

## **The Float Guide**

How to float a company on the Hong Kong Stock Exchange

While every effort has been made to ensure the accuracy of the information contained in this publication, it is for general guidance only and should not be treated as a substitute for specific advice. If you would like advice on any of the issues raised, please speak to the author, **Rhoda Yung** or other partners of our Corporate Finance Practice Group, whose contacts are set out in the contacts section.

The applicable laws and rules are stated as at 1 January 2022.

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## ABOUT DEACONS

Deacons is Hong Kong's premier independent law firm. We provide an extensive range of legal and commercial services to local and international corporations. With over 170 years of experience in providing legal services, our clients are assured of the integrity and stability of one of the region's oldest and most respected law firms.

Deacons was the first firm to be granted three licences to operate representative offices in Mainland China. We currently have representative offices in Beijing, Guangzhou and Shanghai where our lawyers have extensive expertise, experience and contacts in the PRC market.

Deacons' principal service areas include Banking & Finance, Capital Markets, China Trade & Investment, Competition, Construction, Corporate and M&A, Corporate Services, Employment & Pensions, Family Law, Insolvency & Restructuring, Insurance, Intellectual Property, Investment Funds, Litigation & Dispute Resolution, Private Clients, Real Estate, Regulatory and Tax.

## ABOUT OUR CORPORATE FINANCE PRACTICE

Deacons' Corporate Finance Practice Group is one of the market leaders in the Hong Kong equity and debt capital markets. We advised on over 130 **IPOs/new listings** in Hong Kong over the last ten years. Based on public information available to us, we **ranked first** among Hong Kong law firms in terms of advising on the largest number of IPO/new listings announced in four out of the last ten years. In addition, we were also involved in a substantial number of takeovers-related transactions involving Hong Kong listed companies and debt capital market transactions.

The practice group currently comprises 13 partners and over 70 associates/executives, many of whom are qualified and, in some cases, have practised in different jurisdictions. We have extensive experience in a broad spectrum of corporate finance, equity and debt capital markets, structured products and regulatory work. In addition to new listings and takeovers-related transactions, we have also demonstrated a proven ability to handle major and complex transactions including secondary issues, public and private company mergers and acquisitions, private equity, corporate restructurings, debt / bond issues (including sovereign bond issues), cross-border and local joint venture and other commercial transactions. Starting from 2022, Deacons' Banking & Finance team has been integrated into the Corporate Finance Practice Group.

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## INTRODUCTION

“Floating” a company marks a significant milestone in the company’s development.

Being a gateway to the rapidly growing market of Mainland China and equipped with a well-established and sound regulatory framework and settlement system, the SEHK has been one of the most sought-after platforms for floating a company. Hong Kong’s IPO market has ranked the first in the world in seven of the last 13 years. According to the market statistics published by HKEX, as at 31 December 2021, 2,219 companies were listed on the Main Board of the SEHK and 353 companies were listed on GEM of the SEHK.

This Float Guide aims to provide you with an overview of the Hong Kong regulatory requirements and process for listing a company’s equity securities on the SEHK as at 1 January 2022 only and should not be relied upon as legal advice. The information contained in this Float Guide is for general guidance and may not apply in a specific situation. There are also constant changes to the regulatory requirements and practices from time to time, which may affect the applicability of this Float Guide. No representation or warranty, expressed or implied, is made as to, and no reliance should be placed on, the fairness, accuracy, completeness or correctness of any information contained in this Float Guide and Deacons accepts no responsibility for any errors or omissions this Float Guide may contain. Detailed legal advice should be sought in respect of any specific issues. If you would like advice on any specific issues, please feel free to contact our contacts listed on the front page of this Float Guide.

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## DEFINITIONS

<b>Application Proof</b>	a draft listing document that is required to be substantially complete and is submitted to the SEHK together with the listing application
<b>CASBE</b>	China Accounting Standards Committee of the China Ministry of Finance
<b>CIS</b>	collective investment schemes
<b>Companies (Winding Up and Miscellaneous Provisions) Ordinance</b>	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32 of the Laws of Hong Kong)
<b>GEM</b>	GEM operated by the SEHK
<b>GEM Listing Rules</b>	Rules Governing the Listing of Securities on GEM
<b>HDR</b>	Hong Kong depositary receipts
<b>HKEX</b>	Hong Kong Exchanges and Clearing Limited
<b>IPO</b>	initial public offering
<b>Listing Rules</b>	Main Board Listing Rules and GEM Listing Rules
<b>Main Board</b>	Main Board of the SEHK
<b>overseas issuer</b>	an issuer that is neither a Hong Kong issuer or a PRC issuer
<b>Main Board Listing Rules</b>	Rules Governing the Listing of Securities on the SEHK
<b>PHIP</b>	Post Hearing Information Pack
<b>PN21/PN2</b>	Practice Note 21 of the Main Board Listing Rules/Practice Note 2 of the GEM Listing Rules
<b>PRC</b>	for purposes of the Listing Rules, the People's Republic of China, other than the regions of Hong Kong, Macau and Taiwan
<b>SEHK</b>	The Stock Exchange of Hong Kong Limited
<b>SFC</b>	Securities and Futures Commission of Hong Kong
<b>SFO</b>	Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong)
<b>SPAC</b>	special purpose acquisition company
<b>WVR</b>	weighted voting rights

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## **EXECUTIVE SUMMARY**

### **WHAT ARE THE KEY LISTING REQUIREMENTS?**

There are a number of listing methods on the SEHK: offer for subscription, offer for sale, placing, introduction and in the case of Main Board listing, transfer from GEM. Some of the listing methods may overlap to allow different offering mechanisms.

There are a number of basic requirements for a primary listing of equity securities on the Main Board or GEM, including those relating to financial requirements, acceptable jurisdictions, suitability for listing, ownership and management continuity, accounts, management presence and integrity, market capitalisation, public float, shareholder protection and shareholder spread. In practice, some of these requirements may be waived by the SEHK but others are strictly enforced and less likely to be waived.

### **WHO ARE THE WORKING PARTIES?**

The sponsor is usually one of the first and most important working parties that the listing applicant has to engage, as the sponsor will provide corporate finance advice for the listing applicant, assist the listing applicant in appointing other working parties and supervise and coordinate works of all the parties involved in the IPO process.

Other working parties typically involved in a Hong Kong IPO include capital market intermediaries (including global coordinator(s), bookrunner(s) and lead manager(s) (one or more of which may also be, or affiliated with, the sponsor)), underwriters, legal advisers, the reporting accountants, valuers, receiving banks, share registrar and transfer agent, internal control advisers, industry expert, financial printer, public relations advisers, compliance adviser and (for issuance of HDR only) depositary.

### **HOW LONG DOES THE IPO TAKE?**

A relatively straight-forward and well-organised float can be completed in 4 to 6 months. The complexity of the structure and issues (both legal, regulatory and commercial) involved will dictate the time required to complete the float.

### **WHAT DO DUE DILIGENCE AND VERIFICATION INVOLVE?**

Misrepresentations or misleading statements in a listing document (including prospectus) or, possibly, publicity materials to subscribe for shares in an issuer, attract civil and criminal liabilities under the Hong Kong regulatory regime. Careful due diligence and verification of statements disclosed, supported with independent documentary evidence if possible, may help the directors and other working parties put forward a defence that they had reasonable grounds to believe the statements at the time when they were included in the prospectus were true.

### **WHAT DOES THE PROSPECTUS COVER?**

A listing applicant needs to include all relevant information, including but not limited to those relating to itself and the business of its listing group, in the prospectus so that the potential investors may make an informed assessment of the assets and liabilities, profits and losses, financial position and performance and prospects of the listing applicant, the rights and liabilities attaching to the shares to be offered and the risks involved in an investment in the listing applicant.

### **WHAT IS UNDERWRITING?**

The Hong Kong public offer has to be fully underwritten under the Listing Rules and the international placing is also underwritten in practice. In other words, the underwriters shall procure subscribers for,

or failing which, subscribe for, shares offered under the IPO at the offer price to be agreed between the issuer and the global coordinator on behalf of the underwriters.

## **WHAT NEEDS TO BE WATCHED OUT FOR WHEN MARKETING THE FLOAT?**

The Listing Rules and legislation of Hong Kong impose stringent restrictions and control over publicity and release of information concerning a listing applicant. Leakage of information regarding a proposed listing may result in substantial delay in the listing timetable as the SEHK may delay the hearing for considering the listing application.

