

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

Editor
David J Goldschmidt

THE LAWREVIEWS

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The Initial Public Offerings Law Review
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OFFERINGS
LAW REVIEW

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PREFACE

Welcome to the inaugural edition of *The Initial Public Offerings Law Review*. While it is largely agreed that the first ‘modern’ initial public offering (IPO) was by the Dutch East India Company (VOC) in 1602, IPOs now take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Several of the earliest exchanges are still at the forefront of the global IPO market, such as the NYSE and LSE, however, the world’s major stock exchanges now are scattered around the globe, and many of them are now public companies themselves. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market. For example, markets in the Asia-Pacific region, including Hong Kong, Shanghai and Tokyo, have enjoyed a significantly stronger presence in the global IPO arena in recent years owing to economic growth in the Asian markets.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different between jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, is it important that the company and its management are aware of the requirements from the outset as well as potential pitfalls that may derail the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply.

Virtually all markets around the globe have experienced significant volatility in recent years. In 2016, the uncertainty surrounding the US presidential election, the unexpected outcome of the Brexit vote and numerous other geopolitical issues facing regions throughout the world furthered the general decline in both overall deal count and proceeds raised. Moving forward, however, many regions have a healthy IPO pipeline for the coming 12 months, including many household names.

The Initial Public Offerings Law Review seeks to introduce the reader to the global IPO regulatory environment and main stock exchanges in 16 different jurisdictions. Each chapter provides a general overview of the IPO process in the region, addresses regulatory and exchange requirements and presents key offering considerations. We hope this inaugural edition of *The Initial Public Offerings Law Review* introduces the reader to the intricacies of taking a company public in these jurisdictions and serves as a helpful handbook for companies, directors and managers.

David J Goldschmidt

Skadden, Arps, Slate, Meagher & Flom LLP
New York
March 2017

HONG KONG

*Christopher Betts*¹

I INTRODUCTION

The Hong Kong capital markets led the world in terms of funds raised in both 2015 and 2016, continuing a trend that also saw it ranked first in most of the past eight years (notably excluding 2014, when the Alibaba initial public offering (IPO) skewed funds raised in favour of the New York Stock Exchange (NYSE)). Listings of Chinese companies dominate the Hong Kong markets, and funds raised are often inflated by large IPOs of Chinese state-owned financial institutions: nine of the 10 largest IPOs in 2016 were of state-owned Chinese financial services companies, with the largest being the US\$7.4 billion IPO by Post Savings Bank of China.

The Securities and Futures Commission of Hong Kong (SFC) is the primary regulator for the Hong Kong securities market and is also responsible for the licensing and supervision of stock exchanges – which is currently limited to the Stock Exchange of Hong Kong Limited (HKEx) and the two boards operated by it, the Main Board and the Growth Enterprises Market (GEM) board. IPOs are currently reviewed by both the SFC and the HKEx, the latter of which is broken down into the Listing Division, responsible for vetting listing applications, and the Listing Committee, which is responsible for approving (or rejecting) listing applications submitted to it by the Listing Division at the end of the vetting process.

Unlike certain other markets that have disclosure based regimes (most notably the US), Hong Kong adopts a substantive review process with the aim of protecting retail investors and preventing problematic or risky companies from listing on the HKEx. This is because of the regulatory focus on protection, driven in large part by the fact that Hong Kong law does not currently permit class actions, litigation funding or contingency based legal fees for contentious legal matters (thus significantly reducing any risk of post-IPO shareholder litigation), and also by the fact that controlling shareholders and directors of Hong Kong listed companies are typically not situated in Hong Kong (thus reducing the chances of any successful litigation or enforcement actions being brought against them).

Both the SFC and the HKEx have the power to object to a listing application – in the case of the SFC, that power is contained in subsidiary legislation to the Securities and Futures Ordinance (SFO),² which states that the SFC may object to a listing if it does not believe that it is in the interest of the investing public or the public interest, and in the case of the HKEx in Rule 8.04 of the Listing Rules, which states that a listing applicant must, ‘in the opinion of the [HKEx], be suitable for listing’.

