MAYER·BROWN JSM

April to June 2011

This quarterly update (April to June 2011) highlights recent developments in Hong Kong capital markets practices:

- ***Two new schemes to facilitate RMB IPOs:*** With a view to encourage RMB IPOs in HK, HKEx proposed two new IPO models whereby practitioners may consider adopting by the end of this year, namely: (1) the "Single Tranche, Single Counter" Model which will allow an issuer to issue and list its shares in RMB solely; and (2) the "Dual Tranche, Dual Counter" Model which will allow an issuer to issue and list its shares in both RMB and HKD. Details of the two new models are explained in the "RMB Equity: Frequently Asked Questions" issued by HKEx on 22 June 2011. In fact, the first RMB IPO in HK - Hui Xian Real Estate Investment Trust (Stock Code: 87001) was listed on SEHK on 29 April 2011. For more details, please see "*RMB IPOs - The Two New Models*" below.

- ***Potential business trust listing in HK:*** It is understood that the regulators have been discussing with market practitioners and other relevant parties about the potential listing of business trusts in HK and are considering the matters which should be taken into account in designing the appropriate regulatory framework. For more details, please see "*Potential Business Trust Listing in HK - Factors to Consider*" below. In this connection, we have also issued a relevant article entitled "*The Emergence of Stapled Securities and Business Trusts in Hong Kong*" on 8 June 2011.

- ***Applicability of the interim guidance on pre-IPO investments:*** HKEx published a listing decision "HKEx-LD12-2011" on 17 June 2011 in which it determined that the Interim Guidance on Pre-IPO Investments issued on 13 October 2010 was not applicable to the proposed issue of securities to independent investors by a listing applicant seeking a secondary listing on SEHK. For more details, please see "*HKEx Listing Decision on Applicability of the Interim Guidance on Pre-IPO Investments*" below.

- ***Pre-deal research reports to comply with the SFC requirements:*** SFC published its "Consultation Conclusions on the Regulatory Framework for Pre-deal Research" on 30 June 2011 in response to its "Consultation Paper on the Regulatory Framework for Pre-deal Research" issued on 30 September 2010. The major purpose of the consultation was to expand the scope of conflicts of interest requirements governing research analysts. For more details, please see "*Consultation Conclusions on the Regulatory Framework for Pre-deal Research*" below.

- ***Guernsey as an acceptable jurisdiction:*** HKEx published a listing decision "HKEx-LD10-2011" on 18 May 2011 to confirm that Guernsey is an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules. For more details, please see "*Guernsey as an Acceptable Jurisdiction*" below.

- ***Alberta, Canada as an acceptable jurisdiction:*** HKEx published a listing decision "HKEx-LD11-2011" on 25 May 2011 to confirm that Alberta, Canada is an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules. For more details, please see "*Alberta, Canada as an Acceptable Jurisdiction*" below.

In this Update, the following terms have the following meanings:

"CCASS"	the Central Clearing and Settlement System established and operated by Hong Kong Securities Clearing Company Limited
"CO"	Companies Ordinance (Cap 32 of the Laws of Hong Kong)
"FAQ"	Frequently Asked Questions
"HK"	Hong Kong Special Administrative Region of the PRC
"HKD"	Hong Kong Dollars
"HKEx"	Hong Kong Exchanges and Clearing Limited
"IPOs"	Initial public offerings
"JPS"	Joint Policy Statement Regarding the Listing of Overseas Companies dated 7 March 2007
"Listing Rules"	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and/or Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited, as the case may be
"PRC"	People's Republic of China
"REITs"	real estate investment trusts
"RMB"	Renminbi
"SEHK"	The Stock Exchange of Hong Kong Limited
"SFC"	Securities and Futures Commission

"SFO"	Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong)
"Takeovers Codes"	The Codes on Takeovers and Mergers and Share Repurchases

RMB IPOs - The Two New Models

QUICK READ

With a view to encourage RMB IPOs in Hong Kong, HKEx proposed two new IPO models whereby practitioners may consider adopting by the end of this year, namely: (1) the "Single Tranche, Single Counter" Model which will allow an issuer to issue and list its shares in RMB solely; and (2) the "Dual Tranche, Dual Counter" Model which will allow an issuer to issue and list its shares in both RMB and HKD. The details of the two models are explained in the "RMB Equity: Frequently Asked Questions" issued by HKEx on 22 June 2011 (**RMB FAQ**).