## **ANY OTHER CONSIDERATIONS?**

In addition to the basic listing requirements, the Listing Rules also contain additional requirements, modifications and exceptions to the basic requirements to tailor for different companies and industries, e.g. pre-revenue biotech companies, mineral companies, investment companies, companies with WVR structures, SPACs. Each listing applicant should review these additional requirements to see if they apply to its listing application.

A company which is proposing to float on the SEHK should, as an important part of the listing process, consider and plan for the post-listing regulatory regime, in particular the strict corporate governance requirements, the onerous financial and other disclosure requirements and the controls on corporate transactions. Further, controlling shareholders and the company should pay attention to the restrictions on disposal of shares and issue of new shares after listing. Each listing applicant should consider and assess the compliance costs involved post-listing.



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## LISTING REQUIREMENTS

Currently, the SEHK runs two platforms for listing - the Main Board and GEM. The Rules Governing the Listing of Securities on the SEHK govern the listing of companies on the Main Board and the Rules Governing the Listing of Securities on GEM govern the listing of companies on the GEM.

GEM has been positioned as a market designed to accommodate small and mid-sized companies which do not satisfy the more stringent Main Board listing requirements to go public.

A listing applicant will also have to determine the method of listing. Set out below are various methods of listing on the SEHK:

- 1 Offer for subscription
  - An offer to the public by the listing applicant of its own securities for subscription. The subscription must be fully underwritten for Main Board listing applicants.
- 2 Offer for sale
  - An offer to the public by the holders or allottees of securities already in issue or agreed to be subscribed.
- 3 Placing
  - The obtaining of subscriptions for, or the sale of securities by, an issuer or intermediary primarily from or to persons selected or approved by the issuer or the intermediary.
- 4 Introduction
  - An application for listing of securities already in issue where no marketing arrangements are required because their adequate marketability when listed can be assumed, as in the case of securities already listed on another stock exchange or spin-off listings.
- 5 Transfer from GEM
  - A GEM-listed company may transfer its listing to the Main Board. As a result of the rule changes that took effect on 15 February 2018 removing the streamlined process, transfer applicants are required to comply with the listing requirements applicable to new Main Board listing applications.

A listing by way of an IPO may involve an offer of new securities or an offer of existing securities or a combination of both. The SEHK may not permit a new applicant to be listed on the Main Board by way of private placement only if there is likely to be significant public demand for its securities. A GEM IPO must include an offering to the public of not less than 10% of all securities offered. A listing by way of an introduction may involve no share offering depending on the SEHK's assessment on the effectiveness of any liquidity arrangements for the listing applicant's shares in the Hong Kong market.

Each listing applicant also has to ensure that its business must, in the opinion of the SEHK, be suitable for listing. Set out below are certain principal basic requirements for a primary listing of equity securities on the Main Board or GEM:

## (1) Financial requirements

In general, each listing applicant has to demonstrate to the SEHK that it has:

Main Board		GEM
a trading record of not less than 3 financial years (unless a shorter period is accepted by the SEHK) and satisfying one of the following tests:		a trading record of at least 2 financial years, with:
<i>Profit Test</i>	Profit attributable to shareholders of at least HK\$80 million in the last 3 financial years (with profits of at least HK\$35 million recorded in the most recent year, and aggregate profits of at least HK\$45 million recorded in the 2 years before that)	<ul style="list-style-type: none"> <li>• Positive cashflow generated from operating activities in the ordinary and usual course of business of at least HK\$30 million in aggregate for the 2 financial years immediately preceding the issue of the listing document; and</li> <li>• Market capitalisation of at least HK\$150 million at the time of listing</li> </ul>
<i>Market Capitalisation / Revenue / Cashflow Test</i>	<ul style="list-style-type: none"> <li>• Market capitalisation of at least HK\$2 billion at the time of listing;</li> <li>• Revenue of at least HK\$500 million for the most recent audited financial year; and</li> <li>• Positive cashflow from operating activities of at least HK\$100 million in aggregate for the 3 preceding financial years</li> </ul>	
<i>Market Capitalisation / Revenue Test</i>	<ul style="list-style-type: none"> <li>• Market capitalisation of at least HK\$4 billion at the time of listing; and</li> <li>• Revenue of at least HK\$500 million for the most recent audited financial year</li> </ul>	

## **(2) Jurisdictions of incorporation**

Prior to 1 January 2022, Hong Kong, the PRC, Bermuda and the Cayman Islands were the four jurisdictions prescribed under the Listing Rules as an issuer's place of incorporation eligible for listing in Hong Kong. The SEHK also accepted 28 overseas jurisdictions as an issuer's place of incorporation, including Austria, Australia, Brazil, British Virgin Islands, Canada (Alberta, British Columbia and Ontario), Cyprus, England & Wales, France, Germany, Guernsey, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Republic of Korea, Labuan, Luxembourg, Netherlands, Russia, Singapore, and United States of America (California, Delaware and Nevada), provided that companies incorporated in these jurisdictions were able to meet the requirement for equivalent shareholder protection standards in the Listing Rules.

Under the revised overseas issuers listing regime effective from 1 January 2022, an issuer is required to demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in Appendix 3 to the Listing Rules (which cover the most fundamental shareholders' rights relating to notice and conduct of shareholders' meetings, approval of important matters, members' right to requisition a meeting, remove directors, vote, speak and appoint proxies/corporate representatives, auditors, appointment of directors to fill casual vacancies and inspection of shareholders' register, etc.). For this purpose, the SEHK may require an overseas issuer to amend its constitutional documents to provide these core shareholder protection standards. At the time of submitting a listing application, an overseas issuer is required to confirm to the SEHK that it conforms with these core shareholder protection standards with an appropriate legal opinion.

In addition, each of the statutory securities regulator of an issuer's jurisdiction of incorporation and the statutory securities regulator of the place of central management and control must be a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This is to enable the SFC to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the SFC's investigations and enforcement actions where an issuer has its records, business operations, assets and management outside Hong Kong.

## **(3) Suitability for listing**

Both the listing applicant and its business must, in the opinion of the SEHK, be suitable for listing. A listing applicant or its group (other than an investment company) whose assets consist wholly or substantially of cash and/or short-term investments will not normally be regarded as suitable for listing, except where the listing applicant or group is a banking company, an insurance company or a securities house. Apart from the "cash shell" example, the Listing Rules have not specified any other types of businesses that will be regarded as unsuitable for listing. Instead, the SEHK published guidance materials setting out the factors that the SEHK would take into consideration when assessing whether a listing applicant and its business are suitable for listing under different scenarios where suitability is called into question (such as previous conviction of a director or controlling shareholder of the listing applicant, history of non-compliance of the listing applicant, deteriorating financial performance of the listing applicant, reliance on parent group/related parties/major customers, gambling and contractual arrangements). The SEHK would also have concerns in respect of listing applicants whose size and prospects do not appear to justify the costs or purpose associated with a public listing as this raises questions regarding the reasons and justification for their listings, and therefore raises concerns regarding the suitability for such listings. As these factors are not exhaustive and each case is decided on its own facts, it is advisable to make an early enquiry with the SEHK if this is in doubt.

If a listing applicant has one or more controlling shareholder(s), it must demonstrate to the SEHK that it can carry on its business independently of such shareholder(s) upon listing. Significant reliance on the controlling shareholder(s) will give rise to the concern that the listing applicant may not be suitable for listing. In deciding whether a listing applicant could carry on its business independently of its

controlling shareholder(s), the SEHK will usually look into the following factors, including without limitation:

- financial independence;
- independent access to sources of supplies/raw materials for production;
- independence of production/operation capabilities; and
- independence of access to customers and independent management.

#### (4) Ownership and management continuity

Each listing applicant has to demonstrate to the SEHK that it has:

Main Board	GEM
<p>a trading record of not less than 3 financial years, with:</p> <ul style="list-style-type: none"> <li>• management continuity for at least the 3 preceding financial years; and</li> <li>• ownership continuity and control for at least the most recent audited financial year</li> </ul> <p>except that:</p> <ul style="list-style-type: none"> <li>• under the Market Capitalisation / Revenue Test, the SEHK may accept a shorter trading record period under substantially the same management if the new applicant can demonstrate that: <ul style="list-style-type: none"> <li>- 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</li> <li>- management continuity existed for the most recent audited financial year; and</li> </ul> </li> <li>• the SEHK may also accept a shorter trading record period for:</li> </ul>	<p>a trading record of not less than 2 full financial years, with:</p> <ul style="list-style-type: none"> <li>• substantially the same management throughout the 2 full financial years; and</li> <li>• a continuity of ownership and control throughout the full financial year immediately preceding the issue of the listing document</li> </ul> <p>except that the SEHK may accept a shorter trading record period and waive or vary the ownership and management requirements for:</p> <ul style="list-style-type: none"> <li>• newly-formed “project” companies; and</li> <li>• mineral companies</li> </ul>

Main Board	GEM
<ul style="list-style-type: none"> <li>- newly-formed “project” companies; and</li> <li>- mineral companies</li> </ul>	

In assessing whether there is a sufficient trading record, the SEHK usually refers to the underlying business that forms the subject matter of listing and not the legal entity that is the listing applicant.

