

Initial Public Offerings 2022

Contributing editors
Joshua Ford Bonnie and Kevin P Kennedy
Simpson Thacher & Bartlett LLP





Simpson
Thacher

Clients around the world in a wide array of industries turn to Simpson Thacher for critical insights and commercial advice on their most complex transactions. We represent our clients with a commitment to hard work, excellence and integrity.

One of the world's preeminent law firms, Simpson Thacher offers best-in-class teams across practice areas. Building on more than 135 years of experience, we have played a substantial role advising on many of the world's most noteworthy matters.

www.simpsonthacher.com

Simpson Thacher & Bartlett LLP

NEW YORK BEIJING HONG KONG HOUSTON LONDON LOS ANGELES PALO ALTO SÃO PAULO TOKYO WASHINGTON, D.C.

© Law Business Research 2021

Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between May and June 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2015
Seventh edition
ISBN 978-1-83862-672-3

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Initial Public Offerings 2022

Contributing editors**Joshua Ford Bonnie and Kevin P Kennedy****Simpson Thacher & Bartlett LLP**

Lexology Getting The Deal Through is delighted to publish the seventh edition of *Initial Public Offerings*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapters on New Zealand and Turkey.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Joshua Ford Bonnie and Kevin P Kennedy of Simpson Thacher & Bartlett LLP, for their continued assistance with this volume.



London
June 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in July 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	3	New Zealand	52
Joshua Ford Bonnie, Kevin P Kennedy and Jonathan H Pacheco Simpson Thacher & Bartlett LLP		Michael Pritchard, Chris Harker and Sarah Haste Mayne Wetherell	
Australia	4	Singapore	58
Adam D'Andreti, Lucy Hall and Kevin Zhou Gilbert + Tobin		Evelyn Wee, Hoon Chi Tern and Jasselyn Seet Rajah & Tann Singapore LLP	
Belgium	12	South Africa	64
Arnaud Coibion, Filip Lecoutre, Thierry L'Homme, Gilles Nejman and Xavier Taton Linklaters LLP		Ezra Davids, David Yuill, Ryan Wessels and Sibonelo Mdluli Bowmans	
Greece	18	Sweden	70
Catherine M Karatzas, Alexandra Th Kondyli, Nikos Askotiris and Aris Makripodis Karatzas & Partners Law Firm		Carl-Johan Pousette and Marcus Tipner Advokatfirman Hammarskiöld	
Hong Kong	24	Switzerland	76
Celia Lam and Christopher Wong Simpson Thacher & Bartlett LLP		Philippe A Weber and Christina Del Vecchio Niederer Kraft Frey	
Ireland	31	Turkey	87
Lee Murphy and Ryan Duggan Eversheds Sutherland (Ireland)		İltem Dokurlar and Naz Esen Turunç	
Japan	40	United Kingdom	93
Kohei Koikawa, Masashi Ueda and Takahiro Yokota Nishimura & Asahi		Clare Gaskell, Deborah Harris and Lucy Gillett Simpson Thacher & Bartlett LLP	
Luxembourg	45	United States	101
François Warken and Laurent Schummer Arendt & Medernach		Joshua Ford Bonnie, Kevin P Kennedy and Jonathan H Pacheco Simpson Thacher & Bartlett LLP	

Hong Kong

Celia Lam and Christopher Wong

Simpson Thacher & Bartlett LLP

MARKET OVERVIEW

Size of market

- 1 | What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

In 2019 and 2020, 163 and 146 companies, respectively, were newly listed on The Stock Exchange of Hong Kong Limited (HKSE), raising a total sum of approximately HK\$314.24 billion and HK\$400.14 billion, respectively.

Issuers

- 2 | Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

The HKSE generally welcomes issuers incorporated in different jurisdictions to seek listing status on the HKSE, as long as the relevant issuers can demonstrate to the satisfaction of the HKSE that they are subject to key shareholder protection standards that are at least comparable to those in Hong Kong.

Other than companies incorporated in Hong Kong, the HKSE has, as of April 2021, recognised companies incorporated in the People's Republic of China (PRC), the Cayman Islands and Bermuda as 'eligible' for listing (the 'recognised' jurisdictions). The relevant listing applicant incorporated in any of these jurisdictions is not required to make specific submissions to seek the HKSE's approval insofar as jurisdiction of incorporation is concerned.