1 Christopher Betts is a partner at Skadden, Arps, Slate, Meagher & Flom.

2 Namely, the Securities and Futures (Stock Market Listing) Rules.

II GOVERNING RULES

IPOs in Hong Kong are governed by a mix of both law and rules. The relevant laws are primarily the SFO³ and Companies (Winding Up and Miscellaneous Provisions) Ordinance⁴ (CO), while the primary rules are the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules) and their GEM board counterpart. The SFO governs offerings of securities in Hong Kong generally, while the CO contains provisions with respect to prospectuses issued in connection with securities offerings. The Listing Rules, which are regularly supplemented by the HKEx by way of Guidance Letters and Listing Decisions, set out detailed provisions regarding the application process for listing securities on the HKEx.

i Main stock exchanges

The HKEx is the sole exchange for IPOs in Hong Kong. IPOs of Hong Kong-based enterprises have long ceased to represent a meaningful portion of the number of overall IPOs completed via the HKEx, with the overwhelming majority being of China-based enterprises. In particular, most of the large deals in recent years have been by Chinese state-owned financial institutions, with private deals in any given year often coming from a small number of industries or sectors perceived as having better growth prospects. The healthcare and education sectors have been particularly active sectors in the past couple of years. In addition, a number of China-based technology companies have also sought IPOs on the HKEx (the largest of which in recent years was the US\$630 million IPO of Meitu, Inc in late 2016).

The GEM board was developed in the late 1990s with a view to it being positioned as a Hong Kong equivalent to the NASDAQ, but its popularity and attraction has waned for many years, with senior HKEx officials routinely expressing a desire to revamp the GEM board. Nevertheless, for smaller companies with limited operating histories or that are yet to generate a profit, it remains a viable option.

Dual listings were somewhat routine for large China-based state-owned issuers prior to 2005, with companies such as China Mobile and China Telecom seeking dual HK or NYSE listings. However, with the continued integration of Hong Kong markets with the domestic People's Republic of China (PRC) markets, by far the most common form of dual listing is Chinese incorporated companies with 'A shares' listed on either the Shanghai or Shenzhen Stock Exchanges and 'H shares' listed on the HKEx.

There is a varying, but in any given year almost always small, number of IPOs of businesses without a dominant Hong Kong or China nexus each year (most notably companies like Fast Retailing, Prada, Glencore, Prudential and Coach have obtained listings in Hong Kong, though the last of these, Fast Retailing, was back in early 2014). For foreign companies, the most significant potential benefit of an IPO or listing on the HKEx would be access to China-based capital, as Chinese government-controlled pension funds are not restricted from investing in Hong Kong securities (unlike securities in other markets), and China-based retail investors can also trade in HKEx listed securities through the Shanghai–Hong Kong Stock Connect and Shenzhen–Hong Kong Stock Connect programmes.⁵

3 Chapter 571 of the Laws of Hong Kong.

4 Chapter 32 of the Laws of Hong Kong.

5 These programmes are mutual market access programmes pursuant to which investors in securities in Hong Kong dollars, Shanghai and Shenzhen-based investors can trade in certain Hong Kong listed securities

ii Overview of listing requirements

Objective requirements

Companies seeking to list on the HKEx must either be incorporated in one of a prescribed list of jurisdictions (namely, Hong Kong, PRC, Bermuda or the Cayman Islands – together known as the ‘recognised jurisdictions’), or a published list of other jurisdictions that the HKEx and SFC have, through a test case, accepted as having shareholder protections of a comparable standard as those under Hong Kong law (the ‘acceptable jurisdictions’). Companies incorporated outside the recognised and acceptable jurisdictions can still list on the HKEx, but must first make a submission to the HKEx and SFC comparing the shareholder protections under the laws of the jurisdiction it is incorporated in with those of Hong Kong, and describing what measures the company proposes to adopt to address any discrepancies (such as amendments to its constitutional documents).

A company applying to list on the Main Board must have a trading record of at least three years and meet any one of the three following financial tests:

- a* Profits test: at least HK\$50 million in profits attributable to shareholders in the last three financial years (with profits of at least HK\$20 million recorded in the most recent year, and aggregate profits of at least HK\$30 million recorded in the two years before that).
- b* Market cap/revenue test: market cap of at least HK\$4 billion at the time of listing and at least HK\$500 million in revenue during the most recent audited financial year.
- c* Market cap/revenue/cash flow test: market cap of at least HK\$2 billion at the time of listing, revenue of at least HK\$500 million for the most recent audited financial year and positive cash flow from operating activities of at least HK\$100 million in aggregate for the three preceding financial years

In addition, a listing applicant must have management continuity for at least the three preceding financial years, which generally requires that there has been no change in the majority of its board of directors or senior management team during the three financial years track-record period. Also, there has to be a continuous ownership and control of the voting rights attaching to the shares for the latest financial year of the trading record period by the controlling shareholder or, where there is no controlling shareholder, a single largest shareholder. Under the large market capitalisation or revenue test, the HKEx may accept a shorter trading record period under substantially the same management subject to certain conditions being met. Relaxations of the objective criteria may also be available to infrastructure, mining and other companies – though few such companies have listed in the past decade.