## (5) Accounts

A listing applicant has to prepare the consolidated or combined results of itself and its subsidiaries for each of the 3 financial years (2 financial years for GEM) immediately preceding the issue of the listing documents in accordance with either Hong Kong Financial Reporting Standards or International Financial Reporting Standards. However, listing applicants incorporated in the PRC that have adopted financial reporting standards and interpretations for business enterprises issued by the CASBE can continue to use CASBE for the preparation of the accountants’ report.

The latest financial period reported on by the reporting accountants must not have ended more than 6 months before the date of the listing document. If the financial period reported on fall outside 6 months before the date of the listing document, then the audited stub accounts should be prepared.

## (6) Management presence and integrity

An issuer must have sufficient management presence in Hong Kong, which usually requires at least 2 executive directors to be ordinarily resident in Hong Kong. The SEHK will normally accept a waiver application from strict compliance with this requirement if satisfactory communication arrangements with the SEHK are in place.

The directors of the listing applicant must meet all the requisite requirements including satisfying the SEHK that they have the necessary character, experience and integrity to act as a director of a listing company.

## (7) Market capitalisation

The expected market capitalisation at the time of listing must be at least HK\$500 million for Main Board listing applicants relying on the Profit Test (see “(1) Financial requirements” above) and HK\$150 million for GEM listing applicants.

## (8) Public float and shareholder spread

	Main Board	GEM
<b>Minimum securities of the issuer held by the public at the time of listing and thereafter as a percentage of the issuer’s total issued shares</b> <sup>Note 1</sup>	25%	25%

	Main Board	GEM
<b>Expected market capitalisation of the securities held by the public at the time of listing</b>	HK\$125 million	HK\$45 million
<b>Minimum number of shareholders at the time of listing</b> <sup>Note 2</sup>	300	100

*Notes:*

- 1. The SEHK has the discretion to accept a lower percentage of between 15% and 25% in the case of the issuer with an expected market capitalisation at the time of listing of over HK\$10 billion. The class of securities for which listing is sought must not be less than 15% of the issuer's total number of issued shares, having an expected market capitalisation at the time of listing of not less than HK\$125 million for a Main Board listed issuer and HK\$45 million for a GEM listed issuer*
- 2. Not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.*

It must be noted that meeting the above minimum requirements alone does not mean the requirement for an open market is satisfied. In January 2017, the SFC and SEHK issued a joint statement noting the price volatility of stocks listed on the GEM and reminding new applicants seeking to list on GEM to ensure that in relation to their securities for which listing is sought the conditions exist for an open market as well as orderly, informed and fair trading to develop at the time of listing. Capital market intermediaries which are overall coordinators involved in GEM IPOs (“OCs”) should advise the new applicants on the overall strategy and allocation basis to achieve an open market and an adequate spread of shareholders, and other capital market intermediaries involved in the placing of GEM IPO shares should put in place appropriate policies and procedures to avoid any undue concentration of shareholding.

## WORKING PARTIES

In a typical Hong Kong IPO, the participation of the following working parties is crucial and fundamental:




Party	Roles
<b>Sponsor</b>	<p>Providing corporate finance advice to the listing applicant on the IPO; assisting the listing applicant to appoint the other working parties; supervising and coordinating works of all the parties involved in the IPO process; reviewing the documents for the listing application; and being the principal channel of communication with the SEHK on the listing application.</p> <p>A sponsor must be a corporation or authorised financial institution licensed or registered under the SFO for Type 6 regulated activity i.e. advising on corporate finance.</p> <p>There must at least be one independent sponsor for a listing application. If a sponsor is not regarded by the SEHK as sufficiently independent for the purpose of the Listing Rules, the listing applicant will have to appoint a co-sponsor which is able to satisfy the independence requirements before the listing application will be processed.</p>
<b>Global coordinator, bookrunner and lead manager (i.e. OC)</b>	<p>Leading or assisting in the formation and coordination of an underwriting syndicate and overseeing the offering and underwriting process.</p>
<b>Underwriters</b>	<p>Participating in the underwriting of the offering.</p>
<b>Legal advisers (Hong Kong and if relevant, overseas)</b>	<p>Legal advisers as to Hong Kong law - providing legal advice on Hong Kong regulatory requirements in relation to all aspects of the IPO, including conducting legal due diligence, assisting with any restructuring of the listing group and preparing the relevant documents.</p> <p>Legal advisers as to the laws of overseas jurisdiction(s) - assisting with legal due diligence and providing legal advice and opinion on the listing group's compliance with the laws of the overseas jurisdiction(s) where its business operations are located and/or where the equity securities are offered.</p> <p>To avoid conflicts of interest, the listing applicant will have separate legal representation from the sponsor and the underwriters.</p>
<b>Reporting accountants</b>	<p>Reviewing the listing applicant's financial records and position; preparing the accountants' report on the listing group; and providing comfort letters and opinions on any profit forecast.</p>
<b>Valuers</b>	<p>Preparing a valuation report on the listing applicant's interests in land. Occasionally, they may also be required to prepare valuations on other assets of the listing applicant, such as machines and equipment or intellectual property rights.</p>
<b>Receiving banks</b>	<p>Arranging for the collection of payment for the public offer shares.</p>

Party	Roles
<b>Share registrar and transfer agent</b>	Processing applications, share transfers and the issue of share certificates.
<b>Internal control advisers</b>	Assessing and evaluating the internal control procedures of the listing applicant and providing recommendations.
<b>Industry expert</b>	Preparing an industry report in which the market trend, market share, industry ranking and competitive landscape are reported and analysed.
<b>Financial printer</b>	Typesetting, printing and translating the listing document, offering circular, application form, formal notice and announcements in connection with an IPO.
<b>Public relations advisers</b>	Assisting the listing applicant's management and the global coordinator in organising securities marketing materials, coordinating road-show arrangements and covering other investor education-related aspects.
<b>Compliance adviser</b>	Assisting the newly listed company in complying with the requirements under the Listing Rules after listing and its appointment is mandatory under the Listing Rules.
<b>Depository (for issuance of HDR only)</b>	<p>Issuing or cancelling HDR as agent of the HDR issuer and holding, via its appointed custodian, the shares represented by the HDR for the benefit of the HDR holders.</p> <p>All HDR issuers must appoint a depository. A depository is a financial institution acceptable to the SEHK and appointed and authorised by the HDR issuer.</p>



## LISTING TIMETABLE

Set out below is an indicative IPO timetable for a straight-forward and well-organised listing on the SEHK with certain milestone dates highlighted. The actual duration of the entire IPO process is to be decided on a case-by-case basis depending on the complexity of the structure and issues (both legal, regulatory and commercial) involved.

Approximate days before listing		Matters to be completed
120+		Appointment of sponsor <sup>Note 1</sup> , preparing for the listing application, including without limitation, due diligence and prospectus drafting
56		Submitting the listing application to the SEHK <sup>Note 2</sup>  Publication of the Application Proof (in English and Chinese) on HKEX's website
26		Submitting documents prescribed under the Listing Rules at least 4 clear business days before the expected hearing date
21		<b>Hearing by the Listing Committee of the SEHK to approve the listing application</b>
17		Posting of PHIP and commencing to distribute "red herring" prospectus during road-show
12 to 14	After being approved by the Listing Committee in principle	Signing of Hong Kong underwriting agreement and prospectus registration
11		<b>Prospectus publication</b> <sup>Note 3</sup>
8 to 10		Opening and closing of the public offer
7		<b>Determination of offer price, signing of international underwriting agreement and distribution of final offering circular</b>
1		Announcement of offer price, results of public offer share applications and allocations, and despatch of share certificates and refund cheques (where applicable)
0	Grant of formal listing approval	<b>Dealing in shares commences on the SEHK</b>

### Notes:

1. A listing application must not be submitted less than 2 months from the date of the sponsor's formal appointment. Effective from 5 August 2022, for Main Board IPOs, the issuer should at least appoint one OC (that is also acting, or has a group company that acts, as an independent sponsor) at least two months before submission of the listing application.
2. Effective from 5 August 2022, for all IPOs, the issuer should appoint all OCs no later than two weeks after submission of the listing application.
3. Effective from 5 July 2021, all listing documents must be published solely in an electronic format, and new listing subscriptions must be made through online electronic channels only (except for issuers adopting mixed media offer).