Further, as of April 2021, the HKSE has, based primarily on its analyses of the regulatory regimes of general shareholder protection standards available in the jurisdictions of incorporation, as well as the existence of cross-border cooperation between securities regulators in the home jurisdictions and Hong Kong, identified 28 jurisdictions as 'acceptable' as a company's place of incorporation for seeking listing status in Hong Kong. For each such 'acceptable' jurisdiction, the HKSE has published a specific country guide that contains stipulations that the HKSE considers necessary to be included in the listing applicant's constitutional documents for shareholder protection purposes. As long as the sponsor to the listing applicant files a confirmation to the HKSE that the principles, laws and practices set out in the relevant country guide are fulfilled and applicable, the HKSE will grant its approval insofar as the listing applicant's jurisdiction of incorporation is concerned. These 28 acceptable jurisdictions are Austria, Australia, Brazil, British Virgin Islands, Canada (Alberta, British Columbia, Ontario), Cyprus, England and Wales, France, Germany, Guernsey, India, Ireland, the Isle of Man, Israel, Italy, Japan, Jersey, the Republic of Korea, Labuan, Luxembourg, Netherlands, Russia, Singapore and the United States (State of California, State of Delaware and State of Nevada).

Notwithstanding that an issuer is not incorporated in any of the eligible or acceptable jurisdictions as listed in the foregoing paragraphs, if the issuer is able to demonstrate to the satisfaction of the HKSE that it is subject to appropriate standards of shareholder protection that are at least comparable to those in Hong Kong, the HKSE is prepared to accept, on a case-by-case basis, different jurisdictions of incorporation as suitable for seeking listing status in Hong Kong.

In addition, foreign issuers seeking to list in Hong Kong are not required to have their operations or businesses based in, or otherwise closely affiliated to, Hong Kong or mainland China.

In March 2021, the HKSE announced a public consultation proposing to streamline the listing regime for overseas issuers, including removing the distinction between the 'recognised' jurisdictions and the 'acceptable' jurisdictions, and imposing one common set of core shareholder protection standards to all issuers regardless of place of incorporation.

Primary exchanges

- 3 | What are the primary exchanges for IPOs? How do they differ?

Hong Kong Exchanges and Clearing Limited, through its wholly owned subsidiary The Stock Exchange of Hong Kong Limited, is the only stock market operator in Hong Kong. Two platforms – the Main Board and the Growth Enterprise Market (GEM) – are available for issuers seeking to be listed. The Main Board is a market for larger and more established businesses that fulfil the HKSE's higher profit and financial requirements, whereas GEM is a market for small and mid-sized companies. In addition, equity securities can be listed on the Main Board in the form of shares or depositary receipts, while equity securities can be listed only in the form of shares on GEM.

At the end of 2019, the shares of 2,071 and 378 companies were listed on the Main Board and GEM, respectively; and at the end of 2020, the shares of 2,2,170 and 368 companies were listed on the Main Board and GEM, respectively.

REGULATION

Regulators

- 4 | Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

The Hong Kong Stock Exchange (HKSE) and the Securities and Futures Commission (SFC) are responsible for promulgating and enforcing the rules and regulations regarding listing matters in Hong Kong. Both these regulatory bodies have the statutory duties to ensure an orderly, informed and fair securities market in Hong Kong. The major regulations promulgated by the HKSE regarding listing matters are the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the Listing Rules) and the Rules Governing the

Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited, and the primary legislations that the SFC administers relating to offering of securities in Hong Kong are the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Securities and Futures Ordinance. In addition, both regulators from time to time publish guidance materials and codes of conduct to regulate, among other things, disclosures in prospectuses, due diligence by sponsors of IPO listing applicants and securities-offering activities in Hong Kong.

The HKSE and the SFC cooperate under the dual-filing arrangement that came into effect in 2003. Dual filing refers to the requirements of the Securities and Futures (Stock Market Listing) Rules, under which listing applicants must file applications, prospectuses and other disclosure materials with the SFC via the HKSE. In other words, while the HKSE is the channel of communication with the listing applicant during the IPO application vetting process, any documents filed by the listing applicant with the HKSE will be passed on to the SFC, which may also review and vet the application. Any comments that the SFC may have on the listing application will be made to the listing applicant via the HKSE. Accordingly, both the HKSE and the SFC are involved in the IPO vetting process and can exercise enforcement powers against persons issuing false or misleading information.

