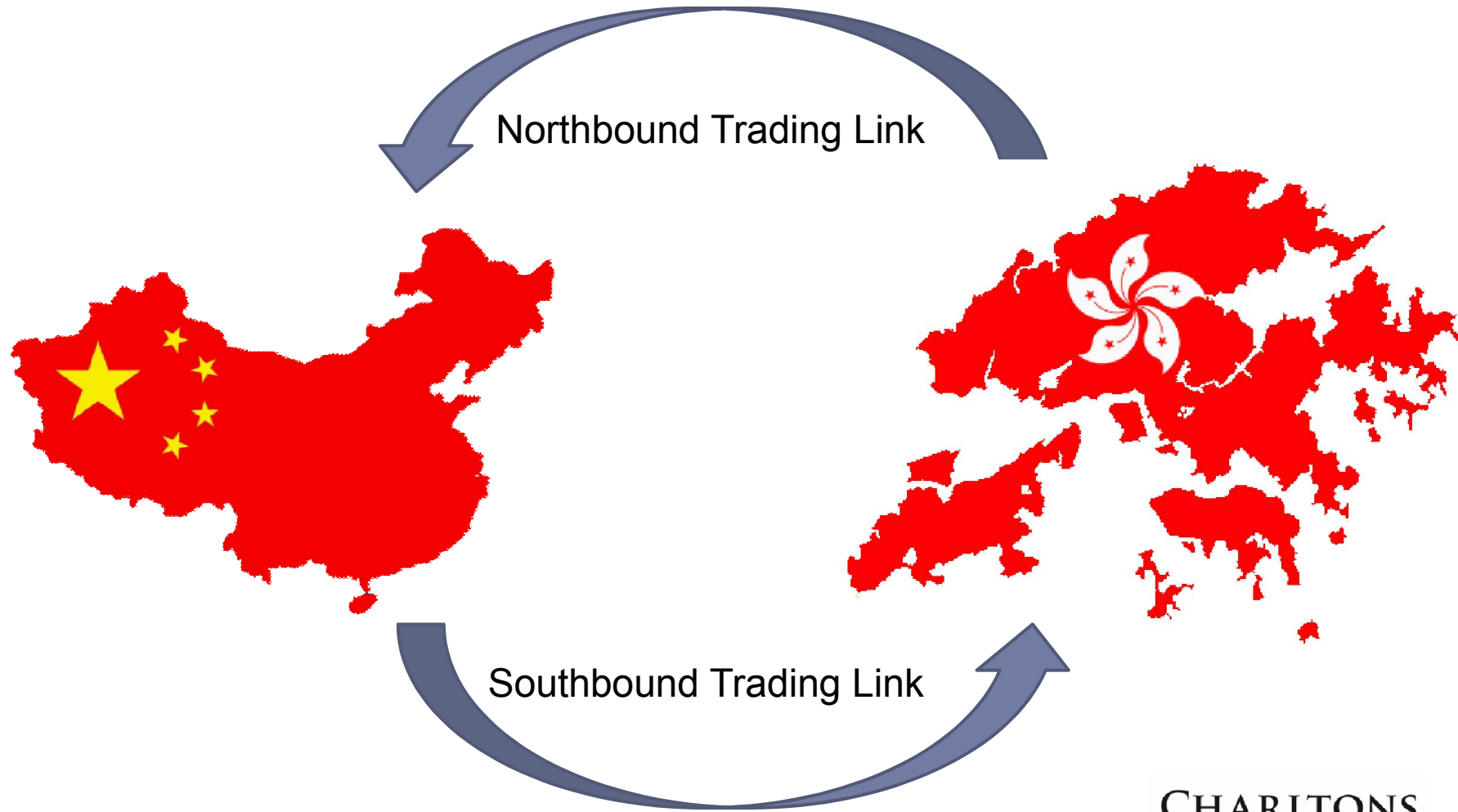
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Shanghai – Hong Kong Stock Connect



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Northbound/ Southbound Share Trading



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Eligible Shares

Eligible shares for Northbound Trading Link

- SSE 180 Index
- SSE 380 Index
- Shares of companies with A-shares and H-shares listed on the SSE

Eligible shares for Southbound Trading Link

- Hang Seng Composite LargeCap Index
- Hang Seng Composite MidCap Index
- Shares of companies listed on the HKEx and SSE

Quotas on a “Net Buy” Basis

	Aggregate Quota	Daily Quota
Northbound Trade	RMB 300 billion	RMB 13 billion
Southbound Trade	RMB 250 billion	RMB 10.5 billion

“Net buy” basis: Investors may sell cross-boundary securities regardless of quota balance

Eligible Investors

- Mainland investors who may participate in southbound trading link must be:
 - institutional investor; or
 - individual investors with at least RMB500,000 in securities and cash



Rules and Regulations

- Trading and clearing arrangements are subject to rules and regulations of the market where trading and clearing take place
- Listed companies only subject to rules and regulations of markets where they are listed
- Pilot programme will operate on days that are trading days in both SSE and HKEx
- ChinaClear and HKSCC will establish direct link for cross-border clearing (each will become a clearing participant of the other)