In fact, the first RMB IPO in HK - Hui Xian Real Estate Investment Trust (Stock Code: 87001) was listed on SEHK on 29 April 2011. This listing, however, involved a REIT, not a company. The new listing models announced by HKEx aim to encourage companies to issue shares in RMB.

THE "SINGLE TRANCHE, SINGLE COUNTER" MODEL

Although under the "Single Tranche, Single Counter" Model, shares will be issued and listed in RMB only, HKEx will basically allow investors to use HKD together with RMB to subscribe for the RMB-denominated shares. In such case, an RMB IPO model which permits HKD subscription should recognise that RMB is the principal fundraising currency and accordingly, there should be a minimum level of subscription in RMB. Even though an investor subscribes for shares pursuant to an RMB IPO in HKD, he will only be allotted RMB-denominated shares.

Details of the subscription mechanics including the HKD/RMB conversion mechanism, the associated costs and risks to investors and the application of the claw-back and re-allocation provisions between subscription in RMB and subscription in HKD should be clearly disclosed in the prospectus.

THE "DUAL TRANCHE, DUAL COUNTER" MODEL

The "Dual Tranche, Dual Counter" Model will allow simultaneous offering and initial listing of a tranche of RMB-traded shares and a tranche of HKD-traded shares by the same issuer. Generally, the two tranches will operate in substantially the same way as two parallel IPOs except that the upfront allocation of shares between the two tranches and the minimum RMB tranche size will have to be clearly disclosed in the prospectus.

Some major features of the model are briefly summarised as follows:

- ***Ownership continuity and control requirement*** - The ownership continuity and control requirement pursuant to the Listing Rules will apply to the two tranches as a whole rather than against each tranche separately.

- ***Offer price*** - The offer price of the two tranches should be the same after foreign exchange conversion. An issuer should disclose clearly in the prospectus the conversion rate or the rationale for determining the conversion rate for calculating the final offer price.

- ***Clawback and re-allocation mechanisms*** - An issuer should disclose in the prospectus the clawback and re-allocation mechanisms and that they function independently within the tranche. Subject to the satisfaction of the intra-tranche claw-back/re-allocation requirements, the issuer may re-allocate shares between the two tranches in the light of market demand, subject to the minimum RMB tranche size.

- ***Stabilisation by underwriters*** - Generally, the current "Greenshoe" mechanism (i.e. the over-allotment option) will apply to each of the two tranches on the basis of their respective pre-determined offer size although HKEx will consider the relevant requirements on a case-by-case basis.

- ***Trading in two separate encounters*** - Upon listing, the two tranches of shares will carry different stock codes and will be traded under two separate counters on SEHK in their respective currencies (i.e. one in RMB and one in HKD). The trades of the respective counters will be cleared and settled separately under CCASS.

- ***Shareholders' rights*** - All shares from the two tranches will be of the same class and carry identical shareholders' rights.

- ***Post-listing "convertibility" or "fungibility"***- In the long run, HKEx intends to allow post-listing "convertibility" or "fungibility" between the two tranches of shares and so a shareholder may convert his shares from one tranche to the other tranche. HKEx believes that it would help to ensure the efficiency of arbitrage and accordingly, help to maintain the prices of the two counters in the secondary market within a reasonable gap. However, since the development of RMB equities on the SEHK platform is still at its preliminary stage, HKEx may not permit such "convertibility" or "fungibility" for the first few RMB IPOs.