Authorisation for listing

5 | Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

A listing applicant is required to file an application for listing to the HKSE and, via the dual-filing arrangement, to the SFC. The shares of any issuer may be listed on the HKSE only after the unconditional listing approval is obtained.

The application documents submitted by a listing applicant must be in advanced form and substantially complete in order that the time between the date of the listing application and the actual listing can be shortened. Against this background, the majority of listing application documents are submitted to the HKSE when a listing applicant first files its listing application. These initial documents comprise a listing application form (commonly known as Form A1 and Form 5A for applications seeking Main Board and Growth Enterprise Market (GEM) listing, respectively) setting out the basic information of the listing applicant and the proposed offering structure, a draft application prospectus and a set of requisite documents, including documents such as draft legal opinions and draft profit and working capital forecast memoranda of the listing applicant, as required under the Listing Rules. At various prescribed stages of the vetting process until unconditional listing approval is granted, the HKSE requires other prescribed documents to be submitted to facilitate its review of the listing application in a sequential and orderly manner.

Upon receipt of the initial application documents, which should be in advanced form and substantially complete, the HKSE will conduct a detailed qualitative assessment of the listing application in terms of the following overarching principles:

- eligibility for listing;
- suitability for listing;
- sustainability of its performance or business;
- compliance of the listing application with relevant securities rules and legislation; and
- disclosure sufficiency.

During the vetting process, the listing division of the HKSE and the SFC may raise queries or make prospectus disclosure comments to the listing applicant or sponsors to the IPO. When the enquiries and

comments have been satisfactorily addressed, the listing division of the HKSE will then present the relevant listing application for a listing committee hearing (for Main Board applicants) or GEM listing approval group hearing (for GEM applicants), as applicable. Once the HKSE is satisfied with the quality of the listing application, taking into account the overarching principles mentioned in the foregoing paragraph, it will grant a no-comment letter for the prospectus and share application forms, after which these may be published on the websites of the issuer and the HKSE and the IPO launched.

After the launch of an IPO, the listing applicant and the underwriters are required to submit certain administrative and marketing-related information to the HKSE. Once the HKSE and the SFC are satisfied that all listing-related matters, including those related to marketing and allotment of securities, have been properly arranged, unconditional listing approval will be granted to the issuer for listing of its shares on the HKSE.

Prospectus

6 | What information must be made available to prospective investors and how must it be presented?

The relevant law and regulations in Hong Kong relating to the public offers of shares require that each such offer is made with a prospectus that complies with certain content requirements set out in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Listing Rules and the guidance letters published by the HKSE. Before a prospectus may be distributed to the public, it must be delivered to the Hong Kong Registrar of Companies for registration. The latest regime taking effect in July 2021 requires that all prospectuses (in Chinese and English) shall be available on the websites of the issuer and the HKSE and delivery of physical forms of prospectus will not be required.

The prospectus should be drafted in concise and plain language so that it can be read and clearly understood by investors. A prospectus typically contains the following operative sections:

- expected timetable;
- summary, risk factors, waivers and exemptions from compliance with the Listing Rules, directors and parties involved in the global offering;
- corporate information;
- industry overview;
- regulatory overview;
- history, development and reorganisation;
- business;
- financial information;
- relationship with controlling shareholders;
- connected transactions;
- share capital;
- substantial shareholders;
- cornerstone investors;
- directors, senior management and employees;
- future plans and use of proceeds;
- underwriting;
- structure of the global offering;
- how to apply for the Hong Kong offer shares;
- accountants' report;
- unaudited pro forma financial information;
- expert reports (where applicable, such as a property valuation report);
- summary of the applicant's constitutions and law of the place of incorporation; and
- other statutory and general information.

As regards the financial information to be included in the prospectus, a Main Board listing applicant is generally required to include audited financials of the three full financial years immediately preceding the issue of the prospectus, whereas a GEM listing applicant is generally required to include audited financials of the two full financial years immediately preceding the issue of the prospectus. Nonetheless, the Listing Rules also require that the latest audited financials included in a prospectus must not have ended more than six months from the date of the prospectus and accordingly, the listing applicant may need to include audited stub period financials in its prospectus.