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Regulatory and Enforcement Cooperation

- CSRC and SFC will cooperate on:
 - referral and information exchange mechanisms concerning improper activities;
 - investigatory cooperation in relation to cross-border illegal activities including disclosure of false or misleading information, insider dealing and market manipulation;
 - bilateral enforcement exchange and training; and
 - enhancement of general standards of cross-border enforcement cooperation



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Benefits of HK listing

- ❖ Deep primary and secondary market liquidity
 - **115 new listings*** in 2014 raised **US\$ 29.4 billion** (up 33% from 2013)
 - * excludes transfers from the Main Board to GEM
 - Equity fund raised by listed cos post-IPO in 2014 = **US\$91.3 billion**
- ❖ Access to local and international funds – Hong Kong is Asia’s leading fund management centre with largest concentration of international fund managers
- ❖ Number of companies listed on HKEx as at 31 December 2014 = **1,752**
 - **1,548** on the Main Board and
 - **204** on the Growth Enterprise Market (**GEM**)

Benefits of HK listing (Cont'd)

- ❖ Established legal system based on English common law + regulatory framework = investor confidence
- ❖ Numerous tax advantages, currency convertibility, free transferability of securities and no restrictions on capital flow
- ❖ Opportunities for overseas cos to raise profile and visibility in China and Asia-Pacific region
- ❖ Branding opportunities for companies in the luxury goods sector – attracted listings of high profile companies such as Prada, Coach, Inc., L'Occitane and Samsonite
- ❖ China's position as a major consumer of energy, minerals & metals has attracted mining & natural resource companies
 - e.g. Swiss commodities giant Glencore International AG, Russia-based United Company Rusal PLC, Kazakhstan copper miner Kazakhmys PLC and Brazilian metals and mining company Vale S.A.
- ❖ Vale S.A = 1st overseas company to list on HKEx in form of Hong Kong Depositary Receipts (HDRs). HDR listings allowed on Main Board (but not GEM)

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Overseas listings

Issuer	Country of Operations/Headquarters	Country of Incorporation	Sector	Year of Listing	Funds Raised (HK\$ billion)
Glencore International plc	Headquartered in Switzerland	Jersey	Natural Resources	May 2011	77.75
RUSAL	Russia	Jersey	Natural Resources	January 2010	17.39
Mongolian Mining Corporation	Mongolia	Cayman Islands	Natural Resources	October 2010	5.81
PRADA SpA	Italy	Italy	Luxury	June 2011	19.23
Samsonite International SA	Headquartered in United States	Luxembourg	Luxury Goods	June 2011	10.09
L'Occitane	France	Luxembourg	Luxury Goods	May 2010	5.5
SECONDARY LISTINGS BY WAY OF INTRODUCTION					
Vale SA (HDR Listing)	Brazil	Brazil	Natural Resources	December 2010	
Kazakhmys PLC	Kazakhstan	United Kingdom	Natural Resources	June 2011	
Coach, Inc (HDR Listing)	United States	United States	Luxury Goods	December 2011	

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Hong Kong's markets

- ❖ **Main Board** – caters for established companies able to meet its profit or other financial standards
- ❖ **Growth Enterprise Market (“GEM”)** – caters for smaller growth companies, has lower admission criteria and acts as a stepping stone to the Main Board
- ❖ The post-listing obligations of GEM companies are now broadly similar to those of Main Board listed companies. The principal difference in the ongoing obligations of Main Board and GEM companies is that quarterly reporting is a Listing Rule requirement for GEM companies whilst for Main Board issuers it is still a Recommended Best Practice only (under the Corporate Governance Code)

Eligibility of Overseas Listing Applicants

- ❖ Listing Rules provide for listing of companies incorporated in Hong Kong, the PRC, the Cayman Islands and Bermuda (**Recognised Jurisdictions**)

- ❖ Exchange has also accepted companies from 21 other jurisdictions (**Acceptable Jurisdictions**) for listing:

Australia, Brazil, the British Virgin Islands, Canada (Alberta), Canada (British Columbia), Canada (Ontario), Cyprus, France, Germany, Guernsey, the Isle of Man, Italy, Japan, Jersey, the Republic of Korea, Labuan, Luxembourg, Singapore, the United Kingdom and the states of California and Delaware in the United States of America

- ❖ Exchange/SFC Joint Policy Statement Regarding the Listing of Overseas Companies sets out criteria for acceptance of overseas listing applicants

- ❖ Key requirements relate to:

- shareholder protection standards and
- regulatory co-operation arrangements between statutory securities regulator(s) in the applicant's jurisdiction of incorporation and its place of central management and control (if different) and the Hong Kong's Securities and Futures Commission ("SFC")

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Eligibility of Overseas Listing Applicants (Cont'd)

- ❖ Exchange requires listing applicant to demonstrate that the laws and regulations of its country of incorporation, **and** the provisions of its constitutional documents, **together** provide standards of shareholder protection which are equivalent to those provided under Hong Kong law