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## **DUE DILIGENCE AND VERIFICATION**

### **CIVIL AND CRIMINAL LIABILITIES FOR PROVIDING FALSE OR MISLEADING INFORMATION**

The issue of a listing document, including prospectus, and possibly publicity materials, constitutes a bundle of representations on the basis of which shares or debentures are offered for money. Under the common law principles of tort and contract as well as Hong Kong legislations, if an investor is induced by misrepresentations or misleading statements in the prospectus or, possibly, publicity materials to subscribe for shares in the issuer, he may be able to claim against the issuer, its directors and possibly parties who have prepared and published such information for damages that he suffers as a result of reliance on such misrepresentations or misleading statements.

In addition to civil liabilities, a person (including a director of an applicant and the sponsor(s) to the applicant) who authorises the issue of a prospectus or, possibly, publicity materials, containing false, inaccurate or misleading information may be subject to criminal sanction.

Every statement in a prospectus should be prepared based on careful due diligence and subject to verification, if possible by reference to independent documentary evidence, such that the directors and other working parties may put forward a defence that they had reasonable grounds to believe the statements at the time when they were included in the prospectus were true.

### **PN21/PN2**

PN21/PN2 provides the indicative guidelines as to the due diligence that should be conducted by a sponsor such that the sponsor will be able to satisfy itself as to the validity of the statements contained in the listing document and information provided by the management of the listing applicant and whether the listing applicant is suitable for listing. Depending on the business and background of the listing applicant, the scope and extent of appropriate due diligence by a sponsor may be different and a sponsor must exercise its judgment as to what investigations or steps are appropriate for a particular listing applicant. PN21/PN2 sets out typical due diligence inquiries (non-exhaustive) on the following areas:

#### **Collective and individual experience, qualifications, competence and integrity of the directors**

- reviewing written records that demonstrate each director's past performance
- assessing individually and collectively the financial literacy, corporate governance experience and competence generally of the directors

#### **The listing applicant's compliance with the qualifications for listing**

- searching the company registry in the new applicant's place of incorporation
- reviewing material financial information
- assessing the accuracy and completeness of the information submitted by the listing applicant

## **Preparation of the listing document and supporting information**

- assessing the financial information to be published in the listing document
- assessing whether there has been any change since the date of the last audited balance sheet
- assessing the listing applicant's performance and finances, business plan and any profit forecast or estimate
- assessing whether it is reasonable to conclude that the proceeds of the issue will be used as proposed
- interviewing business stakeholders, for examples, major customers / suppliers
- undertaking a physical inspection of material assets
- reaching an understanding of the listing applicant's production methods and the manner in which the listing applicant manages its business
- analysing the business aspects of economic, political or legal conditions that may materially affect the new applicant's business
- reaching an understanding of the technical feasibility of each new product, service or technology developed

## **Expert sections of the listing document**

- interviewing the expert, reviewing the terms of engagement reviewing material financial information
- reviewing the expert sections of the draft listing document
- assessing the factual information in the expert report and whether the assumptions on which the expert's opinion is based are fair, reasonable and complete

## **The listing applicant's accounting and management systems and in relation to the directors' appreciation of their and the listing applicant's obligations**

- assessing the new applicant's accounting and management systems
- interviewing all directors and senior managers with key responsibilities

## **SPONSOR DUE DILIGENCE**

Paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, which contains the key standards and requirements for sponsor conduct, provides that before submitting an application on behalf of a listing applicant to the SEHK, a sponsor should have performed all reasonable due diligence on the listing applicant except in relation to matters that by their nature can only be dealt with at a later date, and ensure that all material information as a result of due diligence has been included in the Application Proof.

## **COMFORT LETTERS AND ARRANGEMENT LETTERS**

As part of the due diligence by the sponsor and the underwriters, the auditors are required to issue comfort letters and arrangement letters to provide “comfort” on the accuracy of the financial statements and other financial information stated in the listing document and the offering circular either by reference to applicable accounting standards or reporting procedures agreed among the auditors, the sponsor and the underwriters.

## **VERIFICATION NOTES**

The sponsor’s legal advisers will prepare a set of verification notes to assign responsibilities among the working parties for confirmation of the statements in the listing document and verify each material statement, if possible by reference to independent documentary evidence. The verification notes are updated from time to time based on the then applicable draft listing document and are signed by the listing applicant, its directors and the relevant working parties before the listing document is published.

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## THE PROSPECTUS

The Listing Rules set out the requirements for the contents of a listing document. The Companies (Winding Up and Miscellaneous Provisions) Ordinance defines a “prospectus” as any prospectus, notice, circular, brochure, advertisement or other document:

- offering any shares or debentures of a company to the public for subscription or purchase for cash or other consideration; or
- calculated to invite offers by the public to subscribe for or purchase for cash or other consideration any shares or debentures of a company.

A listing document which is a prospectus within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance therefore has to satisfy the additional content requirements under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. An example of a listing document which does not fall within the definition of a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance is the listing document for an applicant to list by way of introduction without any share offering.

The key sections of a prospectus typically include the following:

**(1) Risk factors**

The key risk factors that investors should be aware of in deciding to invest in the listing applicant. The discussion is usually divided by reference to the key risk factors relating to the operations and business of the listing group, the relevant industry in which the listing group carries on its business, the relevant jurisdiction(s) in which the listing group operates, and the IPO.

**(2) Waiver(s) from compliance with the requirements under the Listing Rules and if applicable, the Companies (Winding Up and Miscellaneous Provisions) Ordinance**

The waiver(s) and condition(s) under which the relevant waiver(s) is/are granted by the SEHK and if applicable, the SFC, in relation to the listing applicant’s inability to comply with the requirements under the Listing Rules and if applicable, the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

**(3) Industry overview**

A brief description of the industry in which the listing group carries on its business. Discussion on both global and domestic markets as well as market share, positioning and competitive landscape are included.

**(4) Regulatory overview**

A brief introduction of the laws and regulations applicable to the listing group.

**(5) History and business development**

The changes in shareholding, acquisitions, disposals and other landmark developments of the listing group.

**(6) Business**

A description of the listing group’s business and assets, including business model and operations, competitive strengths, business strategies, key products and services, customers and suppliers, raw materials, production, properties, research and development (“R&D”), environmental protection and labour relations of the listing group.

**(7) Connected transactions**

Details of any connected transactions between the listing group and the connected persons of the listing applicant as determined under the Listing Rules.

**(8) Directors and senior management**

Information about the directors of the listing applicant and senior management of the listing group.

**(9) Relationship with the controlling shareholder(s)**

Details of any relationship between the listing group and the listing applicant's controlling shareholder(s) other than the latter's shareholding in the listing applicant.

**(10) Substantial shareholder(s)**

Details of the shareholder(s) of the listing applicant interested in 5% or more of its share capital immediately upon listing.

**(11) Share capital**

The authorised and issued share capital of the listing applicant upon listing and details of the listing applicant's issuing and repurchase mandates.

**(12) Cornerstone investor(s) (if applicable)**

Information on any cornerstone investors of the listing applicant and certain basic terms of their investment.

**(13) Financial information**

Management discussion and analysis of the financial information and results of operations of the listing group, which usually includes discussion on leading factors affecting the listing applicant's financial performance and year-to-year comparison of financials of the listing group.

**(14) Future plans and use of proceeds**

The listing applicant's development plans and how the IPO proceeds will be used.

**(15) Underwriting**

The terms and conditions of the underwriting agreements, including without limitation the termination provisions.

**(16) Structure of the IPO**

Details of the Hong Kong public offer and the international private placement comprising the IPO, including information on the allocation, over-allotment option (if any) and stabilisation.

**(17) How to apply for Hong Kong offer shares**

The standard procedures for the application of shares under the Hong Kong public offer.

**(18) Accountants' report**

The audited financial statements of the listing group for the track record period.

**(19) Unaudited pro forma financial information**

Prescribed unaudited pro forma financial information to allow the investors to assess the listing group's financial performance and financial condition after the completion of the IPO.

**(20) Profit forecast/Estimate (optional)**

Forecast or estimate of the listing group's profit attributable to equity holders with the bases and assumptions, as well as the respective reports from the reporting accountants and the sponsor on their review of the accounting policies and calculations of the profit forecast or estimate.

**(21) Property valuation**

Independent property valuation report prepared by the valuers.