OTHER MATTERS IN RELATION TO RMB IPOS

Some other matters discussed in the RMB FAQ are also summarised below:

- ***Listing review process*** - HKEx does not expect that there will be any delay in the listing review process of RMB IPOs as all IPOs will be subject to the same review policies and procedures regardless of which currency of funds they are raising although RMB IPOs may be subject to more disclosure requirements and more complex mechanics.

- ***Remittance of IPO proceeds*** - If an issuer intends to remit IPO proceeds into the PRC, it will have to obtain all necessary approvals from the relevant PRC authorities, the procedures of which should be similar to the existing arrangement for remitting funds raised in HK back to the PRC.

- ***HDRs*** - Issuers may also apply to list HK depositary receipts in RMB.

- ***Dividends*** - An issuer may provide an option to shareholders to elect the receipt of dividend payments in the currency in which it is declared, an alternative currency or a combination of currencies. It may also set a different default currency for the respective tranches if a shareholder does not make a selection. Adequate disclosure should be made in the prospectus to explain the dividend payment policy and currency options (if any).

Copies of the RMB FAQ can be downloaded via the link below:

http://www.hkex.com.hk/eng/newsconsul/hkexnews/2011/Documents/1106223news.pdf

Potential Business Trust Listing in HK - Factors to Consider

QUICK READ

It is understood that SEHK and SFC have been discussing with market practitioners and other relevant parties about the potential listing of business trusts in HK and are considering the matters which should be taken into account in designing the appropriate regulatory framework.

FACTORS TO CONSIDER

In a reply by the Secretary for Financial Services and the Treasury to the Legislative Council published on 8 June 2011 (**FSTB Reply**), it is stated that the following are the major factors under consideration by the Government in preparing for business trust listing in HK:

- ***The core underlying principle*** - In formatting a suitable regulatory regime for business trust listing, the core underlying principle is to ensure that such a regulatory regime mirrors the regime in place for listed companies. Accordingly, the risks arising from using a business trust structure should be in line with those of a company.

- ***Listing Rules consideration*** - SEHK aims to consider listing applications of business trusts and regulate them by adopting the same principles as stipulated in the Listing Rules which are applicable to any company seeking a listing on SEHK. In order to achieve such aim, SEHK might need to modify the current regulatory framework for listed companies in the Listing Rules so that such principles would also be applicable to business trusts in a manner that fully retains all the current Listing Rule requirements on investors' protection, disclosure and corporate governance.

- ***Investors' protection consideration*** - Since business trusts are established by trust deeds and so, unlike companies, they are not subject to the provisions on shareholders' protection under the CO nor other laws and regulations applicable to listed companies. In view of these differences, a business trust listing applicant would be required to address the relevant requirements for investor protection standards by including such matters in its trust deed or by other acceptable means. The rationale behind such approach is to ensure that holders of units in business trusts would enjoy investor protection standards comparable to those required of incorporated HK issuers such as the rights of investors to approve significant matters relating to the trusts and to attend and vote at general meetings.

- ***SFO consideration*** - A major part of the regulatory regime for listed companies is provided in the SFO. Currently, some SFO provisions applicable to listed companies do not apply to business trusts, in particular provisions in relation to insider dealing and disclosure of interests in shares. The Government is of the view that it is important that listed business trusts are subject to the relevant SFO provisions. In this regard, SFC and SEHK are discussing these concerns with entities seeking to list an active business by way of a trust. These discussions are intended to identify any structure which would satisfy the entities' commercial needs and at the same time ensure that the relevant SFO provisions apply. Progress to date suggests that there should be appropriate structures which would bring a listed business trust into the ambit of the relevant SFO provisions. One possible structure under consideration is to list a "stapled" security pursuant to which a share in a company is "stapled" to a unit in a trust. In other jurisdictions, these

products are traded as a single stapled security. With the use of stapled securities, the relevant SFO provisions might apply as the listed security includes shares issued by a company.

