



alternative finance conference

accessing Asian capital through dual listings on
the Hong Kong Stock Exchange

Paul D. Davis, Partner

October 4, 2012

McMillan—firm profile

In January 2011, McMillan and Lang Michener combined to create the “new McMillan” with offices in Toronto, Montréal, Vancouver, Calgary, Ottawa and Hong Kong. The new McMillan is a full service business law firm and has the capability to assist clients anywhere in the world. We have a long history of acting for investment funds and asset management entities, as well as the industries in which your Fund may invest, with the ability to provide a full array of legal services. With such resources, we can obtain quick access to lawyers with the right expertise and depth of jurisdictional knowledge to meet any client need.

Leading Canadian legal firm for more than 100 years

McMillan is a leading Canadian business law firm committed to client service and professional excellence for over 100 years

Offices in Vancouver, Calgary, Toronto, Ottawa, Montréal and Hong Kong, and nearly 350 lawyers

Particular expertise in corporate commercial law, Canadian and US securities law, mining and financial services

Serving clients in the Asia-Pacific region for over 15 years



China practice

we understand the Chinese marketplace

McMillan has the knowledge and skills to provide cross-cultural transactional advice and services to clients seeking Asian-based investors. Our legal professionals have many years experience advising on China inbound and outbound transactions. We have established a Hong Kong office (in association with Angela Ho & Associates) to provide greater access to our Canadian legal expertise.

In the past 4 years, have assisted over 10 Chinese-based companies in achieving successful listings on the TSX/TSXV for over \$200MM aggregate financings

In 2010, acted for Citigroup and BOC International in connection with a HKEx dual-listing of China Gold International and a related \$350MM financing

Currently working on several potential offerings by Canadian public companies on the HKEx



rising prominence of HKEx

- Global IPO Market Leader in 2009-2011
- Strong Fund Raising Capability
 - US\$110 billion and US\$62 billion raised in 2010 and 2011, respectively
- Gateway to China
 - potential inflow of funds from Mainland China as economy and RMB open up
 - leading institutional and sovereign wealth funds are investors of HKEx listed companies

why dual list?

benefits of dual listing

- Access to significant capital and trading
- Improved home market valuations and trading liquidity

key trends in dual listing

- Growing number of dual listed success stories
- Increased profiles

drawbacks

- Higher transactional costs
- Difficulty of TSX-V companies to list on HKEx
- Stricter listing requirements
- Regulation by two stock exchanges
 - experienced counsel can be of assistance

HKEx main board general listing requirements

- Stricter listing requirements than TSX / TSX-V
- Track Record: 3 Year Financial Performance
- Management continuity: 3 Years
- Ownership continuity: 1 Year
- Eliminates mining companies from listing—except mature companies

key main board listing requirements

financial requirements—to fulfill any one of the following tests:

profits test

- Net profit of latest year \geq USD2.6 m
- Net profit of two preceding years \geq USD3.8 m (in aggregate)
- Market cap \geq USD25.6 m

market cap / revenue test

- Market Cap \geq USD513 m
- Revenue of the most recent audited year \geq USD64 m

key main board listing requirements

financial requirements—to fulfill any one of the following tests:

market cap / revenue / cash flow test

- Market Cap \geq USD256 m
- Revenue of most recent audited financial year \geq USD64 m
- Aggregate positive cash flow for 3 preceding financial years \geq USD13 m

key main board listing requirements

control and management

- Ownership continuity and control for at least the most recent financial year
- Management continuity for at least 3 years

public float

- Minimum of 25%
- If market cap \geq USD1,282 m, public float can be lowered to 15%
- Minimum of 300 shareholders

key main board listing requirements

professional advisers

- Must appoint a sponsor for listing
- Public offer tranche must be fully underwritten by underwriters
- Must appoint a compliance adviser for the period from listing date to end of publication of financial results for 1st full financial year after listing

financial information requirements

- Historical financial information
- Forecasts (working capital and profit)
 - a profit forecast is optional; but a customary requirement for HKEx IPO
 - required in HK in order that research analysts can prepare reports in connection with HKEx IPO
 - creates potential issues for Canadian issuers governed by Canadian securities laws regarding forward looking information (Part 4A of NI 51-102)
 - try to limit profit forecast period

financial information requirements

- Indebtedness statement
- Pro forma financial information
- Qualified auditor required

new HKEx listing rules for mining companies

- HKEx plan to broaden listed issuer base initiated in 2010
- Minimum requirements:
 - at least “indicated resources”
 - 125% working capital for 12 months (watch out for restrictions on pre-IPO Financing!)
 - Board of directors and management with 5 years industry experience allows for waiver of financial standards
 - clear Pathway to Production
- Expect conservative application of new listing rules

clear pathway to production

- Path to production supported by at least a scoping study (i.e. preliminary evaluation of economic viability of mineral resources)
- Indicative dates and costs for achievement of commercial production
- HKEx can be expected to focus on plan to achieve production
- Major investment banks may want to see “bankable feasibility study” at a minimum

listing by initial public offering

- Process lead by HK investment bank as sponsor and underwriter
- Typical listing route—South Gobi and China Gold International
- Advantages:
 - funds raised to pay listing costs
 - Asian investor base established
- Size:
 - larger investment banks: \$200 million +
 - smaller investment banks: \$20 to \$50 million +

listing by introduction

- Simple dual listing of common shares
- Sponsor required by HKEx
- HKEx must be satisfied that market for shares will develop
- Disadvantages:
 - no funds raised to fund costs of listing
 - no Asian investor base created

connections to Asia

- Tangible connection to Asia required in practice
- Tangible connection may result from:
 - properties in Asia (as with South Gobi and China Gold Int'l)
 - Asian market for a company's products
 - Asian investor base (eg. Chinese SOE)
- Lack of tangible connection will reduce attractiveness to both investment banks and secondary market investors
- Second stage of "two-step" investment for Chinese investors, where first step is investment in TSX company

jurisdictional issues generally

- Issuers regulated by:
 - two stock exchanges,
 - two securities law administrators (Securities and Futures Commission in Hong Kong), and
 - corporate laws of home jurisdiction
- Issuers will face duplicate and conflicting regulation
- No jurisdictional agreements between Canada and Hong Kong regarding jurisdiction, as is the case with the Multilateral Jurisdictional Disclosure System between Canada and the U.S.
- British Columbia will accept Hong Kong prospectus review