**(22) Summary of the constitution of the listing applicant and the laws of its place of incorporation**

A general description of the memorandum of association (where applicable), articles of association or bye-laws of the listing applicant and certain aspects the laws of its place of incorporation of particular relevance to the investors of the listing applicant.

**(23) Statutory and general information**

Prescribed disclosure in relation to the listing group, including information on the securities held by the directors, the directors' service contracts, and summaries of the material contracts (being contracts entered into by the listing group not in its ordinary course of business within the 2 years before the date of the prospectus), intellectual property rights and any share option scheme of the listing group.

**(24) Documents delivered to the Registrar of Companies and documents on display**

Certain documents (such as the material contracts of the listing group) that must be delivered to the Registrar of Companies of Hong Kong for the registration of the prospectus and those which must be published on the SEHK's website and the listing applicant's website for at least 14 days.

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## PROSPECTUS VETTING PROCESS

### VETTING

The Application Proof is sent to the SEHK for review when the listing application is submitted. Under the dual filing system of the SEHK and the SFC, the SEHK will be authorised by the listing applicant to provide the Application Proof to the SFC for the latter's review. Both the SEHK and the SFC will provide comments on the draft prospectus. The SEHK will consider Listing Rules disclosures and issues concerning suitability for listing, while the SFC's review will be focused on whether the listing applications raise apparent concerns under the Securities and Futures (Stock Market Listing) Rules. As soon as all enquiries are cleared, the SEHK will put forward the application to hearing by the Listing Committee for approval.

### REGISTRATION

A listing document constituting a prospectus under the definition of the Companies (Winding Up and Miscellaneous Provisions) Ordinance has to be registered with the Registrar of Companies of Hong Kong before it can be published to the public. Advance notification of not less than 14 days has to be given to the SEHK regarding the proposed date of registration of the prospectus.

The SEHK's authorisation of registration has to be secured before the Registrar of Companies of Hong Kong will accept the prospectus for registration. In addition to the prospectus and the application forms signed by the directors, certain documents such as certified copies of the material contracts of the listing group and the written consent of any expert named in the prospectus will also have to be submitted for prospectus registration.



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## STRUCTURE OF AN OFFERING

A Hong Kong IPO usually comprises an offering of securities for subscription by the public and a private placement of securities to selected professional, institutional and other investors with a sizeable demand for the securities. The SEHK may not permit a Main Board new applicant to be listed by way of private placement only if there is likely to be significant public demand for the securities. A GEM IPO must include an offering to the public of not less than 10% of all securities offered.

### INITIAL ALLOCATION

Under the Listing Rules, where an IPO involves both a Hong Kong public offer tranche and a private placement tranche, at least 10% of the shares offered in the IPO must be initially allocated to the public offer tranche. Accordingly, usually 90% of the shares offered in an IPO are initially allocated to the private placement tranche.

### CLAWBACK MECHANISM

The initial allocation is subject to the following clawback mechanism prescribed under the Listing Rules:

- the number of shares under the public offer tranche will be increased to 30% of the shares initially available under the IPO when the total demand for shares in the public offer tranche is 15 times, but less than 50 times, the initial allocation;
- the number of shares under the public offer tranche will be increased to 40% of the shares initially available under the IPO when the total demand for shares in the public offer tranche is 50 times, but less than 100 times, the initial allocation; and
- the number of shares under the public offer tranche will be increased to 50% of the shares initially available under the IPO when the total demand for shares in the public offer tranche is 100 times or more the initial allocation.

If the public offer tranche is under-subscribed, shares initially allocated to this tranche may be transferred to the private placement tranche.

Reallocation of shares from the private placement tranche to the public offer tranche other than pursuant to the above clawback mechanism or over-allocation of shares to the public offer tranche is subject to the following restrictions:

- the maximum total number of shares that may be allocated to the public offer tranche following a the reallocation and over-allocation is the lesser of:
  - (i) not more than double the initial allocation to the public offer tranche; and
  - (ii) not more than 30% of the total offered shares; and
- if the IPO includes an offer price range, the final offer price must be fixed at the bottom end of the indicative offer price range or (if the pricing flexibility mechanism as described under the section headed "Price Determination" is adopted) the downward adjusted final price.

### ALLOCATION WITHIN THE PUBLIC OFFER TRANCHE

The shares available in the public offer tranche are equally divided into the following pools:

- Pool A: for investors who applied for shares with an aggregate price (excluding brokerage, SEHK trading fee, SFC transaction levy and Financial Reporting Council transaction levy) of HK\$5 million or less; and

- Pool B: for investors who applied for shares with an aggregate price (excluding brokerage, SEHK trading fee, SFC transaction levy and Financial Reporting Council transaction levy) of more than HK\$5 million and up to the total value of Pool B.

Share not subscribed in either pool should be reallocated to the other pool to satisfy any excess applications.

## **OVER-ALLOTMENT OPTION**

Issuers (and, where applicable, selling shareholders) will normally grant an over-allotment option to the underwriters, pursuant to which the underwriters may require the issuer to issue (and, where applicable, the selling shareholder to sell) additional shares representing up to 15% of the total number of shares initially available under the IPO to cover over-allocations.

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## UNDERWRITING

### UNDERWRITING AGREEMENTS

The Hong Kong public offer tranche in an IPO is required to be fully underwritten under the Listing Rules, which means that the underwriters shall procure subscribers for, or failing which, subscribe for, shares offered under the Hong Kong public offer tranche. The private placement tranche is also underwritten in practice.

Separate underwriting agreements are entered into for the different tranches: the listing applicant and, usually, its executive directors and major shareholders will enter into the Hong Kong underwriting agreement with the public offer underwriters prior to the registration of the prospectus to govern the underwriting arrangements under the public offer, while the underwriting agreement for an international placing is usually entered into after the closing of the public offer and the private placement when the offer price for the securities is agreed between the listing applicant and the underwriters. Each selling shareholder will also be a party to the underwriting agreements if existing shares are offered for sale in the IPO.

The underwriting agreements will set out, among others:

- the underwriters' underwriting obligations;
- the underwriting commission, incentive fee (if any) and expenses payable to the underwriters;
- the conditions precedent, including the agreement of the final offer price between the listing applicant (and, where applicable, the selling shareholder(s)) and the underwriters;
- the representations, warranties and undertakings relating to, among others, the listing group and the accuracy and completeness of the prospectus;
- the indemnities given by the listing applicant and other warrantors (usually the executive directors and major shareholders) in favour of the underwriters in respect of liabilities arising from, among others, misstatements or misrepresentations in the prospectus and breaches of the underwriting agreement;
- the provisions for termination of the underwriters' obligations under the respective underwriting agreements;
- the lockup provisions regarding the disposal of shares by controlling shareholders and issue of new shares by the issuer for prescribed periods following listing;
- the provisions for clawback of shares under the private placement tranche to the public offer tranche;
- the appointment of a stabilising manager; and
- (in the international placing agreement only) the provisions for the issuer (and, where applicable, each selling shareholder) to grant the over-allotment option to the underwriters.

## AGREEMENTS AMONG UNDERWRITERS

The Hong Kong public underwriters, the international placing underwriters and the two syndicates of underwriters will also enter into separate agreements to govern their respective rights and obligations in respect of the IPO, including allocation, reallocation, commissions and expenses, default of underwriting obligation, authorisation to the global coordinator and agreed selling restrictions.

## PRICE DETERMINATION

Instead of a fixed price, it is common that the prospectus specifies an indicative price range within which the shares are offered. The final offer price should be agreed between the listing applicant (and, where applicable, the selling shareholder(s)) and the global coordinator on behalf of the underwriters and specified in the price determination agreement among the parties.

The final offer price is normally determined by a process known as “book-building” whereby the underwriters solicit orders from professional and institutional investors to acquire specific numbers of shares at prescribed prices. This “book-building” process normally continues up to the last day for lodging applications under the public offer. If, for any reason, the listing applicant (and, where applicable, the selling shareholders) and the global coordinator are unable to reach an agreement on the offer price by the prescribed date under the underwriting agreements, the offer will not proceed and will lapse. An announcement on the final offer price should be announced by the issuer.

Applicants are required to pay the maximum offer price, together with related brokerage, SEHK trading fee, SFC transaction levy and Financial Reporting Council transaction levy, subject to refund. If the offer price as finally determined is less than the maximum offer price, the excess application moneys will be refunded.