In this connection, we have also issued a relevant article entitled "*The Emergence of Stapled Securities and Business Trusts in Hong Kong*" on 8 June 2011.

Copies of the FSTB Reply can be downloaded via the link below:

http://www.fstb.gov.hk/fsb/ppr/press/doc/pr080611_e.pdf

HKEx Listing Decision on Applicability of the Interim Guidance on Pre-IPO Investments

QUICK READ

HKEx published a listing decision "HKEx -LD12-2011" on 17 June 2011 in which it determined that the Interim Guidance on Pre-IPO Investments issued on 13 October 2010 (**Interim Guidance**) was not applicable to the proposed issue of securities to independent investors by a listing applicant seeking a secondary listing on SEHK.

THE INTERIM GUIDANCE

The Interim Guidance stipulates that pre-IPO investments must be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form; or (b) 180 clear days before the first day of trading of the applicant's securities, except in very exceptional circumstances.

BACKGROUND

Company A's primary listing was on the Australian Stock Exchange (**ASX**). It intended to apply for a secondary listing of the same class of shares on SEHK and accordingly, a public offer of new shares would be involved. Shares would be fully transferable and fungible between the HK and Australian stock markets.

Prior to submitting a listing application to SEHK, Company A proposed to issue shares and convertible bonds (**Pre-HKIPO Investments**) to some independent investors (**Pre-HKIPO Investors**) to finance its business operation. Under the ASX rules, the Pre-HKIPO Investments would be required to be approved by shareholders.

If the Interim Guidance was applicable, Company A would be required to wait for 180 clear days after the completion of the Pre-HKIPO Investments to list on SEHK. Company A applied for an exemption from the Interim Guidance.

RULING

SEHK considered the case and concluded that the Interim Guidance was not applicable to the Pre-HKIPO Investments in view of the following factors:

- Company A was a listed company on ASX and SEHK considered that ASX was an exchange providing comparable protection to shareholders.
- It was common for listed companies to enter into financial arrangements, such as the Pre-HKIPO Investments, for the purpose of financing their operations.
- Under the ASX rules, shareholders' approval was required for the Pre-HKIPO Investments and it followed that the corresponding terms would be fully disclosed to Company A's shareholders in this connection.

- The Pre-HKIPO Investors were independent third parties.

- The pricing of the shares pursuant to the Pre-HKIPO Investments was based on the prevailing market price of the shares traded on ASX with no price adjustment after the issue.

- Subject to some conversion price adjustments, basically, the initial conversion price of the convertible bonds pursuant to the Pre-HKIPO Investments represented a premium to the prevailing market price of the shares.

- The sponsors were satisfied that the Pre-HKIPO Investments complied with Rule 2.03 of the Listing Rules which requires that the issue and marketing of securities be conducted in a fair and orderly manner and all holders of listed securities are treated fairly and equally.

- Company A would fully disclose the terms of the Pre-HKIPO Investments in the prospectus pursuant to its listing on SEHK.

Copies of the listing decision can be downloaded via the link below:

http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld12-2011.pdf

Consultation Conclusions on the Regulatory Framework for Pre-deal Research

QUICK READ

SFC published its "*Consultation Conclusions on the Regulatory Framework for Pre-deal Research*" (**Pre-deal Research Consultation Conclusions**) on 30 June 2011 in response to its "*Consultation Paper on the Regulatory Framework for Pre-deal Research*" issued on 30 September 2010 (**Pre-deal Research Consultation Paper**). The major purpose of the consultation was to expand the scope of conflicts of interest requirements governing research analysts.