As mentioned in the foregoing paragraph, before a prospectus may be distributed to the public it must be delivered to the Hong Kong Registrar of Companies for registration. Nonetheless, prior to the distribution of a formal prospectus, redacted versions of the prospectus, with all offer-related information (such as descriptions of how an application for shares may be made) removed and appropriate warning and disclaimer statements included in accordance with the specific guidelines prescribed by the HKSE, must be published electronically on the HKSE's website. It must be first published in the form of an application proof prospectus upon submission of a listing application to the HKSE and the SFC; and second, in the form of a post-hearing information pack after the listing committee hearing or GEM listing approval group hearing (as the case may be) and material comments (if any) from the HKSE have been addressed, but in any event prior to the earlier of the distribution of the red-herring document to institutions or professional investors, and the commencement of the roadshow phase.

Publicity and marketing

7 | What restrictions on publicity and marketing apply during the IPO process?

The Hong Kong securities laws and regulations impose restrictions on the publicity and marketing activities that may be conducted by an issuer and other related parties during the course of an IPO process. The restrictions cover two aspects: (i) the offering of securities; and (ii) information relating to the listing applicant.

Regarding (i), the Listing Rules require that all publicity materials released in Hong Kong relating to securities offerings and listing proposals must be reviewed and approved by the HKSE prior to release. The rationale for such a requirement is that regulators are concerned about publicity relating to or seen to be relating to listing and public offering, as such publicity may mislead the public into believing that approval for an issuer's listing application or offering plans have already been - or will soon be - approved by the relevant regulatory authorities. In addition, the regulators are concerned about the public being provided with information not contained in the prospectus (which, as mentioned in questions 5 and 6, must be vetted and approved by the regulators and registered with the Hong Kong Registrar of Companies before it may be distributed to the public).

As to (ii), generally speaking, in the course of the preparation for and during an IPO, the listing applicant may still in its ordinary course of business conduct promotional or marketing activities, such as advertising for its products and services, in accordance with its usual marketing practices without obtaining consent from the HKSE. Even though certain materials may on the surface appear to be for the purpose of promoting the listing applicant or its products or services, the HKSE may, however, rule that such materials are intended for the promotion of the securities of the listing applicant if the regulator is of the view that the materials have the effect of conditioning the market. While promotional materials are considered on a case-by-case basis with reference to the particular circumstances pertaining to the listing applicant, as general guiding principles, the HKSE will deem the materials as relating to an issue of securities if such materials are

not commensurate with the particular nature of the listing applicant's business, products, customers or markets (eg, materials that place disproportionate emphasis on the applicant's name rather than its products and business), or are likely to condition the market ahead of the issue of prospectus and affect the perceptions of the upcoming offer. Further, in the past the HKSE has also ruled that advertisements and news articles promoting the listing applicant's products that are issued shortly before the listing have the effect of conditioning the market, and are therefore in breach of the relevant restrictions on publicity.

Failure to comply with these restrictions may result in the listing application being substantially delayed by the HKSE and, in serious cases, the HKSE or the SFC may even require that the listing applicant make a public statement of clarification or apology.

Enforcement

8 | What sanctions can public enforcers impose for breach of IPO rules? On whom?

Enforcement proceedings and disciplinary actions in respect of breaches of laws and regulations relating to securities-offering activities in Hong Kong are generally initiated by the SFC, whose main role, among others, is to enforce the laws governing Hong Kong's securities and futures markets. The SFC may take enforcement actions against both the sponsors to the new listings as well as the listed companies and their directors, depending on the nature of the particular breach.