If the final offer price is to be fixed below the indicative offer price or the bottom end of the indicative offer price range disclosed in the prospectus, the listing applicant is required to (a) issue a supplemental prospectus informing potential investors of, among other things, the changes to the IPO, including the change in the offer price and offer period and the impact of such change on the sufficiency of working capital and use of proceeds; (b) extend the offer period to allow potential investors to have sufficient time to consider and requires them to confirm their applications under an opt-in approach, that is, to positively confirm their applications for shares in light of the change in the offer price, unless the applicant discloses in the prospectus and related documents that it adopts a pricing flexibility mechanism which allows it to price up to 10% below the indicative offer price or the bottom end of the indicative offer price range (provided that range is not more than 30% above the bottom end of the range).

## PRICE STABILISATION

Price stabilisation actions refer to actions intended to stabilise or maintain the market price of securities at a level higher than that which might otherwise prevail. In most circumstances, price stabilisation actions may be considered market misconduct under the Securities and Futures Ordinance. However, certain price stabilisation actions are allowed to be taken by a stabilising manager (or its agents) appointed by a new issuer during a limited period after the last day for the lodging of applications under the public offer. The global coordinator is normally appointed as the stabilising manager under the underwriting agreement, pursuant to which it (and its agents) may be authorised to over allocate, make purchases, or effect any other transactions (in the market or otherwise) to stabilise or maintain the market price of shares of the issuer at a level higher than that which might otherwise prevail for a prescribed period.

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## **MARKETING AND PUBLICITY RESTRICTIONS**

The Listing Rules and legislation of Hong Kong impose stringent restrictions and control over publicity and release of information concerning a listing applicant. A listing applicant should have detailed guidelines in place to ensure compliance with all applicable marketing and publicity restrictions and consult with its legal advisers and sponsor to determine when and how it distributes publicity materials or carries out publicity activities.

In addition to the listing applicant, its shareholders, potential investors, directors, employees, sponsor(s) and advisers and all other persons involved in the listing application should also abide by the publicity restrictions.

### **RESTRICTIONS ON DISTRIBUTION OF PUBLICITY MATERIALS**

The Listing Rules provide that no publicity material on an issue of securities by a new applicant (including an announcement of a possible pre-IPO investment) can be released in Hong Kong (or outside Hong Kong which are capable of being circulated back to Hong Kong) unless and until the SEHK has reviewed it and confirmed that it has no comments. In addition, such publicity materials must comply with the applicable statutory requirements.

Leakage of information regarding a proposed listing may result in substantial delay in the listing timetable. If any publicity materials relating to a proposed listing are released without prior review by the SEHK, the SEHK may delay the hearing for considering the listing application by up to 1 month. If this results in the listing application being more than 6 months old, the listing applicant may have to submit a new application form and pay the non-refundable listing fee to the SEHK again. Thus, to avoid delay, all participants in the listing should use their best efforts to keep the listing and all relevant information confidential before the SEHK's approval.

### **GENERAL MARKETING MATERIALS FOR PROMOTION OF A LISTING APPLICANT'S BUSINESS**

Notwithstanding the above restriction on distribution of publicity materials, publicity materials released for the purpose of promoting the listing applicant or its products or business, and not for promoting the securities to be issued, are not required to be reviewed by the SEHK. Nonetheless, information so disclosed should be consistent with disclosures in the listing document. Any information regarding the listing applicant's business or financial condition which appears in press coverage and which is not included in the listing document is likely to attract enquiries from the SEHK, warranting detailed explanation as to the authenticity of the information and the sources for the release. The listing timetable may thus be delayed. A listing applicant should, therefore, consult its legal advisers and sponsor to determine when and how it conducts its promotional activities during the listing application process.

## EXCEPTION FOR AGREEMENTS IN RELATION TO THE ISSUE OF SECURITIES

The Listing Rules allow certain marketing documents, such as an invitation or offering document and documents relating to agreements in connection with the new issue, to be circulated without prior review by the SEHK. However, any commitment to subscribe, purchase or underwrite the securities pursuant to such documents must be made conditional on listing being granted.

## MARKETING AND ROADSHOW

Invitations to the public to acquire or subscribe for shares in the listing applicant should only be made in a prospectus registered under the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

To gauge market demand for the new issue, the listing applicant, its sponsor and the underwriting syndicate usually conduct pre-marketing and book-building activities with professional and institutional investors prior to the issue of the prospectus. This normally involves distribution of information relating to the listing applicant and the offering in a pre-deal research report or “red herring” prospectus (which, in essence, is a near-final draft prospectus conventionally only omitting pricing and related financial and offer information) to institutional investors.

To ensure equality of information dissemination and provide a level playing field for institutional and retail investors, a listing applicant is required to submit a near-final draft prospectus, known as Post Hearing Information Pack (PHIP), to the SEHK for publication upon receipt of a post hearing letter from the SEHK together with a request to post a PHIP and the directors of the listing applicant concluding that the material comments of the SEHK have been addressed; and no later than the earlier of:

- the time at which the listing applicant first distributes any red-herring to institutional investors; and
- the time at which the book-building process commences irrespective of whether the process involves a meeting (whether held physically or by video conference or any other media) between the listing applicant and the institutional investors, or whether any red herring has been distributed.

Parties involved in the listing application, including the listing applicant, should refrain from disclosing any information relating to the offering prior to the publication of the PHIP, and to avoid disclosing information which goes beyond the disclosure in the published Application Proof, PHIP or prospectus, in particular during press conferences, interviews, enquiries by individual investors and meetings with institutional investors, notwithstanding that institutional investors are normally required to provide confidentiality undertakings to the listing applicant, its sponsors and the underwriting syndicate. The listing applicant should also ensure that the information contained on its website is consistent with disclosures in the Application Proof, PHIP and prospectus.

## CONTROL OF INFORMATION TO INVESTMENT RESEARCH ANALYSTS

The directors and senior management of the listing applicant must ensure that no material information, including forward-looking information (whether qualitative or quantitative) concerning the listing applicant that is not reasonably expected to be included in the prospectus or publicly available, is provided to any investment research analyst. When assessing whether any such information is “material” information, the test that should be applied is whether the information is material to an investor in forming a valid and justifiable opinion of the listing applicant and its financial condition and profitability.

If the listing applicant discloses to an analyst material information that is not reasonably expected to be included in the prospectus or publicly available, there are immediate legal and regulatory risks and the listing applicant may be compelled to disclose the same information in the prospectus.

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## **SPECIAL LISTING REQUIREMENTS**

In addition to the basic listing requirements explained in the section headed "Listing Requirements" above, the Listing Rules also contain additional requirements, modifications and exceptions to the basic requirements to tailor for different companies and industries. Some of the key special listing requirements are summarised below:

### **SPIN-OFF OF ASSETS OR BUSINESSES FOR SEPARATE LISTING**

A listed issuer may effect a separate listing of some of its assets or businesses on the SEHK or elsewhere. However, the SEHK would not normally consider a spin-off application within 3 years of the parent company's original listing.

A spun-off entity must satisfy all listing requirements which are applicable to new applicants and demonstrate the ability to function independently of the parent company. The parent company is expected to have due regard to the interests of its existing shareholders by providing them with an assured entitlement to shares in the spun-off entity, either by way of distribution in specie of existing shares in the spun-off entity or by according preference to applications from its shareholders in any offering of shares in the spun-off entity. Approval from the shareholders of the parent company may be required depending on the size of the spun-off entity. The parent company should retain a sufficient level of operations and assets (excluding its interest in the spun-off entity) to support its separate listing status after the listing of the spun-off entity. A submission by the parent company pursuant to Practice Note 15 of the Main Board Listing Rules/Practice Note 3 of the GEM Listing Rules must be made to the SEHK for approval before the listing application.

### **COLLECTIVE INVESTMENT SCHEMES (MAIN BOARD ONLY)**

The SFC is empowered by section 104 of the SFO to authorise CIS, which includes unit trusts, mutual funds, investment companies and any form of collective investment arrangement.

Apart from the requirements under the Securities and Futures Ordinance, additional requirements are set out in Chapter 20 of the Main Board Listing Rules for the listing of interests in authorised CIS. The SEHK will normally grant listing for CIS which has been authorised by the SFC. It should, however, be noted that the SEHK has the discretion to refuse to grant such approval.

### **INVESTMENT COMPANIES (MAIN BOARD ONLY)**

Even if the normal requirements for listing (such as minimum trading record and minimum market capitalisation requirements) are not met, the SEHK may consider applications for listing of securities issued by investment companies, unit trusts, mutual funds or any other collective investment scheme not falling within the requirements for authorised CIS above.

Applications under this regime will be considered in respect of both existing and newly formed investment companies investing in securities, listed or unlisted, including warrants, money market instruments, bank deposits, currency investments, commodities, options, futures contracts and precious metals and investment companies investing in other collective investment schemes. Chapter 21 of the Main Board Listing Rules sets out specific conditions which must be met for new applicant investment companies.