At the time of the listing and thereafter, a company must have at least 25 per cent of its total issued share capital held by the public. However, the HKEx may accept a lower public float percentage (between 15 per cent and 25 per cent) if a company has an expected market capitalisation at the time of the listing of over HK\$10 billion. The following persons will not be regarded as members of the ‘public’:

- a* ‘connected persons’ of the company (see below for a definition of ‘connected persons’);

through their Shanghai or Shenzhen-licensed brokers, as the case may be. For further information, see www.hkex.com.hk/eng/csm/index.htm.

- b* any person whose acquisition of securities has been financed directly or indirectly by a connected person; and
- c* any person who is accustomed to taking instructions from a connected person with respect to the acquisition, disposal, voting or other disposition of the securities held by such person.

At the time of the listing, a company must have at least 300 shareholders, and at the time of listing no more than 50 per cent of a company's shares held in public hands can be beneficially owned by the three largest public shareholders. At the time of the listing, the expected market capitalisation of a company's securities held by the public must be at least HK\$50 million and the total expected market capitalisation must be at least HK\$200 million.

Companies listing on the GEM board are subject to lesser objective listing standards, such as only a two-year trading record requirement, and must only have achieved positive cash flow of HK\$20 million during the two years prior to listing (without having necessarily achieved a profit).

Furthermore, there are a number of corporate governance-related requirements that must be met in order to list, such as the need for a company's board of directors to be comprised of no less than one-third independent non-executive directors, subject to a minimum of three, and to establish audit, remuneration and nomination committees.

Subjective requirements

As noted above, the HKEx and SFC will conduct a substantive review of listing applicants to determine whether they are suitable for listing. The suitability rules have, through the years, been interpreted broadly to render companies with a variety of issues as being unsuitable for listing. These issues, most of which are captured in HKEx Guidance Letter HKEx-GL68-13,⁶ include:

- a* concerns over the integrity and suitability of directors and shareholders;
- b* historical breaches of laws or regulations;
- c* deteriorating financial performance;
- d* over-reliance on a controlling shareholder;
- e* customer or supplier concentration;
- f* a lack of key licences and permits; and
- g* business models considered to be unsustainable by the HKEx.

The HKEx also has specific rules relating to the use of variable interest entity (VIE) structures, which are contractual arrangements used to control entities where direct legal ownership is not possible. VIE structures are often used to control domestic Chinese businesses (this is common for industries that are subject to foreign ownership restrictions, such as technology related sectors). HKEx policy requires that the businesses held through VIE structures must be narrowly tailored to situations where there is a clear regulatory barrier to direct legal ownership, and the contracts underlying the VIE structure must also conform to HKEx requirements. The HKEx has used non-compliance with its policy on the use of VIE structures as the basis for determining that a company is unsuitable for listing on a number of occasions.

⁶ See http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/g/1/g16813.pdf.

Due to the high level of discretion exercised by the HKEx in considering whether a company is suitable for listing, it is relatively common for companies with any concerns regarding their suitability to approach the Listing Division of the HKEx in advance of submitting a formal listing application in order to seek their preliminary views with respect to any issues of concern.

Finally, it should be noted that the HKEx has strict guidelines regulating pre-IPO investments that, in a worst case scenario, can require investment agreements to be amended and restated and lead to a six-month delay to an IPO timetable if not complied with. It is therefore prudent for companies seeking pre-IPO investments to consult with a Hong Kong lawyer prior to an investment being made to ensure that any investment is structured appropriately.

Procedural requirements

The Listing Rules, as supplemented by HKEx Guidance Letters, set out a number of procedural requirements that must be followed when preparing for an IPO in Hong Kong.

To begin with, companies seeking to list securities on the HKEx must appoint one or more sponsor banks for their listing no less than two months prior to the date on which they propose to submit their listing application. Sponsors must be licensed with the SFC to provide corporate finance advice, and are typically investment banks that also act as underwriters on the IPO. Multiple sponsors can be appointed, but at least one must be independent from the company by reference to a number of criteria set out in Rule 3A.07 of the Listing Rules.