PROPOSALS ADOPTED

Pursuant to the Pre-deal Research Consultation Conclusions, SFC decided to adopt the following proposals:

- ***Expanding the scope of Paragraph 16 of the Code of Conduct*** - The scope of the existing requirements contained in Paragraph 16 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) in relation to analyst conduct will be expanded so that they apply not only to analysts covering listed companies in HK but also analysts covering:

    - companies which intend to list their equity securities on SEHK for the first time and are required to issue a prospectus;
    - proposed listings of and listed SFC-authorized REITs in Hong Kong; and
    - entities that are established to conduct business operations and constituted in a form other than that of a corporation or REIT.

- ***Written policies and control procedures*** - The existing practice that intermediaries employing research analysts to prepare research reports on a listing applicant should be required to establish, maintain and enforce a set of written policies and control procedures will be codified to ensure that these analysts are not provided by the intermediaries with any 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.

- ***Prohibition on seeking material information*** - Research analysts preparing research reports on a listing applicant will be prohibited from seeking from the listing applicant or its advisers any 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. In this connection, the expectation that an analyst only uses information that is reasonably expected to be included in the prospectus or that is publicly available does not prohibit an analyst from conducting his own due diligence such as undertaking site visits.

- ***Disclosure in the relevant prospectus*** - An obligation will be imposed on sponsors in relation to a new listing of equity securities to take reasonable steps to ensure that all material information, including forward looking information (whether qualitative or quantitative), disclosed or

provided to analysts is contained in the relevant prospectus or, where the proposed listing does not involve a prospectus, the relevant listing document, offering circular or similar document.

IMPLEMENTATION OF THE CHANGES

The changes to be made to the Code of Conduct and the Corporate Finance Adviser Code of Conduct will be implemented with effect from 1 September 2011 except for the requirements in relation to new listings. In the case of a new listing applicant, the new requirements will apply to any new listing where the listing application (i.e. Form A1) is submitted to SEHK on or after 1 August 2011.

Copies of the Pre-deal Research Consultation Conclusions can be downloaded via the link below:

http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/predeal_conclusions_eng.pdf

Guernsey as an Acceptable Jurisdiction

QUICK READ

HKEx published a listing decision "HKEx-LD10-2011" on 18 May 2011 to confirm that Guernsey is an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules.

BACKGROUND

Even though an overseas issuer's jurisdiction of incorporation does not provide shareholder protection standards equivalent to those in HK, SEHK may still approve the listing application of such overseas issuer if it varies its constitutive documents to provide the necessary protection. In this connection, the JPS formalises this process by setting out a list of shareholder protection areas which SEHK takes into account.

The Companies (Guernsey) Law, 2008 (**CGL**) is the governing law regulating companies in Guernsey.

SEHK noted that there are certain differences in shareholder protection standards between the CO and the CGL which can be generally grouped in into four categories:

- areas where the CGL provisions are considered either more stringent than or broadly commensurate with the CO provisions;
- areas where a Guernsey company's articles of incorporation (**Articles**) could be amended to reflect the CO standards of shareholder protection;
- areas where the differences in shareholder protection standards under the CGL are regarded as immaterial; and
- areas where it is not legally possible for the Articles to be amended or modified to attain a level of shareholders' protection at least equivalent to or broadly commensurate with the level provided by the CO (**Legal Impossibilities**).

PROPOSED AMENDMENTS/PROVISIONS IN THE ARTICLES

As to the second category above, where differences between the CGL and the CO can be addressed by incorporating the proposed amendments/provisions in the Articles to reflect the CO standards of shareholder protection are briefly summarised as follows:

