Corporate Finance

Consultation Conclusions on secondary listing of issuers with corporate weighted voting rights structure by the Stock Exchange

Introduction

On 30 October 2020, the Stock Exchange of Hong Kong Limited (the "**Stock Exchange**") published the consultation conclusions (the "**Consultation Conclusions**") on its proposal to extend the current weighted voting rights ("**WVR**") regime to allow corporates to benefit from WVR, subject to certain safeguards. Although most of the responses to the Consultation in principle supported the proposal, the Stock Exchange after considering the feedback received decided to not to proceed with the proposed amendments to the Listing Rules so that more time could be given to the market to develop a better understanding of the regulatory approach towards regulating listed companies with WVR structures and for regulators to monitor the operation of the current WVR regime under Chapter 8A of the Listing Rules. In the meantime, the Stock Exchange will allow more Greater China Issuers with corporate WVR beneficiaries to secondarily list in Hong Kong under Chapter 19C of the Listing Rules.

The proposal to WVR regime

In April 2018, the Stock Exchange implemented a significant reform to permit WVR structure for Hong Kong listed issuers. Under the regime, a qualifying issuer must be an innovative company, and permissible WVR beneficiaries are limited to individuals who serve as directors of the issuer and have been materially responsible for the growth of the business. For more details in relation to the WVR structure for listed issuers in Hong Kong, please refer to our newsletter issued in May 2018.

With the view to attract quality potential listing applicants from emerging and innovative sectors and to enhance competitiveness of the Hong Kong stock market, the Stock Exchange launched a consultation in January 2020 with proposals to extend the regime to allow corporate shareholders to benefit from the WVR structure. Despite majority of the respondents are in principal supportive of the proposals, there are diverse views and expectations as to how the proposed regime would operate in practice. Hence, the Stock Exchange decided to defer the implementation of the proposed regime at this stage, and to modify the arrangements for Greater China Issuers that are seeking a secondary listing in Hong Kong.

Secondary listing of issuers with WVR structure

Chapter 19C of the Listing Rules sets out the rules applicable to issuers seeking a secondary listing in Hong Kong. A qualifying issuer under Chapter 19C of the Listing Rules must be primarily listed on either the New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc, and must have at least a two-year track record of regulatory compliance on the primarily-listed exchange. To be suitable for listing in Hong Kong, an issuer must also demonstrate itself to be an innovative company. Qualifying issuers are divided into three groups and different rules apply accordingly:

1. Issuers with “a centre of gravity” in Greater China, and achieved primary listing *on or before* 15 December 2017 (the “**Grandfathered Greater China Issuers**”);
2. Issuers with “a centre of gravity” in Greater China, but achieve primary listing *after* 15 December 2017 (the “**Non-Grandfathered Greater China Issuers**”);
3. Issuers without “a centre of gravity” in Greater China (the “**Non-Greater China Issuers**”).

To protect the interest of non-WVR shareholders, apart from having a limited scope of permissible WVR structures as mentioned above, the Listing Rules also stipulate restrictions on the purchase and subscription of WVR shares, continuing obligations for issuers and WVR beneficiaries, and corporate governance and disclosure requirements for issuers. Non-Grandfathered Greater China Issuers are subject to more stringent WVR safeguards that are applicable to primary listing issuers and corporate WVR beneficiaries are not permitted for them. However, under Rule 19C.12 of the Listing Rules, Grandfathered Greater China Issuers and Non-Greater China Issuers that are applying for secondary listing on the Stock Exchange are not required to comply with those rules except for the disclosure requirements.

Modification to the current secondary listing regime

It was announced in the Consultation Conclusions that the Stock Exchange would expand the application of the secondary listing regime under Chapter 19C of the Listing Rules to Greater China Issuers that are (i) controlled by corporate WVR beneficiaries as at 30 October 2020 and (ii) primarily listed on the abovementioned overseas exchanges on or before 30 October 2020. The Stock Exchange will treat them in the same manner as Grandfathered Greater China Issuers. As a result, the existing concessions to Grandfathered Greater China Issuers as explained above will be applicable to more issuers which are seeking a secondary listing on the Stock Exchange. For this purpose, “controlled by” means where a single corporate WVR beneficiary or a group of corporate WVR beneficiaries acting in concert holds the largest share of voting power that amounts to over 30%.

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Future consultation

The Stock Exchange is planning to conduct another round of consultation on the rules governing secondary listing of Greater China Issuers without WVR structure, with a review of the dual-primary and secondary listing regimes as a whole. There are two areas for consultation: (i) Whether Greater China Issuers without WVR structure should be subject to the same expected market capitalisation requirement as Non-Greater China Issuers without WVR structure, to commensurate with the standard set out in the Joint Policy Statement regarding the listing of overseas companies issued by the Stock Exchange and the Securities and Futures Commission; and (ii) Whether to waive the requirement of being an "innovative company" for Greater China Issuers without WVR structure.

Conclusion

In effect, the modification provides a new cut-off date to differentiate between Grandfathered and Non-Grandfathered Greater China Issuers, which is particularly applicable to those with corporate WVR structure. Thus, Chinese companies with capital structures that permit corporate WVR beneficiaries and are primarily listed in certain overseas exchanges after 17 December 2017 are now able to seek secondary listing in Hong Kong subject to less stringent requirements.

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