All IPOs in Hong Kong must be sponsored by corporations (typically investment banks) licensed by the SFC and, as such, all sponsors in Hong Kong IPOs are regulated by the SFC. Representatives and responsible officers of the sponsor entity are also persons regulated by the SFC. The primary role of the sponsor in an IPO is to conduct sufficient due diligence on the listing applicant and make submissions and representations to, and act as a channel of communication with, the HKSE on behalf of the listing applicant in the course of a listing application. Upon the SFC's identification of a sponsor's misconduct (for instance, a sponsor's failure to conduct sufficient due diligence on a listing applicant or internal control failures such as lack of proper record of work performed), the SFC has the power to discipline regulated persons in accordance with the Securities and Futures Ordinance. Depending on the seriousness of the breach, the SFC may invoke any of the following disciplinary sanctions (either alone or in combination):

- revocation or suspension (partially or in full) of licence or registration to perform regulated activities;
- revocation or suspension (partially or in full) of approval to be a responsible officer;
- prohibition of application for licence or registration;
- prohibition of application to be a responsible officer;
- reprimand (private or public); and
- fine (up to the maximum of HK\$10 million or three times the profit gained or loss avoided, whichever is higher, for each misconduct).

Where a breach or misconduct concerned is very serious in nature, the SFC may refer the case to the Market Misconduct Tribunal or exercise its power under the Securities and Futures Ordinance and make an application to the High Court of Hong Kong for an order for appropriate remedies on the affected investors and penalties on the parties in default.

In cases that involve the provision of false or misleading information in the prospectus of a listing applicant, the directors of the listing applicant may also bear civil or criminal liabilities for misstatement of information in prospectuses.

TIMETABLE AND COSTS

Timetable

9 | Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

A summary of the process for a listing application in Hong Kong is as follows.

Appointment of sponsors

In order to ensure that reasonable time is committed by the sponsors (typically the lead underwriters) to the listing application to conduct due diligence in respect of the listing applicant, the notification of appointment of sponsors must be filed to the Hong Kong Stock Exchange (HKSE) at least two months before submission of a listing application.

Submission of listing application

At least two months after the date of filing of the notification of appointment of sponsors, a listing applicant may file a listing application to the HKSE. Upon receipt of the substantially complete listing application documents, the HKSE will conduct a detailed qualitative assessment of the listing application.

Detailed vetting

The HKSE will conduct a detailed qualitative assessment of the listing application in terms of the following overarching principles:

- eligibility for listing;
- suitability for listing;
- sustainability of performance and business;
- compliance of the listing application with relevant securities rules and legislation; and
- disclosure sufficiency.

During the vetting process, the listing division of the HKSE and the Securities and Futures Commission (SFC) may raise queries or prospectus disclosure comments to the listing applicant or sponsors to the IPO. The HKSE is generally expected to provide the first round of written comments within 10 business days of receipt of the listing application. There is no pre-set time frame for a listing timetable. The time frame varies depending on factors including, but not limited to, the quality of the draft application prospectus, the time required for the sponsors to respond to the regulators' comments, the quality of the sponsors' responses and the number of other applications being processed by regulators at the relevant time. An application may be returned by the HKSE or the SFC if the regulators consider during the vetting process that the application is not substantially complete.

Listing hearing

When the enquiries and comments from the listing division of the HKSE and the SFC are satisfactorily addressed, the listing division will present the relevant listing application for listing committee hearing (for Main Board applicants) or Growth Enterprise Market (GEM) listing approval group hearing (for GEM applicants), as applicable. The relevant hearing committee will consider the listing application and may raise additional comments if necessary.

Publication of post-hearing information pack

After the hearing committee is generally satisfied with the listing application, it will issue a post-hearing letter to the applicant. Once the listing applicant is of the view that material comments (if any) from the HKSE have been addressed, it has to electronically publish a post-hearing information pack (PHIP) on the HKSE website. A PHIP is a redacted version of the latest draft prospectus, with all offer-related information

(such as descriptions of how an application for shares may be made) removed and appropriate warning and disclaimer statements included in accordance with the specific guidelines prescribed by the HKSE. In any event, the PHIP must be published prior to the earlier of the distribution of the red-herring documents to institutions or professional investors or of commencement of the book-building process with institutions or professional investors. As a general principle, all disclosures in the PHIP are expected to be the same as the final prospectus to be issued, except that certain information in the PHIP is redacted.

Launch of deal

Once the HKSE is satisfied with the quality of the listing application, taking into account the overarching principles mentioned in the foregoing paragraph, it will grant a no-comment letter for the prospectus and share application forms, after which the prospectus and share application forms may be published on the websites of the issuer and the HKSE and an IPO may be launched.