Canadian prospectus rules

- Canadian prospectus rules need to be reviewed in connection with IPO
- Exemption Order required from British Columbia Securities Commission for B.C. issuers

TSX

- All TSX rules still apply
- TSX pricing rules need to be considered in pricing of HKEx IPO
- TSX has demonstrated flexibility in accommodating HKEx IPO

jurisdiction of incorporation

- HKEx will evaluate each issuer's jurisdiction of incorporation
- Shareholders must be afforded equivalent shareholder protection to Hong Kong
- Ontario, British Columbia and Alberta are accepted jurisdictions, but CBCA not yet accepted

primary versus secondary listing

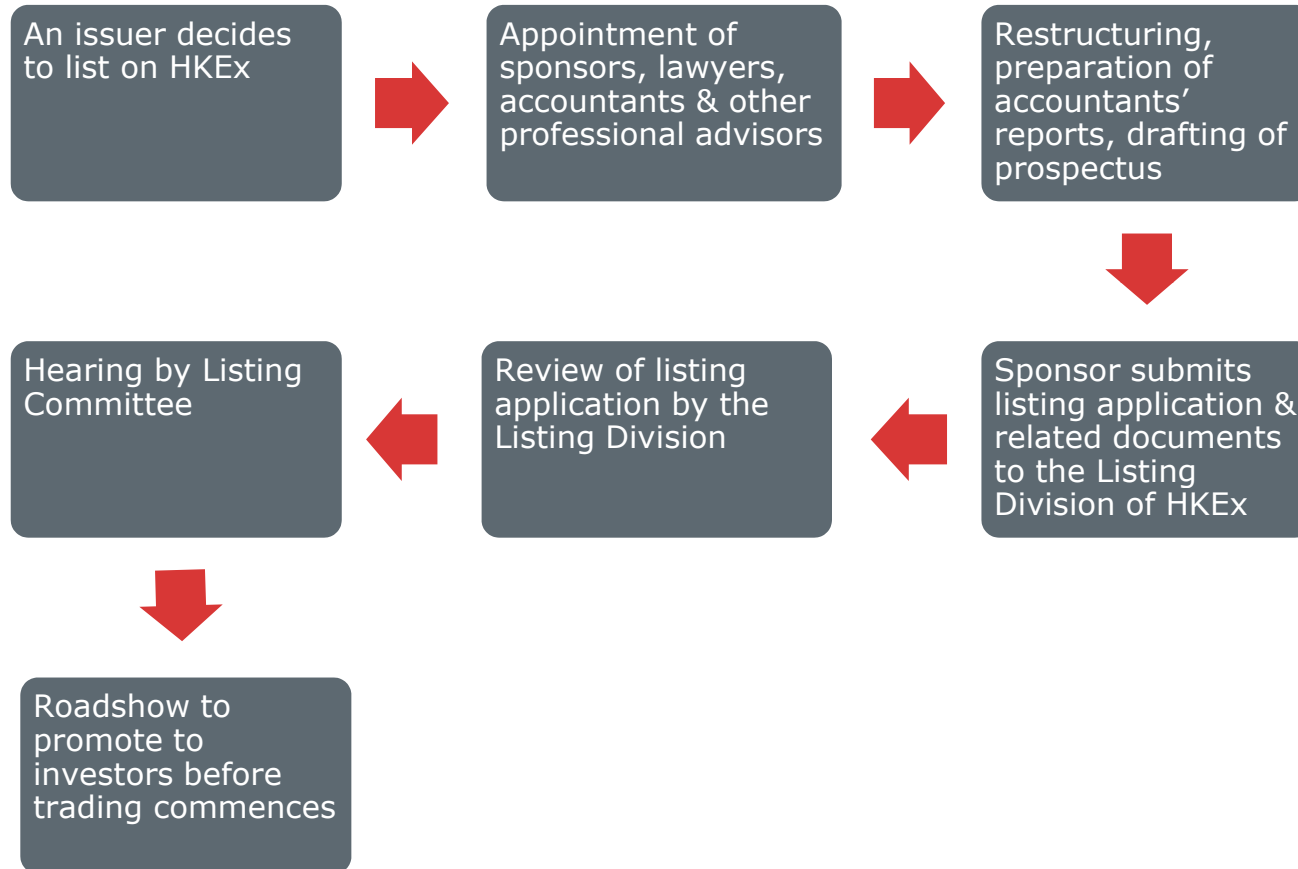
- Listing can be either primary or secondary
- Secondary denotes that HKEx is a secondary market for a company's securities
- More waivers from Hong Kong regulation available for secondary listings
- Secondary listing less onerous than primary, BUT increased trading on HKEx can result in flip to primary

other disclosure issuers

- Canadian issuers will continually be challenged on disclosure issues
- Continual process to ensure all information equally disclosed in TSX and HKEx markets
- Meetings between Company and investment analysts in connection with HKEx IPO a key concern
- Avoid any preferential disclosure of material information

listing process for main board

average time: 10-12 weeks



questions?

Paul D. Davis
Partner, McMillan LLP
416.307.4137
paul.davis@mcmillan.ca