The principal role of the sponsor or sponsors is to guide the company through the IPO process, act as the main communication channel between the company and the regulators, and to provide various confirmations to the HKEx throughout the IPO process (including that they are satisfied, based on their diligence performed, that the company is suitable for listing). For the reasons described above, and as Hong Kong's regulators have limited enforcement tools when dealing with bad corporate actors, the regulators place a very high degree of importance on the role of the sponsor, and sponsors are required (under the Listing Rules and a code of conduct issued by the SFC) to undertake a rigorous diligence exercise in respect of companies wishing to list in Hong Kong. This diligence includes visits to key business sites and interviews with key customers, suppliers and providers of finance. Companies with experience in other markets regularly find the diligence requirements of a Hong Kong IPO significantly more onerous than what they are accustomed to.

The formal phase of the listing application process begins with the filing by the sponsor or sponsors of a prescribed listing application form (the Form A1) with the Listing Division of the HKEx, accompanied by a non-refundable deposit of the initial listing fee, together with an advanced draft of the Hong Kong prospectus and other prescribed documents. The A1 Filing must be made not less than 25 clear business days prior to the proposed date of the Listing Hearing although, as a practical matter, the vetting process regularly results in the time between the A1 Filing and the Listing Hearing being longer than this. Once the Listing Division has completed its review of a listing applicant, it will submit the application to the Listing Committee (an independent committee comprised of a broad range of market participants, including bankers, lawyers, accountants, investor representatives and other stakeholders) for the final determination as to whether or not the company should be permitted to list. In principle, once the approval to list is given by the Listing Committee,

a company may proceed with its offering process. In practice, very few listing applications are formally rejected, with problematic applications invariably being withdrawn or lapsing before any formal decision is made by either of the regulators.

A version of the draft prospectus submitted at the time of the listing application must be made available to the public via the website of the HKEx. This contrasts with other markets (most notably the US, which has steered away from public filings pursuant to the JOBS Act). Exemptions from the public disclosure requirement are available to companies with an existing listing on an exchange outside of Hong Kong.

iii Overview of law and regulations

As noted above, the principal laws governing Hong Kong IPOs are the SFO and the CO. The SFO provides that offerings of securities in Hong Kong can only be made if authorised by the SFC,⁷ while the CO sets out the principal content requirements for prospectuses issued in connection with Hong Kong IPOs (which are supplemented by further content requirements in the Listing Rules). These content requirements include (but are not limited to):

- a* information about the securities to be listed and the company's share capital;
- b* an overview of the industry (including a regulatory overview);
- c* general information about the company's business and assets;
- d* financial information about the company, including an accountant's report prepared in accordance with International Financial Reporting Standards;
- e* management discussion and analysis of financial condition;
- f* a description of the relationship between the company and its controlling shareholder (including any connected transactions);
- g* a property valuation (if the company is engaged in a property business or the book value of any of its properties represents more than 15 per cent of its total assets);
- h* information about the company's management, directors, securities held by the directors and directors' service contracts;
- i* details of shareholders holding 5 per cent or more of the share capital;
- j* a description of how the IPO proceeds are to be used; and
- k* various material contracts and other documents must be made available for public inspection.

The general disclosure standard for a Hong Kong prospectus is that it must contain such particulars and information as are necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the company, its profits and losses and rights attaching to the securities offered.

The directors are jointly and severally liable for the accuracy of the information set out in the Hong Kong prospectus and are required to confirm that, to the best of their knowledge and belief and after all reasonable inquiry, the Hong Kong prospectus does not omit any facts that would result in the Hong Kong prospectus being misleading. Any misstatement in, or omission from, the Hong Kong prospectus may attract civil liabilities pursuant to the CO, the SFO, tort and contract law and criminal liabilities pursuant to the CO, the Theft Ordinance⁸ and the SFO.

⁷ See Section 103 of the SFO.

⁸ Chapter 210 of the Laws of Hong Kong.

III THE OFFERING PROCESS

i General overview of the IPO process

Most Hong Kong IPOs, or at least those raising a material level of funds, are comprised of a Hong Kong public offer (HKPO) tranche and an international private placing tranche, often sold into the United States and to US investors outside the United States pursuant to exemptions from registration under Rule 144A and Regulation S of the US Securities Act of 1933, as amended.