- ***Changes to constitutive document*** - Under the CO requirements, making any changes to a company's constitutive documents requires a three-quarter majority vote in a general meeting generally. Pursuant to the CGL requirements, making such changes also requires a three-quarter majority vote in a general meeting generally. However, in some situations, a lower approval threshold may be allowed to amend the constitutive documents. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Variation of class rights*** - Under the CO requirements, variation of class rights requires a three-quarter majority vote in a general meeting. Pursuant to the CGL requirements, variation of class rights also requires a three-quarter majority vote in a general meeting. However, in some circumstances, a lower approval threshold may be allowed to vary class rights. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Increase member's liability*** - Under the CO requirements, alteration of the constitutive documents to expand an existing member's liability to the company is not binding unless the relevant member agrees in writing. There is no specific provision on this area under the CGL. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Voluntary winding up*** - Under the CO requirements, voluntary winding up of a company must be approved by a three-quarter majority vote in a general meeting generally. Pursuant to the CGL requirements, a special resolution is required for the voluntarily winding up of a Guernsey company. However, in the following circumstances, an ordinary resolution will be sufficient to approve the voluntary winding up: (a) if the period for the duration of the company is fixed in the company's constitutive documents, upon the expiration of such period; or (b) if the company's constitutive documents specify an event which triggers the dissolution of the company, upon the occurrence of such event. In this regard, the Articles should not contain any provisions specifying either a fixed duration for the company or the occurrence of an event which would trigger a winding up of the company by passing an ordinary resolution only.

- ***Appointment, removal and remuneration of auditors*** - Under the CO requirements, appointment, removal and remuneration of auditors must be approved by a majority vote in a general meeting. Basically, the relevant CGL requirements are similar to the CO requirements although the CGL allows deemed appointment of auditors. To address this, the Articles could limit the deeming provision for re-appointment of auditors.

- ***Branch register of members*** - Under the CO requirements, branch register of members in HK shall be open to inspection by members. Closure of the register shall be on terms comparable to the HK requirements. The CGL requirements are basically commensurate with the CO requirements. However, the CGL does not expressly provide for a Guernsey company to have a branch register, nor does it contain specific provisions regarding closure of the members' register. In this regard, the Articles could be amended to give directors power to approve a branch register that would be available for inspection at a location outside of Guernsey. The Articles could also reflect the CO requirements on open and closure of the members' register.

- ***Convening extraordinary general meeting*** - Under the CO requirements, shareholders holding more than five per cent of the paid up capital of a company may require the company to convene an extraordinary general meeting and may request the company to circulate a resolution proposed by the requesting shareholders to all shareholders entitled to receive notice of that meeting. Pursuant to the CGL requirements, shareholders holding more than 10% of the capital carrying the right to vote are entitled to request the directors to call a general meeting. Shareholders representing five per cent of the total voting rights may require the company to circulate a written resolution. In this regard, the Articles could be amended to provide a lower

threshold upon which shareholders would be entitled to request a meeting to reflect the CO requirements.

- ***Notice*** - Under the CO requirements, at least a 21-day written notice is required for shareholders' meetings to approve special resolutions. For other general meetings, at least a 14-day notice is required. Pursuant to the CGL requirements, at least a 10-day notice (or such longer period as the Articles may provide) is required for a general meeting, except where all shareholders entitled to attend and vote agree to a shorter period. In this regard, the Articles could be amended to provide for a longer notice period to reflect the CO requirements.

- ***Meetings and votes*** - Under the CO requirements, overseas companies must adopt general provisions as to meetings and voting procedures on terms comparable to a HK incorporated public company. The CGL requirements are broadly commensurate with the CO requirements. In this regard, the Articles could provide for meetings and voting procedures on terms comparable to the CO requirements (e.g. notice, quorum, means of service of documents).