### **NEWLY-FORMED "PROJECT" COMPANIES (INFRASTRUCTURE PROJECTS)**

The SEHK is prepared to accept a shorter trading record period and/or may vary or waive the profit or other financial standards requirement, or ownership and management requirements, for newly formed "project" companies, for example, companies formed to construct "infrastructure projects".

"Infrastructure projects" are projects which create the basic physical structures or foundations for the delivery of essential public goods and services that are necessary for the economic development of a territory or country, such as construction of roads, water and sewage systems, power plants, telecommunication systems, seaports and airports.

Project companies may apply for listing on the Main Board and GEM. A new applicant must satisfy the SEHK that it meets the additional conditions applicable to "project" companies under the Listing Rules.

## **MINERAL COMPANIES**

A new applicant whose major activity is the exploration for and/or extraction of mineral and/or petroleum may apply for listing as a mineral company on the Main Board or GEM. The SEHK is prepared to accept a shorter trading record period and/or may vary or waive the profit or other financial standards requirement for mineral companies if it is satisfied that the directors and management of the issuer have sufficient and satisfactory experience of at least 5 years in the relevant industry. New applicants which are mineral companies are required to satisfy the SEHK that they, among others:

- have the right to participate actively in the exploration for or extraction of natural resources;
- have a meaningful and sufficient portfolio of indicated resources or contingent resources; and
- have available working capital for 125% of the group's requirements for the next 12 months.

The listing document of a mineral company must contain a public report by a competent person with prescribed qualifications and experience on resources and/or reserves in compliance with the Listing Rules and the applicable standards as modified by the Listing Rules.

## **BIOTECH COMPANIES (MAIN BOARD ONLY)**

Effective from 30 April 2018, biotech companies that do not meet any of the financial eligibility tests of the Main Board (including companies with no revenue or profit) are allowed to list on the Main Board. The Listing Rules contain a designated chapter setting out the additional listing conditions, disclosure requirements and continuing obligations for such companies.

A biotech company seeking to list under that chapter must demonstrate the following features:

- it must have developed at least one core product beyond the concept stage;
- it must have been primarily engaged in R&D for the purposes of developing its core product(s);
- it must have been engaged with the R&D of its core product(s) for a minimum of 12 months prior to listing;
- it must have as its primary reason for listing the raising of finance for R&D to bring its core product(s) to commercialisation;
- it must have registered patent(s), patent application(s) and/or intellectual property in relation to its core product(s);
- if the applicant is engaged in the R&D of pharmaceutical (small molecule drugs) products or biologic products, it must demonstrate that it has a pipeline of those potential products; and
- must have previously received meaningful third party investment (being more than just a token investment) from at least one sophisticated investor at least six months before the date of the proposed listing (which must remain at IPO).



An applicant for listing under the biotech chapter must have a minimum expected market capitalisation at the time of listing of HK\$1.5 billion.

## COMPANIES WITH WVR STRUCTURES (MAIN BOARD ONLY)

Although the SEHK believes that the “one-share, one-vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company, effective from 30 April 2018, the SEHK will consider listing applications of companies seeking to deviate from this principle, under certain conditions and safeguards set out in a new chapter under the Listing Rules. Applicants are expected to demonstrate the necessary characteristics of innovation and growth and demonstrate the contribution of their proposed beneficiaries of WVR to be eligible and suitable for listing with a WVR structure.

An applicant seeking to list with a WVR structure must have a minimum expected market capitalisation at the time of listing of HK\$10 billion. For an applicant having an expected market capitalisation at listing of less than HK\$40 billion, it must have at least HK\$1 billion of revenue in its most recent audited financial year.

## SPAC (MAIN BOARD ONLY)

In mid-December 2021, the SEHK announced new rules to create a listing regime for SPACs that will take effect on 1 January 2022. A SPAC is a type of shell company that raises funds through its listing for the sole purpose of acquiring a business (a “**De-SPAC Target**”) at a later stage (a “**De-SPAC Transaction**”) within a pre-defined time period after listing. The listed issuer resulting from the completion of a De-SPAC Transaction is a “**Successor Company**”.

Some of the salient points of the SPAC listing regime are set out below:

- *Investor suitability:* The subscription for and trading of a SPAC’s securities must be restricted to professional investors (as defined under section 1 of Part 1 of Schedule 1 to the SFO) only. This restriction would not apply to the trading of the Successor Company’s shares post the De-SPAC Transaction;
- *Open market requirements:* For each class of securities new to listing by a SPAC (i.e. shares and warrants other than those issued by a SPAC exclusively to the SPAC Promoters), at the time of listing, there must be at least 75 professional investors, of whom at least 20 must be institutional professional investors (i.e. persons falling under paragraphs (a) to (i) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the SFO) and such institutional professional investors must hold at least 75% of the securities to be listed. For a Successor Company, there must be at least 100 professional investors at the time of listing;
- *SPAC Promoters (i.e. persons who establish and/or beneficially own “Promoter Shares” issued by a SPAC exclusively to them at nominal consideration, also known as “SPAC Sponsors” in the United States):* SPAC Promoters must meet certain suitability and eligibility requirements, and each SPAC must have at least one SPAC Promoter which is a firm that holds a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) licence issued by the SFC holding at least 10% of the Promoter Shares;
- *Dilution cap:* Promoter Shares are capped at a maximum of 30% (including the earn-out portion to be issued after completion of a De-SPAC Transaction) of the total number of all shares in issue as at the initial offering date; and there is also a 50% cap on dilution from the exercise of warrants (including warrants issued by a SPAC exclusively to the SPAC Promoters and other warrants);
- *Fund raising size:* The funds to be raised by a SPAC from its initial offering must be at least HK\$1 billion;

- *De-SPAC Target:* A De-SPAC Target must have a fair market value representing at least 80% of the funds raised by the SPAC from its initial offering. An investment company under Chapter 21 of the Listing Rules would not be an eligible De-SPAC Target;
- *Independent third party investment:* The terms of a De-SPAC Transaction must include investment from third party professional investors. The total funds to be raised from such investors must constitute at least a certain percentage of the negotiated value of the De-SPAC Target. At least 50% of the independent third party investment must come from at least three asset management firms or funds with assets under management of at least HK\$8 billion;
- *Shareholders' approval:* A De-SPAC Transaction must be approved by SPAC shareholders at a general meeting (excluding the SPAC Promoters, their close associates and other shareholders with a material interest);
- *Share redemption right:* SPAC shareholders must be given the option to redeem their shares prior to a De-SPAC Transaction; a material change in SPAC Promoters or SPAC directors and any extension to the deadlines for announcing (within 24 months of the date of the SPAC's listing) or completing (within 36 months of the date of the SPAC's listing) a De-SPAC Transaction; and
- *Return of funds and de-listing:* If a SPAC fails to meet the deadlines in respect of the De-SPAC Transaction or fails to obtain the requisite approvals in respect of the continuation of the SPAC following a material change in SPAC Promoters or SPAC directors, the SEHK may suspend the trading of the SPAC, and the SPAC must, within one month of the suspension, return the funds to all holders of SPAC shares (excluding Promoter Shares). Upon the return of funds, the SEHK will cancel the listing of the SPAC's securities

## SECONDARY LISTINGS (MAIN BOARD ONLY)

An overseas issuer whose primary listing is or is to be on another stock exchange may apply for a secondary listing in Hong Kong if it meets certain eligibility and suitability requirements under the Listing Rules. Unlike issuers primary listed on the SEHK, secondary listings are principally regulated by the rules and authorities of the jurisdiction where they are primary listed and the dominant market of their securities are also on that overseas primary exchange. On this basis, the SEHK exempts or waives certain requirements of the Listing Rules for issuers with, or seeking, a secondary listing.