Commencement of dealing in shares

After the launch of an IPO, the listing applicant and the underwriters are required to submit certain administrative and marketing-related information to the HKSE. Once the HKSE and the SFC are satisfied that all listing-related matters, including those related to marketing and allotment of securities, have been properly arranged, unconditional listing approval will be granted to the issuer for listing of its shares on the HKSE. Typically, dealing in the shares will commence about five to seven business days after pricing.

Costs

10 | What are the usual costs and fees for conducting an IPO?

The costs and fees involved for conducting an IPO are the initial listing fee payable to the HKSE and any charges incurred for the services provided by various professional parties.

The Listing Rules set out a scale of initial listing fees, which is based on the monetary value of the equity securities to be listed. As a reference, as of April 2021, a minimum initial listing fee of HK\$150,000 is payable if the monetary value of the equity securities to be listed does not exceed HK\$100 million, and a maximum initial listing fee of HK\$650,000 is payable if the monetary value of the equity securities to be listed exceeds HK\$5 billion.

As regards the charges for the services provided by various professional parties, including the underwriters, the fees charged by these parties will vary greatly depending on, for example, the complexity of the listing exercise and the size of the share offer.

CORPORATE GOVERNANCE

Typical requirements

11 | What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

The Listing Rules require that at least one-third of the board members of a listed company be independent non-executive directors (INEDs) and at least three INEDs must sit on the board, of which at least one must possess appropriate professional qualifications, or accounting or related financial management expertise.

The Listing Rules also require the establishment of at least three board committees: the audit committee, the remuneration committee and the nomination committee. Each of these committees assumes important corporate governance functions in reviewing the financials of the listed group, setting or reviewing directors' and senior

management's remuneration packages, and the nomination of directors, respectively.

To help the listed company to comply with the ongoing obligations applicable to listed issuers in Hong Kong, and for general governance of the internal affairs of the listed issuers, the Listing Rules require that a listed company appoint a company secretary who, in the opinion of the Hong Kong Stock Exchange (HKSE), is capable of discharging the functions of company secretary by virtue of his or her academic or professional qualifications or relevant experience. The HKSE considers a member of the Institute of Chartered Secretaries, or a qualified solicitor, barrister or accountant in Hong Kong, as an acceptable candidate for company secretary to listed companies. Even if a candidate is not among one of the aforementioned professionals, the HKSE will also take into consideration an individual's familiarity with the Listing Rules and other relevant securities laws in Hong Kong, his or her professional qualifications obtained in jurisdictions outside Hong Kong and his or her length of employment, and the roles he or she plays within the listed applicant's group, for instance, when deciding whether such a candidate is capable of discharging the functions of a company secretary.

The Listing Rules also require that a listed company engage an external compliance adviser for a minimum period commencing from the date of listing of its shares on the HKSE and ending on the date on which it publishes the audited financial results for its first full financial year post-listing. The primary role of the compliance adviser is to guide and advise the newly listed issuer to comply with the Listing Rules, review any regulatory announcements and circulars published by the listed company prior to their publication and ensure compliance by the listed company with the terms of any waivers granted by or undertakings to the HKSE in connection with the listing.

The Listing Rules also contain an appendix (Appendix 14, Corporate Governance Code and Corporate Governance Report) that sets out the detailed corporate governance requirements that listed companies should implement and comply with, and the content requirements of a corporate governance report that a listed company should prepare annually and include in its annual report to shareholders.

New issuers

12 | Are there special allowances for certain types of new issuers?

No. Issuers listed on Growth Enterprise Market (GEM), which is the market for those companies that cannot or do not yet fulfil the Main Board listing requirements, are subject to equivalent corporate governance requirements as issuers listed on the Main Board of the HKSE.

Anti-takeover devices

13 | What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

In Hong Kong, takeovers of listed companies are governed by the Code on Takeovers and Mergers and Share Buy-backs (the Takeovers Code). Under the Takeovers Code, a mandatory general offer is triggered if any person, acting singly or in concert with a group of other persons, acquires, whether by a series of transactions over a period of time or not, 30 per cent or more of the voting rights of a listed company; or any person, or group of persons acting in concert collectively, holding 30 to 50 per cent of the voting rights of a company, acquires more than 2 per cent additional voting rights in the listed company (this 2 per cent is calculated from the lowest percentage of holding over a 12-month period ending on the date of the relevant acquisition).