- ***Proxies*** - Under the CO requirements, proxies or corporate representatives may be appointed by recognised clearing house for attending general meetings and creditors' meetings and such proxies or corporate representatives should enjoy the statutory rights of a shareholder, including the right to speak in such meetings. Pursuant to the CGL requirements, if a clearing house is the legal owner of shares then it will have the right to appoint a proxy or a corporate representative. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Demanding a poll*** - Under the CO requirements, shareholders' rights to demand a poll must be comparable to that available to shareholders of a HK incorporated public company. Pursuant to the CGL requirements, any provisions contained in the Articles restricting shareholders' rights to demand a poll shall be void unless in specified circumstances. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Appointment of directors*** - Under the CO requirements, shareholders must vote on the appointment of a director individually. Unanimous approval of shareholders is required to pass a resolution permitting appointments of two or more directors by a single resolution. Under the CGL requirements, appointments of directors shall be voted on individually except in specified circumstances. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Material interest*** - Under the CO requirements, a director is required to declare any material interest in a contract with the company at the earliest meeting of the board of directors where such contract is discussed. Pursuant to the CGL requirements, a director shall make disclosure to the board of any interest in a transaction or proposed transaction with the company, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction. However, there are exceptions to this requirement. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Directors' interests*** - Under the CO requirements, a notice to move a resolution at a shareholders' meeting shall include particulars of the directors' interests. There is no equivalent

provision under the CGL. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Loans*** - Under the CO requirements, a company may only make loans, including quasi-loans and credit transactions, to a director in specified circumstances. There is no equivalent provision under the CGL. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

- ***Compensation for loss of office*** - Under the CO requirements, an ordinary resolution is required for payment to a director or past director as compensation for loss of office or retirement from office. There is no equivalent provision under the CGL. In this regard, the proposed amendments/provisions in the Articles could reflect the CO requirements.

LEGAL IMPOSSIBILITIES

The Legal Impossibilities are summarised as follows:

- ***Court petition to cancel class rights variation*** - Under the CGL, a variation of class rights may be effected according to (1) the Articles; or (2) the relevant provisions under the CGL, if the Articles do not provide for such variation. The CGL further states that shareholders holding not less than 15% of the relevant share class may apply to the Guernsey court to object to the variation.

  The threshold of 15% under the CGL is higher than the required threshold of 10% under the CO. The CGL would be violated if the Articles specify a lower threshold for this statutory provision. However, under the CGL, if any shareholder can demonstrate that a company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of shareholders, a Guernsey court may order the company to do, or refrain from doing, a particular act.

- ***Annual general meeting (AGM)*** - Under the CGL, it is required that AGMs should be held no more than 15 months apart (except for the first AGM which may be held no more than 18 months after incorporation). This is in line with the requirement under the CO.

  However, shareholders are entitled under the CGL to waive such a requirement to hold an AGM by passing a waiver resolution which must be approved by shareholders holding 90% of the voting rights. It is legally impossible to amend the Articles to exclude this provision. However, in view of the high threshold required to pass the resolution, it is not likely that a listed company would eliminate the requirement to hold an AGM by passing a waiver resolution. In addition, the CGL provides that shareholders holding 10% of voting rights can request that such a waiver resolution be rescinded.

RULING

Subject to the satisfaction of various conditions, SEHK ruled that Guernsey was an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules.

In this connection, SEHK would require the following confirmations to be provided when filing a listing application:

- a confirmation from the sponsor that it has considered and reviewed all material shareholder protection areas in its due diligence review under Practice Notice 21 to the Listing Rules and that it is independently satisfied that the shareholders' protection offered in Guernsey is at least equivalent or broadly commensurate to that offered in HK; and

- a legal opinion and sponsor's confirmation that the listing applicant's constitutional documents do not contain provisions which will prevent it from complying with the Listing Rules, the SFO – Disclosure of Interest and Takeovers Codes.

Copies of the listing decision can be downloaded via the link below:

http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld10-2011.pdf

Alberta, Canada as an Acceptable Jurisdiction

QUICK READ

HKEx published a listing decision "HKEx-LD11-2011" on 25 May 2011 to confirm that Alberta, Canada is an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules.

BACKGROUND

Company B was incorporated under the Business Corporations Act (Alberta) (**ABCA**) and listed on the Toronto Stock Exchange (**TSX**). It was seeking a secondary listing on SEHK. It was submitted that it had sufficient nexus with Alberta as its headquarters and major assets were in Alberta. Alberta's securities regulator adopted securities regulations similar to those adopted in Ontario and British Columbia, which are considered as acceptable overseas jurisdictions by SEHK.