- ❖ Key shareholder protection standards relate to:
 - matters which require approval by a super-majority of shareholders' votes (e.g. material changes to the company's constitutive documents or voluntary winding-up of the company);

 - a requirement that any change to the company's constitutional documents to increase an existing shareholder's liability to the company must be agreed by the shareholder in writing;

 - the appointment, removal and remuneration of auditors must be approved by a majority of shareholders or another body that is independent of the board; and

 - proceedings at general meetings

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Eligibility of Overseas Listing Applicants (Cont'd)

- ❖ Applicants incorporated in Acceptable Jurisdictions – can refer to Exchange’s Country Guide for that jurisdiction. If adopt arrangements set out in the Country Guide – no need to provide detailed explanation of how it meets shareholder protection standards
- ❖ Applicants incorporated in a jurisdiction new to listing must demonstrate how the laws and regulations of their country of incorporation, their constitutional documents and the arrangements they adopt as a whole meet the key shareholder protection standards set out in the Joint Policy Statement

Regulatory Cooperation Arrangements

- ❖ statutory securities regulator in listing applicant’s (a) jurisdiction of incorporation **and** (b) 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 (the “**IOSCO MMOU**”); **or**
 - have entered an appropriate bi-lateral agreement with the SFC providing adequate arrangements with the SFC for mutual assistance and exchange of information for enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong

Russia as an Acceptable Jurisdiction of incorporation

- ❖ Russia - signed the IOSCO MMoU on 16 February 2015.
- ❖ The MMoU paves its way to becoming an Acceptable Jurisdiction for the purpose of listing in Hong Kong
- ❖ The previous absence of such an MMoU was the reason why Lukoil, Russia's second largest oil producer, suspended preparations to list in Hong Kong in 2013

Russia as an Acceptable Jurisdiction of incorporation (Cont'd)

- ❖ Before Russia signed the IOSCO MMoU, Russian company incorporated in an Acceptable Jurisdiction would not be able to list if its place of central management and control is Russia
- ❖ Restructuring a Russian company under a listing vehicle incorporated in a Recognised Jurisdiction risked being considered unacceptable if viewed as a deliberate attempt to avoid the requirements of the Joint Policy Statement
- ❖ 2 Russian-based companies are currently listed in Hong Kong: Rusal and IRC Limited - neither is incorporated in Russia
- ❖ Rusal – incorporated in Jersey and listed before requirement for regulatory cooperation arrangements with statutory securities regulator in listing applicant's place of central management and control
- ❖ IRC Limited – incorporated in Hong Kong (1 of the 4 Recognised Jurisdictions which do not require there to be regulatory cooperation arrangements in place with the jurisdiction of central management and control)

Mining and Natural Resource Companies

- ❖ New Listing Rules for Mineral and Petroleum companies introduced in 2010
- ❖ Advantage of listing as a Mineral Company on the Main Board is the opportunity to obtain a waiver from the requirement to meet the financial tests
- ❖ Mineral Company definition - new listing applicants whose Major Activities (whether directly or through a subsidiary) include **exploration for, and/or extraction of**, natural resources such as **minerals or petroleum**. Major Activity is one representing 25% or more of the total assets, gross revenue or operating expenses of the applicant and its subsidiaries
- ❖ Other requirements for Mineral Company listing applicants:
 - **Must have at least discovered** a portfolio of Indicated Resources (for minerals) or Contingent Resources (for petroleum) under applicable reporting standards “of sufficient substance” to justify a listing. Early stage exploration companies are **not** acceptable for listing
 - **Must have rights to actively participate** in exploration and/or extraction through either (i) an interest of >50% of assets (by value) or (ii) rights acceptable to HKEx giving it sufficient influence in decisions (e.g. under joint ventures, production sharing contracts or specific government mandates) (MB Rule 18.03 (1) / GEM Rule 18A.03 (1)). HKEx normally expects an interest of >30% in relevant assets. Companies with interest of <30% may be considered, e.g. if they actively operate mining project

Mining and Natural Resource Companies (Cont'd)

Requirement for Competent Person's Report

- ❖ A new applicant's listing document must include a Competent Person's Report on its reserves and resources
- ❖ A **Competent Person** must:
 - have > 5 years' experience relevant to the type of mineral/petroleum assets and to the mining activity undertaken by the listing applicant;
 - be professionally qualified and a member of a recognised professional organisation in a jurisdiction whose statutory securities regulator has regulatory cooperation arrangements with HK ; and
 - be independent of the listing applicant and its directors
- ❖ Effective Date of a Competent Person's Report must be less than 6 months before date of listing document
- ❖ Competent Person's Report (CPR) must be prepared in accordance with the JORC Code, NI 43-101 or the SAMREC Code (for mineral reserves and resources) or PRMS (for petroleum reserves and resources)
- ❖ If information is presented in accordance with other reporting standards (e.g. Chinese or Russian), reconciliation to the accepted reporting standards is required