While the Listing Rules require listed companies in Hong Kong to generally maintain a minimum of 25 per cent shareholding to be held in public hands (ie, any person other than a substantial shareholder holding 10 per cent or more shareholding, directors or chief executive of the listed group or a close associate of any of them), most listed companies in Hong Kong have a rather concentrated shareholding structure, and generally a single controlling shareholder, who is usually the founder of the business, may hold more than 30 per cent (and often even over 50 per cent) of the shares of the listed company. Against this background, it is generally quite difficult for a person or group of persons acting in concert to acquire a 30 per cent interest in a listed company to trigger a mandatory general offer. In cases where a listed company has several founders each owning less than 30 per cent shareholding interests, these shareholders may consider entering into an acting-in-concert deed so that their interests will be aggregated together with a view to countering potential takeover attempts.

FOREIGN ISSUERS

Special requirements

14 | What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

Foreign issuers seeking to list in Hong Kong are not required to have their operations or businesses based in, or otherwise closely affiliated to, Hong Kong or mainland China. The main analysis that a foreign issuer must first perform in deciding whether to pursue for a listing in Hong Kong is to consider whether the listing vehicle is incorporated in Hong Kong, PRC, Bermuda or the Cayman Islands. If not, the issuer should consider whether the general shareholder protection standards available in its jurisdiction of incorporation are comparable with those in Hong Kong. The Hong Kong Stock Exchange (HKSE) generally welcomes issuers incorporated in different jurisdictions seeking listing status on the HKSE, as long as the relevant issuers can demonstrate to its satisfaction that they are subject to key shareholder protection standards that are at least comparable to those in Hong Kong. In March 2021, the HKSE announced a public consultation proposing to streamline the listing regime for overseas issuers. The consultation, which ends in May 2021, may result in amendments to the current shareholder protection standards and qualifications of listing of applicants.

Selling foreign issues to domestic investors

15 | Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

Yes. As a general rule, an offering of shares for sale to the public in Hong Kong for consideration is required to be accompanied by a prospectus. Before a prospectus can be distributed by an issuer seeking an IPO in Hong Kong, it has to undergo a detailed vetting and approval process by and registration with various regulators in Hong Kong. The Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance contains safe-harbour provisions that exempt 12 specific types of offerings in Hong Kong from having to be accompanied by prospectuses. The most relevant exemptions that may be relied on by foreign issuers that are conducting an IPO outside Hong Kong but seeking to offer shares for sale to investors within Hong Kong are:

- where the offer is made to professional investors within the meaning of the Securities and Futures Ordinance. In general, a high net-worth individual (him or herself or holding through a special purpose vehicle), partnership or corporation with a portfolio of

assets in securities or currency deposits in the aggregate amount of HK\$8 million (or its equivalent), or a high net worth corporation or partnership with total assets of HK\$40 million (or its equivalent), is considered as a professional investor;

- where the offer is made to no more than 50 persons in Hong Kong;
- where the total consideration payable for the securities offered does not exceed HK\$5 million (or its equivalent); and
- where the minimum denomination of or the minimum consideration payable by any person for the shares is at least HK\$500,000.

TAX

Tax issues

16 | Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

No tax or levy is imposed in Hong Kong in respect of capital gains from the sale of shares or on dividends. Nonetheless, trading gains from the sale of shares by persons carrying on a trade, profession or business in Hong Kong, where such gains arise in or are derived from Hong Kong, will be chargeable to Hong Kong profits tax. Currently, profits tax is imposed on corporations at a two-tiered rate (8.25 per cent on assessable profits up to HK\$2 million and 16.5 per cent on any part of assessable profits over HK\$2 million), and on individuals according to a scale of increasing rates (depending on the amount of the individual's total taxable income), with a maximum rate of 17 per cent or a flat rate of 15 per cent. Gains from the sale of the shares effected on the Hong Kong Stock Exchange will be considered as 'arising in or derived from Hong Kong'.

