

Hong Kong and Indonesia: Detangling dual listing of Indonesian-listed companies on the Hong Kong Stock Exchange

In brief

On 26 July 2023, Hong Kong Exchanges and Clearing Limited and PT Bursa Efek Indonesia signed a memorandum of understanding (MOU) to explore opportunities in strategic collaboration, including cross-border listings on The Stock Exchange of Hong Kong Limited ("**SEHK**") and the Indonesia Stock Exchange ("**IDX**"). Having been ranked as the world's number one IPO venue in seven of the last thirteen years, SEHK is an ideal listing venue for issuers to gain exposure and access to abundant local and international funds and to enhance their public profiles.

Against this backdrop, we highlight below some major listing requirements for an IDX-listed company contemplating a dual listing on the Main Board of the SEHK and legal and regulatory considerations from the Indonesian perspective.

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Streamlined Hong Kong listing regime for Overseas Issuers

The Hong Kong Listing Rules have recently been amended to streamline the listing regime for issuers incorporated outside Mainland China and Hong Kong ("**Overseas Issuer(s)**"). An Overseas Issuer can opt for a dual primary listing on the SEHK where it has (or simultaneously seeks) a primary listing on an overseas stock exchange. In such case, it will be subject to full listing requirements of both the SEHK and those of the overseas exchange on which its securities are (or will be) listed. Alternatively, an Overseas Issuer that is primarily listed on another stock exchange recognised by the SEHK ("**Recognised Stock Exchange**")¹ with the majority of their equity securities traded outside Hong Kong and does not have a weighted voting rights structure² may apply for a secondary listing on the Main Board of the SEHK.

Listing requirements under the Hong Kong listing regime

Below is a high-level summary of the key listing requirements for an IDX-listed company seeking a dual primary listing on the Main Board of the SEHK:

¹ A list of Recognised Stock Exchanges are published on the SEHK's website. IDX is yet to be included in such list.

² For the avoidance of doubt, Overseas Issuers with a weighted voting rights structure can apply for a secondary listing on the Main Board of the SEHK but are subject to specific requirements in Chapters 8A and 19C of the Hong Kong Listing Rules.

	Key Requirements ³
Operating and Management Record	• A trading record of ≥ 3 financial years ("FY(s)") • Management continuity for at least the three preceding FYs • Ownership continuity and control for at least the most recent audited FY
Financial Eligibility Tests	• Profit test ➢ $\geq$HK\$35 million for the most recent FY and ➢ $\geq$HK\$45 million in aggregate for the two preceding FYs - OR • Market capitalization /revenue /cash flow test ➢ Market capitalization: $\geq$HK\$2 billion at the time of listing ➢ Revenue: $\geq$HK\$500 million for the most recent audited FY ➢ Cash flow: $\geq$HK\$100 million in aggregate for the three preceding FYs - OR • Market capitalization /revenue test ➢ Market capitalization: $\geq$HK\$4 billion at the time of listing ➢ Revenue: $\geq$HK\$500 million for the most recent audited FY
Minimum Public Float and Market Capitalisation	• $\geq 25\%$ of total number of issued shares must at all times be held by the public. A lower percentage of between 15% and 25% may be accepted for a listing applicant with an expected market capitalisation of over HK\$10 billion at the time of listing • ≥ 300 shareholders • An expected market capitalisation of $\geq$HK\$500 million with $\geq$HK\$125 million held by the public at the time of listing
Core shareholder protection standards	• An Overseas Issuer must demonstrate that how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards at least equivalent to those of Hong Kong. • The core shareholder protection standards as set out in Appendix 3 of the Hong Kong Listing Rules must be set out in the issuer's constitutional documents.
Sufficient Working Capital	• Available sufficient working capital for the group's present requirements for at least the next 12 months from the date of the prospectus
Financial Reporting Standards	• Normally, Hong Kong Financial Reporting Standards (HKFRS) or International Financial Reporting Standards (IFRS). The SEHK may accept the use of alternative financial reporting standards subject to certain limitations

Secondary listings are subject to the same basic listing requirements set out above with certain modifications or exceptions provided for under the Hong Kong Listing Rules. For example, for the minimum market capitalisation requirement, an applicant seeking a secondary listing without a weighted voting right structure must meet one of the following requirements:

- An expected market capitalisation at the time of secondary listing of HK\$3 billion if it has a track record of good regulatory compliance of at least five full financial years on a qualifying stock exchange (i.e., NYSE, NASDAQ or LSE Main Market) or on any Recognised Stock Exchange (only for Overseas Issuers without a centre of gravity in Greater China); or
- An expected market capitalisation at the time of secondary listing of HK\$10 billion if it has a track record of good regulatory compliance of at least two full financial years on a qualifying stock exchange as mentioned above.
- An applicant seeking a secondary listing on the SEHK are principally regulated by the rules and authorities of the jurisdiction where Overseas Issuers are primarily listed, and the dominant market of their securities are also on that overseas primary exchange. As such, the SEHK exempts or waives certain requirements of the Hong Kong Listing Rules for issuers seeking a secondary listing, e.g., certain disclosure obligations.