Qualifications for MB listing

a) **Suitability for listing**

- Must satisfy Exchange that applicant and its business are suitable for listing

b) **Operating History and Management**

- A Main Board applicant must have a trading record period of, and management continuity for, at least **3 financial years** and **ownership continuity and control** for at least the **most recent audited financial year**

Exception:

- Under the market capitalisation/ revenue test, the Exchange may accept a shorter trading record period under substantially the same management if the new applicant can demonstrate that:
 - its directors and management have sufficient and satisfactory experience of at least 3 years in the line of business and industry of the new applicant; and
 - management continuity for the most recent audited financial year

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Qualifications for MB listing (Cont'd)

c) Financial Tests – Applicants must meet one of the three financial tests:

	1. Profit Test	2. Market Cap/Revenue Test	3. Market Cap/Revenue/Cashflow Test
Profit	At least HK\$50 million in the last 3 financial years (with profits of at least HK\$20 million recorded in the most recent year, and aggregate profits of at least HK\$30 million recorded in the 2 years before that)	-	-
Market Cap	At least HK\$200 million at the time of listing	At least HK\$4 billion at the time of listing	HK\$2 billion at the time of listing
Revenue	-	At least HK\$500 million for the most recent audited financial year	At least HK\$500 million for the most recent audited financial year
Cashflow	-	-	Positive cashflow from operating activities of at least HK\$100 million in aggregate for the 3 preceding financial years

- ❖ For both Tests 2 & 3, only revenue from **principal activities** (not revenue from incidental activities) will be recognised. Revenue from “book transactions” is disregarded

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Qualifications for MB listing (Cont'd)

Financial Requirement Waivers for Mineral Companies

- ❖ New applicant Mineral Companies can obtain a waiver from the financial tests if their directors and senior management together have > 5 yrs' experience relevant to the exploration and/or extraction activity that Mineral Company is engaged in. Details of such experience must be included in the listing document
- ❖ Pre-production stage companies seeking a waiver must be able to show a clear path to commercial production

Waivers for non-Mineral Companies

- ❖ Exchange may also accept a shorter trading record period and/or may vary or waive the financial standards requirements for:
 - newly formed “project” companies (for example a company formed to construct a major infrastructure project); or
 - in exceptional circumstances, if the applicant or its group has a trading record of at least two financial years and the Exchange is satisfied that the applicant's listing is in the interests of the applicant and its investors

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Qualifications for MB listing (Cont'd)

d) Shares in public hands

❖ The Rules require:

(1) a **25%** public float;

(2) that the expected market capitalisation of shares held by the public at the time of listing must be **at least HK\$50 million**

❖ Where a listing applicant has more than 1 class of securities, the total securities held by the public **on all regulated market(s) including the Exchange** must be **at least 25%** of the issuer's total issued share capital. The class of securities for which listing is sought must not be **less than 15%** of the issuer's total issued share capital, having an expected market capitalisation at the time of listing **of at least HK\$50 million**

Qualifications for MB listing (Cont'd)

d) Shares in public hands (Cont'd)

Exchange's Discretion to Accept Lower Public Float

- ❖ For large companies, with an expected market capitalisation in excess of HK\$10 billion, the percentage required to be in public hands, may, at the Exchange's discretion, be lower (but not lower than 15%) provided that:
 1. the Exchange is satisfied that the number of securities and their distribution will enable the market to operate properly with a lower percentage;
 2. the issuer makes appropriate disclosure of the lower prescribed percentage of public float in the listing document;
 3. the issuer confirms the sufficiency of public float in successive annual reports after listing; and
 4. a sufficient proportion (to be agreed in advance with the Exchange) of any securities to be marketed contemporaneously in and outside Hong Kong, must normally be offered in Hong Kong

- ❖ The waiver cannot be applied for post-listing if the issuer subsequently satisfies the HK10 billion market capitalisation requirement

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Qualifications for MB listing (Cont'd)

e) **Minimum number of shareholders**

- The minimum number of shareholders at the time of listing is 300
- Not more than 50% of the publicly held shares can be beneficially owned by the 3 largest public shareholders

f) **Market capitalisation at time of listing**

Minimum expected market capitalisation of new applicant is:

- HK\$200 million for Profit Test applicants;
- HK\$4 billion for Market Capitalisation/Revenue Test applicants; or
- HK\$2 billion for Market Capitalisation/Revenue/Cash Flow Test applicants

Determination of Market Capitalisation

- Expected market capitalisation at the time of listing is calculated on the basis of all issued share capital of the applicant including:
 - the class of securities to be listed;
 - any other class(es) of securities whether unlisted or listed on other regulated markets
- The expected issue price of the securities to be listed is used to determine the market value of securities that are unlisted or listed on other markets

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Qualifications for MB listing (Cont'd)

g) Working capital sufficiency

- Listing document must contain confirmation of sufficient working capital for at least next 12 months
- The sponsor must provide written confirmation to the Exchange that it has obtained written confirmation from the applicant as to the sufficiency of working capital and it is satisfied that the issuer's confirmation is given after due and careful enquiry
- Mineral Companies are required to have sufficient working capital for 125% of the group's requirements for the next 12 months

h) Competing businesses

The Main Board Listing Rules allow competing businesses of an applicant's directors and "controlling shareholder(s)" provided that full disclosure is made at the time of listing and on an on-going basis