UNDERTAKINGS

Even though an overseas issuer's jurisdiction of incorporation does not provide shareholder protection standards equivalent to those in HK, SEHK may still approve the listing application of such overseas issuer if it varies its constitutive documents to provide the necessary protection. In this connection, the JPS formalises this process by setting out a list of shareholder protection areas which SEHK takes into account.

It was submitted that, under Alberta law, Company B would not be able to amend its articles of association (**Articles**) to incorporate some of the JPS items for the purpose of providing comparable shareholder protection standards as those adopted in HK. However, Company B could provide undertakings to SEHK (**Undertakings**) to ensure that certain areas of comparable shareholder protection would be safeguarded.

The Undertakings proposed to be given by Company B were as follows:

- ***Alteration of members liability*** - Under the CO, any amendment in a company's constitutional documents to increase an existing member's liability to the company is not enforceable unless such amendment is agreed by the member in writing. Under the ABCA, a limited liability company can convert to an unlimited liability company through a special resolution. Upon conversion, the members of the unlimited liability company are liable for the debts and liabilities of the company whether those debts and liabilities arose before or after the conversion. Company B proposed to provide an undertaking that it would not be converted to an unlimited liability company.

- ***Appointment of director*** - Under the CO, individual voting is required in respect of appointment of a director. Under the ABCA, there is no statutory requirement for directors to be elected individually. Company B proposed to provide an undertaking that it would arrange directors to be elected individually in line with the CO.

- ***Financial assistance to directors*** - Under the CO, a public company is generally not allowed to make loans to its directors and their associates, subject to certain specified exceptions. Under the ABCA, a company is permitted to give financial assistance to any person for any purpose. Company B proposed to provide an undertaking that it would only make loans to directors in the circumstances permitted under the CO.

- ***Compensation to directors*** - Under the CO, an ordinary resolution from shareholders is required for the purpose of making payment to a director or past director as compensation for loss of office or retirement. Under the ABCA, shareholders' approval is not required for making payment to a director upon loss of office. Company B proposed to provide an undertaking that it would only make payment to a director or past director as compensation for loss of office or retirement from office in accordance with the CO.

DIFFERENCES

Despite the provision of the Undertakings, there are still some additional differences as to the shareholder protection standards in the two jurisdictions. However, SEHK was of the view that such differences were acceptable. The differences related to the following areas:

- Voting threshold for change of constitutional documents, variation of share class rights, voluntary winding-up and share capital reduction.

- Court petition to cancel class rights variation.

- Appointment of auditor.

- Lack of court process for share capital reduction.

- Redemption and repurchase of shares.

- Distributions and dividends.

RULING

After considering the applicable Alberta law and the Undertakings, SEHK was satisfied that Company B would provide broadly equivalent shareholder protection standards as those provided to investors in Hong Kong companies under the CO. Although there were still some differences remaining between the two systems, SEHK considered that such differences acceptable. Accordingly, SEHK decided that Alberta, Canada was an acceptable jurisdiction of an issuer's place of incorporation for the purpose of listing on SEHK under the Listing Rules.

In this connection, SEHK would require the following confirmations to be provided when Company B filed its listing application:

- a confirmation from the sponsor that it has considered and reviewed all material shareholder protection areas in its due diligence review under Practice Notice 21 to the Listing Rules and that it is independently satisfied that the shareholders' protection offered in Alberta is at least

equivalent or broadly commensurate to that provided in HK; and

- a legal opinion and sponsor's confirmation that the listing applicant's constitutional documents do not contain provisions which will prevent it from complying with the Listing Rules, the SFO – Disclosure of Interest and Takeovers Codes.

Copies of the listing decision can be downloaded via the link below:

http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld11-2011.pdf

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