The key requirements to a secondary listing are summarised below:

	Overseas issuers <u>without</u> a WVR structure		Overseas issuers <u>with</u> a WVR structure
<b>Stock exchange of primary listing</b>	Recognised Stock Exchanges <sup>Note 1</sup>	Qualifying Exchanges <sup>Note 2</sup>	Qualifying Exchanges <sup>Note 2</sup>
<b>Centre of gravity in Greater China</b>	Generally Prohibited	Permitted	Permitted
<b>Being an innovative company"</b>	Not Required	Not Required	Required

	Overseas issuers <u>without</u> a WVR structure		Overseas issuers <u>with</u> a WVR structure
<b>Minimum market capitalisation at listing</b>	HK\$3 billion	HK\$3 billion	HK\$40 billion (or HK\$10 billion and revenue of at least HK\$1 billion for the most recent audited financial year)
<b>Minimum track record on the primary exchange</b>	5 full years of listing with good regulatory compliance record	5 full years of listing with good regulatory compliance record (or 2 full years of listing with good compliance record if its market capitalisation has at least HK\$10 billion at the time of listing)	2 full years of listing with good regulatory compliance record

**Notes:**

1. "Recognised Stock Exchange" refers to the main market of a stock exchange that is included in a list of Recognised Stock Exchanges published on the Stock Exchange's website as updated from time to time, e.g.: (a) The Amsterdam Stock Exchange (NYSE Euronext – Amsterdam); (b) The Australian Securities Exchange (ASX); (c) The Brazilian Securities, Commodities and Futures Exchange (BM&FBOVESPA); (d) The Frankfurt Stock Exchange (Deutsche Börse); (e) The Italian Stock Exchange (Borsa Italiana); (f) The London Stock Exchange (LSE); (g) The Madrid Stock Exchange (Bolsa de Madrid). (h) NASDAQ OMX (US); (i) The New York Stock Exchange (NYSE Euronext (US)); (j) The Paris Stock Exchange (NYSE Euronext – Paris); (k) The Singapore Exchange (SGX); (l) The Stockholm Stock Exchange (NASDAQ OMX – Stockholm); (m) The Swiss Exchange (SIX Swiss Exchange); (n) The Tokyo Stock Exchange (TSE); or (o) The Toronto Stock Exchange (TMX).
2. "Qualifying Exchange" means (a) The New York Stock Exchange LLC; (b) Nasdaq Stock Market; and (c) the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority's "Premium Listing" segment).

## HONG KONG DEPOSITORY RECEIPTS (MAIN BOARD ONLY)

Depository receipts are securities issued by a depository representing underlying shares of an issuer which have been placed with the depository or its nominated custodian. HDRs can be held by Hong Kong investors in substantially the same way as shares. Foreign companies from any jurisdiction which meets the requirements set out in the *Joint Policy Statement Regarding the Listing of Overseas Companies* published by the SEHK and the SFC on 27 September 2013 may apply for a listing on the Main Board in the form of HDR.

The HDR framework provides an alternative for, among others, issuers from jurisdictions that discourage overseas listing of shares. HDR listed in Hong Kong will be traded in, and dividends will be converted into, Hong Kong or United States dollars.

The listing regime for listing of HDR, which covers the requirements for admission, the listing process and continuing obligations after listing, is generally the same as for listing of shares on the Main Board. The SEHK has published guidance on its HDR regime on its website.

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## **POST LISTING COMPLIANCE**

A company which is proposing to list in Hong Kong should, as an important part of the listing process, consider and plan for the post-listing regulatory regime, in particular the strict corporate governance requirements, the onerous financial and other disclosure requirements and the controls on corporate transactions. In addition, controlling shareholder(s) and the company should pay attention to the restrictions on disposal of shares and issue of new shares after listing. Set out below is a general introduction to some of the relevant post-listing requirements:

### **RESTRICTIONS ON DISPOSAL OF SHARES BY CONTROLLING SHAREHOLDER(S)**

Controlling shareholder(s) (being a person or a group of persons who is/are together entitled to exercise 30% or more of the voting power of the listed company or who control(s) the composition of a majority of its board of directors) should not dispose of its/his/her/their shares in the listed issuer in the 6 months (in the case of Main Board issuers) or 12 months (in the case of GEM issuers) following listing, or during the subsequent 6 months (in the case of Main Board issuers) or 12 months (in the case of GEM issuers) if such disposal would result in its/his/her/their ceasing to be the controlling shareholder(s).

### **RESTRICTIONS ON ISSUE OF NEW SHARES BY A LISTED ISSUER**

The issue of further securities which are to be listed will need to comply with the Listing Rules, especially as to the method of listing, disclosure and the submission and contents of relevant documents. There are specific requirements for shares, warrants, debt securities and convertible debt securities.

In particular, new listed issuers should note that, subject to limited exemptions, a listed issuer is prohibited from issuing further shares, or securities convertible into equity securities, in the 6 months following listing. Rights issues made within 12 months of listing also require the approval of independent shareholders of the issuer.

On an ongoing basis, save in limited circumstances, a listed issuer is required to obtain the approval of shareholders before it allots or grants securities or rights to subscribe for securities. A listed issuer may also obtain a general mandate from its shareholders to allot shares accounting for up to 20% of its issued share capital in any year.

### **MAINTENANCE OF PUBLIC FLOAT**

A listed issuer must ensure that at least 25% of its issued capital is held by the public at all times, although the SEHK has discretion to accept a lower percentage in certain circumstances as mentioned above.

### **CORPORATE GOVERNANCE**

Corporate governance has been an important area of regulatory change in recent years, and many of the relevant requirements have been introduced by the SEHK as part of its programme for improving standards of corporate governance. Scandals involving excessive directors' remuneration, loans to directors, over-advantageously timed share option grants and resignations following the failure by a number of directors to disclose criminal records have all attracted considerable press attention over the years.

The Listing Rules set out code provisions for corporate governance which listed issuers are expected to comply with, as well as recommended best practices for guidance. Listed issuers are required to confirm whether they have complied with the code provisions and explain any deviations in their annual reports and interim reports.

## FINANCIAL AND OTHER DISCLOSURE REQUIREMENTS

### Disclosure of inside information

With effect from 1 January 2013, listed companies in Hong Kong have a statutory duty to disclose inside information to the public in a timely manner unless one or more of the safe harbours applies. The Listing Rules require that a listed company and its directors must take all reasonable steps to maintain strict confidentiality of inside information until it is announced. If an announcement cannot be made promptly in respect of the inside information, the listed company must apply for a trading halt or a trading suspension. The SEHK also requires the listed company to halt trading where it considers it appropriate to preserve or ensure an orderly, informed and fair market.

### Disclosure of financial information

Listed issuers are required to announce their financial information within the prescribed periods set out below:

*For Main Board issuers:*

Annual results

- preliminary results should be announced within 3 months, while a detailed annual report should be released within 4 months after each financial year end

Interim results

- preliminary results for the first 6 months of each financial year should be announced within 2 months, while an interim report should be released within 3 months after the end of the 6-month period

*For GEM issuers:*

Annual results

- preliminary results and an annual report should be released within 3 months after each financial year end

Half-year results

- preliminary results for the first 6 months of each financial year and a half-year report should be released within 45 days after the end of the 6-month period

Quarterly results

- preliminary results and quarterly report for the first 3 and 9 month periods of each financial year should be released within 45 days after the end of such period

## CONTROLS ON CORPORATE TRANSACTIONS

Acquisitions and disposals of assets (including securities) and certain other transactions, as well as connected transactions, by members of a listed group are regulated by complicated requirements under the Listing Rules and statutory requirements. Depending on the size, nature and parties involved in a transaction, different levels of disclosure may be triggered and approval by shareholders (or independent shareholders) may need to be obtained.

## **SECURITIES TRANSACTIONS**

Dealings in securities of a listed company are regulated by the Listing Rules and statutory requirements. There is a dual civil and criminal regime in Hong Kong for market misconduct, such as insider dealing, price rigging and disclosure of false or misleading information inducing transactions. The Listing Rules also contain detailed provisions regarding dealing in securities by directors of listed companies. Notably, directors are prohibited from dealing in securities of the listed company when they possess inside information and during prescribed periods prior to the publication of financial results of the company.

## **OTHER DISCLOSURE OBLIGATIONS**

The Listing Rules also prescribe a number of situations and corporate actions which require detailed disclosure to be made by listed companies, by publication of announcement on their websites as well as the SEHK's website, and/or by despatch of circulars to their shareholders.

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## CONCLUSION

The regulatory regime in Hong Kong in relation to the securities market is constantly being refined to bring Hong Kong in line with other leading international jurisdictions. Over the past years, a number of reforms have been introduced make Hong Kong's markets internationally attractive, competitive and diversified. Some of the most notable initiatives of the SEHK in recent years include the introduction of new rules in April 2018 to facilitate the listing of companies from the emerging and innovative sectors (including pre-revenue biotech companies and companies with WVR structures) on the Main Board as well as the introduction of the SPAC listing regime and the enhancement of the listing regime for overseas issuers in January 2022, which are briefly discussed in the section headed "Special Listing Requirements" above.

The listing process in Hong Kong encompasses complicated compliance issues and procedures. To ensure the success of a float, companies considering achieving a listing in Hong Kong should consult professional advisers well in advance to identify and resolve issues before making a listing application to the SEHK.