- A "controlling shareholder" is person(s) controlling 30% or more of the voting power at general meetings; or the composition of a majority of the board of directors

Qualifications for MB listing (Cont'd)

i) Accountants' report and accounting standards

Requirements:

- must cover 3 financial years prior to issue of listing document
- may be prepared in accordance with Hong Kong or International Financial Reporting Standards or, where the overseas company is seeking a secondary listing on HKEx, US GAAP

j) Directors

- Collectively responsible for management and operations of listed issuer
- Fiduciary duties and duties of due skill and care
- Character, experience and integrity requirement

Qualifications for MB listing (Cont'd)

k) Independent non-executive directors

Minimum Number of INEDs

- Rules require appointment of a minimum of 3 INEDs. At least 1/3 of an issuer's board must be INEDs. Listed issuer to inform the Exchange and publish an announcement immediately if the number of its INEDs falls below the minimum or it does not have one qualified INED. It has 3 months to rectify the situation

Qualification of INEDs

- Rules require appointment of at least one INED with appropriate professional qualifications or accounting or related financial management expertise

l) Committees

- Establishment of an **audit committee** and **remuneration committee** is compulsory under Main Board Rules
- Audit Committee must be made up only of non-executive directors, the majority must be INEDs of the issuer. Minimum of 3 members: at least one must be an INED with appropriate professional qualifications or accounting or related financial management expertise
- Remuneration Committee must be made up of a majority of INEDs with written terms of reference and chaired by an INED

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Qualifications for MB listing (Cont'd)

m) Sponsor

- A new applicant seeking a listing of equity securities on the Main Board must appoint one or more sponsors under a written engagement agreement to assist with its listing application (Rule 3A.02). Only firms that are licensed under Part V of the Securities and Futures Ordinance (“SFO”) for Regulated Activity Type 6 (Advising on Corporate Finance) and are permitted by their licence to conduct sponsor work are allowed to act as sponsors to new listing applicants
- At least one sponsor must be independent of the listing applicant
- The sponsor(s) must be appointed at least 2 months before submission of the listing application

Qualifications for MB listing (Cont'd)

n) Compliance adviser

- Listing applicants must appoint a compliance adviser for the period commencing on initial listing and ending on the publication of financial results for the 1st full financial year after listing
- A compliance adviser must be either a corporation licensed or an authorised institution registered to advise on corporate finance matters under the SFO
- Issuers must consult their compliance adviser:
 - before publication of any regulatory announcement or report, circular or financial report;
 - where a notifiable or connected transaction is contemplated (including share purchases and share repurchases);
 - where the issuer proposes to use IPO proceeds other than as set out in the listing document or where its business activities, developments or results differ from information in the listing document; and
 - where the Exchange makes an inquiry as to unusual movements in the price or trading volume of the issuer's securities

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Qualifications for MB listing (Cont'd)

o) Service agent

Overseas companies must appoint and maintain the appointment of a person authorised to accept service of process and notices on their behalf in Hong Kong throughout the period of listing

p) Share register

Overseas companies must maintain a register of shareholders in Hong Kong and provide for transfers to be registered locally

q) Management Presence

Normally at least two of the executive directors must be ordinarily resident in Hong Kong

Qualifications for MB listing (Cont'd)

r) **Authorised Representatives**

Every issuer must appoint 2 authorised representatives to act at all times as the issuer's principal channel of communication with the Exchange (either 2 directors or a director and the company secretary)

Responsibilities of an authorised representative

- ❖ being the principal channel of communication between the Exchange and the listed issuer; and
- ❖ to ensure that whenever he is outside Hong Kong suitable alternates are appointed, available and known to the Exchange

s) **Company Secretary**

- A person to be appointed as company secretary needs to have appropriate academic or professional qualifications or relevant experience
- The Exchange takes into account the length of the person's employment with the issuer, familiarity with HK's Listing Rules and regulatory regime, training, and professional qualifications in other jurisdictions
- A company secretary is not required to be resident in Hong Kong

Listing Application Procedure

- ❖ At the time of application to list, an applicant must submit a draft listing document (the **Application Proof**) the information in which must be “**substantially complete**” except in relation to information that by its nature can only be finalised and incorporated at a later date
- ❖ The Exchange has the power to **return** a listing application on the ground that the information in the listing application or Application Proof is not “substantially complete”
- ❖ If the Exchange returns a listing application to a sponsor before issuing its first comment letter to the sponsor, the initial listing fee will be refunded but in other cases it will be forfeited
- ❖ If an application is returned, a new application **cannot be submitted until 8 weeks after** the Return Decision
- ❖ The names of the applicant and sponsor(s) together with the return date will also be published on the Exchange’s website
- ❖ Before submitting the listing application, the sponsor is required to perform all reasonable due diligence on the listing applicant (except in relation to matters that can only be dealt with later)
- ❖ Sponsors also have a duty to report to the Exchange any material information concerning non-compliance with Listing Rules or other regulatory requirements relevant to the listing