In addition, all transfers of Hong Kong stock that involve a change in beneficial interest is subject to stamp duty in Hong Kong. Hong Kong stock is a rather broad concept under the Stamp Duty Ordinance and covers shares of all companies listed on the Hong Kong Stock Exchange, as well as listed real estate investment trusts and depositary receipts. The prevailing rate of ad valorem stamp duty as of April 2021 is a total of 0.2 per cent on the consideration for (or if greater, the value of) the shares being transferred, and is generally borne by the transferor and the transferee equally.

INVESTOR CLAIMS

Fora

17 | In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

Enforcement proceedings and disciplinary actions in respect of breaches of laws and regulations relating to securities-offering activities in Hong Kong are generally initiated by the Securities and Futures Commission (SFC). Such enforcement proceedings and disciplinary actions can be triggered by the SFC itself in the course of its supervision of the operation of the securities market, including the review of the conduct of securities-offering activities, and the information released to the public; they can also be triggered by listed companies and regulated persons (which include sponsors to listing applications), or by disgruntled investors who file complaints with the SFC. Upon identification of potential misconduct or the receipt of a complaint, the SFC will investigate the matter and decide on the appropriate actions to be taken against the persons concerned or, in serious incidents of misconduct, refer the cases to the Market Misconduct Tribunal or the High Court of Hong Kong for an order for appropriate remedies and penalties.

Simpson Thacher

Celia Lam
celia.lam@stblaw.com

Christopher Wong
cwong@stblaw.com

ICBC Tower, 35th Floor
3 Garden Road, Central
Hong Kong
Tel: +852 2514 7600
Fax: +852 2869 7694
www.stblaw.com

Class actions

18 | Are class actions possible in IPO-related claims?

No. Class actions are not available in Hong Kong.

Claims, defendants and remedies

19 | What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Civil liability for misstatement in prospectus can arise under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), Securities and Futures Ordinance (Cap. 571) and common law principles on misrepresentation (as supplemented by the Misrepresentation Ordinance (Cap. 284)). The company pursuing an IPO, directors or promoters of the company or any person who has authorized the issue of prospectus may be liable for misstatements in a prospectus. In such circumstances, an investor may seek for recovery of damages. In addition, the SFC may also seek for a repurchase order from the court to compel the listed company to make repurchase offer to investors who subscribed for shares in the IPO or who purchased the shares on the secondary market.

UPDATE AND TRENDS

Key developments

20 | Are there any other current developments or emerging trends that should be noted?

Paperless Listing and Subscription Regime

Commencing from July 2021, all listing documents shall be published solely in electronic form on the websites of the issuer and the HKSE and printed forms will no longer be required.

Consultation on Listing Regime for Overseas Issuers

In March 2021, the HKSE announced a public consultation proposing to streamline the listing regime for overseas issuers. The consultation, which ends in May 2021, may result in amendments to the current shareholder protection standards and qualifications of listing of applicants.

Coronavirus

21 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In February 2020, the SFC and the HKSE issued a joint statement to allow relaxation of the financial reporting requirements on a discretionary, case-by-case basis when a listed company believes that, as a result of covid-19 travel restrictions, there is a real possibility that it will be unable to publish results announcements in accordance with the Listing Rules. To continue the trading in the securities of the listed company, the listed company should at least submit and publish the material financial information, including key financial figures such as the assets, liabilities, income and expenses and changes in shareholders' equity, and narrative discussions of its financial position and performance to supplement the financial figures provided.

In addition, the SFC and the HKSE also issued a joint statement in April 2020 to remind the listed companies to take into account the pandemic safety concerns and social distancing requirements when deciding on the timing of the general meetings and the manner in which such meetings are to be held, including but not limited to considering measures permissible under the laws of their jurisdictions of incorporation and their constitutional documents to reduce the need for physical attendance.



Simpson
Thacher

For more than four decades, Simpson Thacher's European practice has provided clients with innovative lawyering and pragmatic advice that reflects their business imperatives. We offer unparalleled U.S. and English law capabilities, putting the collective skill of our entire Firm to work to help our clients achieve their commercial goals.

www.simpsonthacher.com

Simpson Thacher & Bartlett LLP

NEW YORK BEIJING HONG KONG HOUSTON LONDON LOS ANGELES PALO ALTO SÃO PAULO TOKYO WASHINGTON, D.C.

© Law Business Research 2021

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)