The HKPO is conducted on the back of a Hong Kong prospectus (which must be issued in both English and Chinese languages) and corresponding English and Chinese application forms, which are distributed to the public through one (or more) retail banks in Hong Kong engaged by the issuer for such purposes. For the international tranche, an offering circular will be prepared that is typically comprised of the Hong Kong prospectus surrounded by a 'wrap' containing certain summary terms, risk factors and other disclosures that are specific to US or other international investors.

Practice Note 18 of the Listing Rules (PN18) dictates that the minimum initial allocation to the HKPO must be 10 per cent of the total number of shares offered in the IPO, and that up to an additional 40 per cent of the total shares offered under the IPO must be 'clawed back' to the HKPO from the international placing tranche in the event of over-subscription by public investors under the HKPO (thus, for particularly 'hot' IPOs, the Hong Kong public may end up being allocated 50 per cent of the deal; though for very large IPOs it is possible to apply to the HKEx for relaxation of the PN18 requirements). An investor can only receive shares either in the international placing or the HKPO, but not both. Alternatively, where demand under the HKPO does not meet the initial 10 per cent offered, the shortfall may be reallocated to the international placing tranche.

An increasingly pervasive feature of Hong Kong IPOs is cornerstone investors, who are either strategic or financial investors that agree in writing to subscribe for a fixed dollar amount value of shares as part of the international placing tranche shortly prior to the bulk-printing of the offering documents at the IPO price (i.e., the price for the shares offered to the public in Hong Kong). Virtually all sizeable IPOs in recent years have had a substantial (20 per cent to 50 per cent) part of their international placing tranche acquired by cornerstone investors. Appropriate disclosures are required to be made in the offering documents in relation to cornerstone investors, including a brief background summary of the investor and a short description of the terms of the cornerstone agreement. The shares subscribed to by the cornerstone investors pursuant to the international placing are usually subject to a lock-up period of six months following the date of the listing.

Appendix 6 of the Listing Rules (also referred to as the Placing Guidelines) sets out certain rules and restrictions applicable to the international placing, including that:

- a there should be no less than three shareholders for each HK\$1 million of the placing, with a minimum of 100 shareholders;
- b unless prior written consent from the HKEx is obtained, no allocation is permitted to 'connected clients' of the underwriters (i.e., their holding companies, shareholders holding 10 per cent or more of their voting rights, or affiliates), directors or existing shareholders of a company or their associates or nominee companies unless the names of the ultimate beneficiaries are disclosed; and
- c each of the brokers involved in the placing must submit to the HKEx a marketing statement and placee list containing details of placees and names and addresses of the beneficial owners of the shares.

Under the Placing Guidelines and Listing Rule 10.04, existing shareholders are not permitted to subscribe for shares under the international placing without prior consent from the HKEx, which is only granted if the offering of shares under the IPO is undersubscribed and the offer price of the shares is fixed at the bottom end of the initial indicative price range (or the shareholders are subscribing for additional shares at IPO pursuant to pre-existing anti-dilution rights).

All Main Board IPOs will also involve an option granted to the underwriters (either by the company or a selling shareholder) enabling the underwriters to require the company to issue (or the selling shareholder to sell) additional shares representing up to 15 per cent of the number of shares initially available under the IPO for the purpose of covering over-allocations in the international placing.

It is worth noting that Hong Kong remains a market where investment banks are permitted to issue pre-deal research reports, subject to certain guidelines with respect to independence and other matters being complied with, and that it is common for underwriting banks to issue pre-deal research in advance of an IPO.

Controlling shareholders are subject to a post-IPO lock-up set out in Listing Rule 10.07. Briefly, this prohibits a controlling shareholder from disposing of any shares in the first six months following an IPO (the 'first six-month period'), and a controlling shareholder cannot dispose of any shares in the six months following the first six-month period to the extent that its shareholding falls below 30 per cent. The controlling shareholder can be a single person or a group of persons. Companies are also prohibited from issuing any new shares during the first six-month period, with the limited exception of any shares that may be issued pursuant to management or employee equity ownership schemes, or pursuant to the over-allotment option.

ii Considerations for foreign issuers

As noted in Section II.i, *supra*, one of the principal considerations for foreign issuers in selecting Hong Kong as a listing venue is the potential liquidity and valuation benefits of Hong Kong's accessibility to China-based investors, including pursuant to the Shanghai–Hong Kong Stock Connect and Shenzhen–Hong Kong Stock Connect programmes. Valuations of companies on the Shanghai and Shenzhen exchanges are typically many times higher than those for comparable companies on non-PRC exchanges, and there is a perception that Hong Kong listed companies may benefit from the connection to PRC markets in this regard.