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Listing Application Procedure (Cont'd)

Other documents which must be submitted with the listing application include:

- ❖ Written confirmation by each director/supervisor that the information in the Application Proof is accurate and complete in all material respects and not misleading or deceptive
- ❖ Reporting accountants' confirmation that no significant adjustment is expected to be made to the draft reports included in the Application Proof (Guidance Letter HKEx-GL58-13))
- ❖ Experts' confirmation – that no material change is expected to be made to their reports included in the Application Proof (see Guidance Letter HKEx-GL60-13)
- ❖ Draft letter from the sponsor confirming that it is satisfied that the directors' sufficiency of working capital statement has been made by the directors after due and careful enquiry
- ❖ Certified copy of the applicant's certificate of incorporation or equivalent

Listing Application Procedure (Cont'd)

Initial 3-day check (from 1 Oct 2013 to 30 Sept 2014)

- ❖ the Application Proof will be subject to an initial 3-day check by the Exchange based on a prescribed checklist in Table B of Guidance Letter HKEx-GL56-13 (***the Initial 3-day Checklist***)
- ❖ If an Application Proof fails to include matters listed in the Initial 3-day Checklist or it is considered not substantially complete for other reasons (e.g. failure to include material information), the Exchange may return the listing application
- ❖ At the end of this 3-day check, the Exchange will either confirm acceptance of the listing application for detailed vetting or will return the listing application with a letter detailing the reasons for its return
- ❖ Since the initial 3-day check involves only a limited qualitative assessment, the Exchange may return a listing application for not being substantially complete after it accepts an application for detailed vetting following the 3-day check period
- ❖ Listing applications returned during the initial 3-day check are also ***subject to an 8-week moratorium*** on filing a new application and the publication of the names of the sponsor(s) and listing applicant together with the date of the return

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Listing Application Procedure (Cont'd)

- ❖ The Exchange will comment on the Application Proof within 10 business days from receipt of the application
- ❖ Second and further rounds of comments (if any) are given within 10 business days from receipt of reply to the previous comment letter
- ❖ If there is only one set of comments from Exchange, assuming sponsor takes 5 business days to respond, the listing application can be heard by the Listing Committee within around 25 business days
- ❖ If there are 2 rounds of Exchange comments, assuming sponsor takes 5 business days to respond, the listing application can be heard by the Listing Committee **within around 40 business days**
- ❖ If the listing is approved at the Listing Committee hearing, the Exchange will issue a letter requiring the posting of a near-final draft of the listing document (**PHIP**) on the Exchange's website. This must be submitted for publication before distribution of the red herring prospectus to institutional or other professional investors and before book-building commences

Requirements for Secondary Listings

- ❖ Overseas companies can list on the Main Board (but not GEM) by way of a **dual primary listing** or a **secondary listing**
- ❖ A dual primary listing requires the company to comply with the full requirements of the Hong Kong Stock Exchange and the requirements of the overseas exchange
- ❖ A secondary listing in Hong Kong means that the company will be principally regulated by the rules of the jurisdiction of its primary listing. For this reason, it will normally be granted extensive waivers from the HK Listing Rule
- ❖ The Exchange expects the dominant market in the company's securities to be on the overseas exchange
- ❖ An overseas company seeking a secondary listing must demonstrate to the Exchange that its jurisdiction of incorporation and the exchange of its primary listing provide standards of shareholder protection which are at least equivalent to the standards of shareholder protection provided in Hong Kong. Any shortcoming in the relevant standards can be rectified by amendments to the applicant's constitutive documents

Requirements for Secondary Listings (Cont'd)

- ❖ The Joint Policy Statement sets out a list of **Recognised Exchanges** which are considered to provide equivalent standards of shareholder protection including the main markets of:
 - the Amsterdam Stock Exchange
 - the Australian Securities Exchange
 - the Brazilian Securities, Commodities and Futures Exchange
 - the Frankfurt Stock Exchange
 - the Italian Stock Exchange
 - the London Stock Exchange (premium segment, LSE)
 - the Madrid Stock Exchange
 - NASDAQ OMX
 - the New York Stock Exchange
 - the Paris Stock Exchange
 - the Singapore Exchange
 - the Stockholm Stock Exchange
 - the Swiss Exchange
 - the Tokyo Stock Exchange
 - the Toronto Stock Exchange

Requirements for Secondary Listings (Cont'd)

- ❖ Additional requirements apply where the Exchange expects that the majority of trading in the issuer's securities will be on the Exchange. These aim to prevent a company selecting as its primary change an exchange with lower standards of regulation than the Exchange and using the Exchange as the main venue for trading its securities

- ❖ These requirements are that:
 - the issuer's primary listing must be on a regulated, regularly operating, open stock market which is recognised by the Exchange for this purpose (only London and Irish Stock Exchanges have been recognised to date)

 - the issuer must have an adequate nexus with that market

 - the primary regulator in that market must have entered into a written agreement with the Exchange governing the parties' respective roles in the regulation of the issuer