³ These are the key basic listing requirements under the Hong Kong Listing Rules. The SEHK has alternative or additional listing and disclosure requirements for pre-revenue biotech companies, innovative companies with weighted voting rights (WVR) structures, special purpose acquisition companies (SPACs), specialist technology companies, infrastructure companies, mineral companies and investment companies.

An overview of the Indonesian legal and regulatory requirements

Only a few IDX-listed issuers are dual listed on other stock exchanges.

An IDX-listed company seeking to raise capital in Hong Kong can consider doing a dual listing on SEHK by way of listing its depositary receipts⁴. As this is a capital raising, the IDX-listed company can increase its capital through issuance of additional shares and then apply for listing of the depositary receipts representing those newly issued shares on other stock exchange(s). In this case, the IDX-listed company will need to comply with the capital increase (preemptive or non-preemptive rights issuance) requirements for public companies in Indonesia.

An IDX-listed Company seeking a listing on the SEHK

As a general rule, whenever an IDX-listed company issues new shares or equity securities to increase its capital, it has to give preemptive rights (*Hak Memesan Efek Terlebih Dahulu*) to its existing shareholders in proportion to the ownership of shares of the shareholders in that company ("**Rights Issue**"). Taking this route, the IDX-listed company would need to make sure that the majority shareholder (or other shareholders solicited by the majority shareholder) transfer their preemptive rights to the prospective investors at least in a number proportional to the number of shares (when the rights are exercised) to be allocated for listing on the SEHK in the form of depositary receipts.

In very limited circumstances, an IDX-listed company may issue new shares for a capital increase without conferring preemptive rights on the shareholders (i.e., a private placement or a non-preemptive rights issuance ("**NPR**").

Below is a high-level summary of the key requirements for IDX-listed companies conducting Rights Issues and NPR.

Item	Key Requirements	
	Rights Issue	NPR
Regulatory Approvals	- Effective statement of OJK - IDX approval on listing of additional shares For listing of additional shares on the IDX, there are administrative requirements such as submission documents, timeline and pricing.	IDX approval on listing of additional shares For listing of additional shares on the IDX, there are administrative requirements such as submission documents, timeline and pricing.
Corporate Approvals	Shareholders' approval at a general meeting	Independent shareholders' approval at a general meeting, unless otherwise exempted
Constitutional Documents	Normally, amendment of articles of association is not required except for capital provisions. However, dual listing on the SEHK may require the IDX-listed company to further amend its articles of association to include the SEHK listing requirements such as core shareholder protection standard discussed above, to the extent they do not conflict with the Indonesian rules.	Normally, amendment of articles of association is not required except for capital provisions. However, dual listing on the SEHK may require the IDX-listed company to further amend its articles of association to include the SEHK listing requirements such as core shareholder protection standard discussed above, to the extent they do not conflict with the Indonesian rules.
Disclosures	- Domestic: disclosure of information to the shareholders and prospectus (Indonesian language) - For offerings to international investors (for SEHK listings), offering memorandum/circular or information memorandum (English or other foreign language, provided that an English translation is provided) will be required. - Information on the proposed dual listing on SEHK should be included in the above documents. - Dual listing on SEHK would require alignment of the disclosures made pursuant to the Indonesian and Hong	- Disclosure of information to the shareholders on the plan of NPR implementation - For offerings to international investors (for SEHK listings), offering memorandum/circular or information memorandum (English or other foreign language, provided that an English translation is provided) will be required. - Information on the proposed dual listing on SEHK should be included in the above documents. - Dual listing on SEHK would require alignment of the disclosures made pursuant to the Indonesian and

⁴ In theory, it may also be possible to list its shares in SEHK. However, since the shares must also be listed on IDX, it is unclear how the trading of an IDX-listed company's shares can also be done in offshore stock exchanges. The precedents so far are for the IDX-listed companies to list their depositary receipts instead of shares.

Item	Key Requirements	
	Rights Issue	NPR
	Kong requirements in the respective offering documents.	Hong Kong requirements in the respective offering documents.

Hong Kong and Indonesian Ongoing Obligations

To maintain listing on the IDX Main Board and the SEHK Main Board, listed issuers must always comply with the continuing obligations set out under the listing rules of both stock exchanges. The continuing obligations include, public float requirements, open market requirements, financial conditions, publication of annual and periodic financial information and announcement and/or shareholders' approval requirements for certain transactions or corporate actions undertaken by the listed issuer, etc.

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