There are a number of quirks to Hong Kong IPOs that can often challenge foreign issuers. These include:

- a* the need to produce a Chinese language prospectus for which directors must accept individual personal liability;
- b* the SFC expectation that the content of the Hong Kong prospectus be verified, which is a process that involves a company (and its directors or management) providing written documents to evidence or support all statements in the prospectus (including documents evidencing the educational qualifications and work experience of directors or management);
- c* the requirement that a company register with the Companies Registry of Hong Kong (as a non-Hong Kong company), which necessitates a filing of the residential address and identification document number of each director (that can be publicly searched);
- d* the intrusive and burdensome diligence and documentary requirements;

- e* the relatively broad discretion exercised by the HKEx to interpret, and grant waivers from, the Listing Rules; and
- f* complex and detailed rules on connected transactions (as briefly described in Section IV.v, *infra*).

IV POST-IPO REQUIREMENTS

The Listing Rules set out a number of ongoing compliance requirements, principal among which are the following.

i Ongoing disclosures

Companies must issue announcements (in both English and Chinese) if there are any material developments that would reasonably be expected to impact their share price or trading volume ('inside information') as soon as is practicable. This requirement is also backed up legislatively by the SFO, which provides for potential civil and criminal liability for any failures to disclose inside information, or a failure to disclose it promptly. The Listing Rules also set out a number of prescribed situations where announcements must be made (such as the resignation of directors, issuances of new securities, etc).

ii Periodic reporting

Companies must issue annual and interim results announcements within three months and two months, respectively, of the end of their fiscal full and half years. Companies must also issue annual and interim reports to shareholders. Companies are also required to make monthly filings with the HKEx in relation to their share capital and any changes thereto, as well as 'next day' filings upon any new share issuances or share repurchases. Directors are prohibited from dealing in any securities of a company during the 60-day and 30-day periods prior to the issue of annual and interim results announcements, respectively.

iii Disclosure of interest filings

Directors are required to submit filings (within 10 business days of an IPO, and thereafter within three business days) detailing their interests in the share capital (including short positions and options) of a company. Subsequent filings must be made upon the occurrence of any changes. Similarly, other parties must make filings of their interest upon acquiring 5 per cent or more of the issued share capital of a company, and make subsequent filings upon the occurrence of certain changes (primarily if their interest increases or decreases through a full percentage – e.g., from 5.4 per cent to 6.2 per cent).

iv Corporate governance requirements

Companies must continue to comply with various corporate governance requirements (including the board composition and committee requirements outlined above).

v Notifiable and connected transactions

Transactions (including acquisitions and disposals) above certain size thresholds, or with certain ‘connected’ parties, are subject to announcement, shareholder approval and reporting requirements. Broadly speaking, connected transactions are:

- a* transactions between a company (or any of its subsidiaries) and any of its ‘connected persons’ (which includes directors, CEOs or holders of 10 per cent or more voting rights of the company or any of its subsidiaries, and their respective associates); and
- b* certain other transactions in relation to the acquisition or disposal of an interest in a company, the subscription of shares on favourable terms, financial assistance, options and joint ventures where the counterparty is or could, as a result of the transaction, become a connected person of the company.

The purpose of the connected transactions requirements is to ensure that the interests of shareholders as a whole are taken into account by listed companies and to provide safeguards against connected persons taking advantage of their positions of influence. Connected transactions above certain thresholds require approval from disinterested shareholders in general meetings, though a variety of exemptions apply (such as exemptions for the provision of financial assistance to a listed company by a connected person provided that it is on normal commercial terms and no security over the listed company’s assets is granted in connection with the financial assistance).

V OUTLOOK AND CONCLUSION

Hong Kong has a legal system grounded in, and still largely based on, English laws, and has a fair and open economy with no capital controls, no capital gains taxes and no withholding taxes on dividends. On the other hand, the Chinese government still strictly controls the convertibility of yuan and the path to an IPO on domestic Chinese exchanges remains a political and highly uncertain process. For these reasons, and together with the increasing connectivity between the Hong Kong and Chinese capital markets (including through the Shanghai–Hong Kong Stock Connect and Shenzhen–Hong Kong Stock Connect programmes), Hong Kong is expected to retain its status as a preferred IPO venue for China-based businesses, which will ensure that Hong Kong will remain one of the top markets by funds raised for the foreseeable future. Whether Hong Kong can also play a role in helping non-China based issuers raise capital has, in recent years, been called into question and remains up for debate.

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