Requirements for Secondary Listings (Cont'd)

Additional Requirements for Secondary Listings

- ❖ **Overseas Listing** - listing on the issuer's primary exchange must have been granted before the listing on the Exchange can be granted
- ❖ **Public Float** – the public float requirement does not apply

However, the company must ensure that there are sufficient registered shares on its Hong Kong share register to ensure liquidity and should transfer shares over from the overseas share register, if necessary

- ❖ **Listing Document**
 - the Exchange may require the listing document to contain a summary of the relevant regulatory provisions applicable to companies with a primary listing on the issuer's primary stock exchange
 - if a company is incorporated in a Recognised Jurisdiction that is not also its place of central management and control, the listing document must disclose whether the statutory securities regulator of its place of central management and control is a full signatory of the IOSCO MMOU or has entered into a bilateral regulatory cooperation agreement with the SFC

Requirements for Secondary Listings (Cont'd)

Additional Requirements for Secondary Listings

- ❖ **Authorised Representatives** - The overseas issuer need only appoint one authorised representative who need not be a director or secretary, but must be a person acceptable to the Exchange

Waivers from Listing Rule Requirements

- ❖ Automatic waivers from certain Rule requirements apply where the listing applicant:
 - has a market capitalisation >USD400 million
 - has been listed in its primary market for > 5 years
 - has a good record of compliance with the rules and regulations of its home jurisdiction and primary market
 - is primarily listed on a Recognised Exchange and
 - has a “centre of gravity” outside of Greater China

Secondary Listings by way of Introduction (Cont'd)

- ❖ **Listing by way of Introduction** = most commonly used method of obtaining a secondary listing on the Exchange
- ❖ Vale SA, Kazakhmys PLC and Coach, Inc – secondary listings by way of introduction
- ❖ There is often no fund raising and no new issue of shares
- ❖ Raises brand awareness among investors and consumers in the China market and rest of Asia
- ❖ The Exchange will not normally allow a listing by way of introduction where:
 - there is likely to be significant public demand for the securities
 - there will be a change in the issuer's circumstances or in the nature of the issuer's business
 - if the securities have been marketed in Hong Kong in the previous 6 months and the marketing was conditional on listing being granted for those securities

Continuing obligations of Listed Companies post-listing

- ▶ Restriction on controlling shareholders' disposal of shares;
- ▶ Restriction on new issues of shares;
- ▶ Disclosure of Inside Information (i.e. Price Sensitive Information);
- ▶ Announcements of various matters;
- ▶ Disclosure of financial information;
- ▶ Compliance with requirements relating to notifiable transactions;
- ▶ Compliance with requirements relating to connected transactions;
- ▶ Compliance with requirements under the Corporate Governance Code;
- ▶ Compliance with the rules governing dealings by directors in their listed securities (“Model Code for Securities Transactions by Directors of Listed Companies”)

Continuing obligations of Listed Companies post-listing (Cont'd)

Restriction on controlling shareholders' disposal of shares

- The Listing Rules impose restrictions on the disposal of shares by controlling shareholders following a company's new listing.

Restriction on new issues of shares

- Subject to a number of exceptions, a listed issuer cannot issue any shares in the 6 months following listing.

Disclosure of Inside Information (i.e. Price Sensitive Information)

- Listed issuers must disclose inside information to the public as soon as reasonably practicable after inside information has come to their knowledge.
- Failure to do so may attract civil sanctions.

Announcements

- Listed issuers are required to publish announcements on a wide range of matters such as board meeting for approval of results; periodic results; change in auditor or financial year end; change in directors; notice of general meetings; issue of securities; public float; share repurchase etc.

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Continuing obligations of Listed Companies post-listing (Cont'd)

Disclosure of financial information

- Listed issuers are required to publish financial information including annual reports, half-year reports and quarterly reports.
- In particular, annual accounts must be audited by practising accountants of good standing and independent of the issuers.

Compliance with requirements relating to notifiable transactions

- Listed issuers are required to comply with certain requirements in respect of certain transactions, principally acquisitions and disposals, entered into by a listed issuer and its subsidiaries.
- The requirements include obligations to notify the Exchange of the transaction, disclose the transaction to the public by publication of an announcement and to obtain prior shareholders' approval depending on the size of the transaction.

Continuing obligations of Listed Companies post-listing (Cont'd)

Compliance with requirements relating to connected transactions

- Listed issuers are required to comply with the requirements relating to connected transactions.
- Generally, a connected transaction is any transaction between a listed issuer or any of its subsidiaries and a connected person.

Compliance with requirements under the Corporate Governance Code

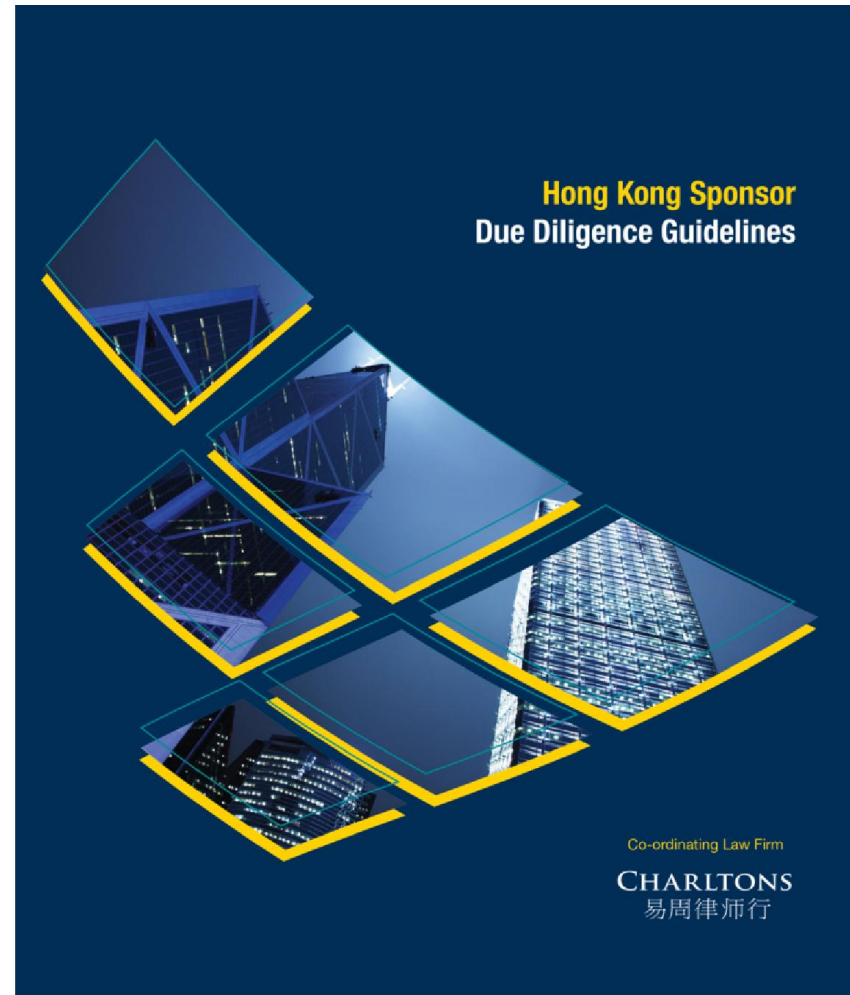
- Listed issuers must state in their half-year and annual reports whether they have complied with the Code Provisions under the Corporate Governance Code and give reasons for any non-compliance.

Compliance with the rules governing dealings by directors in their listed securities (“Model Code for Securities Transactions by Directors of Listed Companies”)

- Listed Companies must adopt rules governing dealings by directors in their listed securities on terms no less stringent than the terms set out in the Listing Rules.
- The Model Code sets out the circumstances under which a director of a listed issuer must not deal in the securities of the company.

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Hong Kong Sponsor Due Diligence Guidelines



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Hong Kong Sponsor Due Diligence Guidelines

- In 2013, Charltons led a group of 20 leading Hong Kong corporate law firms and 40 investment banks in the production of the Hong Kong Sponsor Due Diligence Guidelines;
- Provide practical guidance on the due diligence that needs to be conducted on companies listing on the Hong Kong Stock Exchange in order to comply with new requirements that came into effect on 1 October 2013;
- Contain 3 main sections:
 - Standards – sponsors’ due diligence obligations under Hong Kong laws & regulations
 - Guidance – the market’s interpretation of the standards
 - Recommended Steps - practical steps to meet the Standards
- Comprehensive handbook for practitioners – incorporate all relevant regulatory standards and guidance from the Hong Kong regulators and industry guidance
- English version of the Due Diligence Guidelines was published in September 2013 and is available free online at <http://duediligenceguidelines.com>
- Chinese version of the Guidelines is also available free online at <http://duediligenceguidelines.com.cn>
- Printed copies of the Due Diligence Guidelines can be purchased from orders@duediligenceguidelines.com

CHARLTONS
易周律师行

Contact us

Hong Kong Office

12th Floor
Dominion Centre
43 – 59 Queen's Road East
Hong Kong

Telephone: (852) 2905 7888
Fax: (852) 2854 9596
Email: enquiries@charltonslaw.com
Website: <http://www.charltonslaw.com>



CHARLTONS
易周律師行

Other Locations

China

Beijing Representative Office

3-1703, Vantone Centre
A6# Chaowai Avenue
Chaoyang District
Beijing
People's Republic of China
100020

Telephone: (86) 10 5907 3299
Facsimile: (86) 10 5907 3299
enquiries.beijing@charltonslaw.com

Myanmar

Yangon Office of Charltons Legal Consulting Ltd

161, 50th Street
Yangon
Myanmar
enquiries.myanmar@charltonslaw.com

Shanghai Representative Office

Room 2006, 20th Floor
Fortune Times
1438 North Shanxi Road
Shanghai
People's Republic of China
200060

Telephone: (86) 21 6277 9899
Facsimile: (86) 21 6277 7899
enquiries.shanghai@charltonslaw.com

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