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London Markets China-Based Companies Should Consider for Listing Securities

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The UK offers a range of markets that companies based in the People's Republic of China (PRC) might consider as venues for a primary or secondary listing of their equity securities.

This alert provides an overview of the types of equity securities that might be listed, factors that companies tend to consider when choosing a listing venue and segments of the Official List of the UK Financial Conduct Authority (FCA) and of the markets of the London Stock Exchange (LSE).

For a more detailed comparative analysis of the key eligibility and continuing obligation requirements that PRC incorporated companies must comply with depending on the type of London listing sought, please refer to the appendix.

Types of equity securities

There are currently six PRC incorporated companies listed in London.

Air China, Datang International Power Generation Company and Zhejiang Expressway each have shares admitted to listing on the standard segment of the Official List and to trading on the LSE's main market for listed securities (Main Market).

China Petroleum & Chemical Corporation has global depositary receipts (GDRs) representing its shares admitted to listing on the standard segment of the Official List and to trading on the Main Market.

Huatai Securities and China Pacific Insurance are the only PRC incorporated companies to have GDRs representing their shares admitted to listing on the standard segment of the Official List and to trading on the Shanghai-London Stock Connect (Stock Connect) segment of the Main Market.

No PRC incorporated companies are currently admitted to trading on the LSE's junior market, AIM, but there are a number of PRC incorporated companies that have introduced offshore holding companies, with operations in China, into their group corporate structures and listed the shares in the offshore parent entity in London. Examples include China New Energy with a Channel Islands (Jersey) holding company and shares traded on AIM, and Hutchinson China Meditech with a Cayman Islands holding company and shares traded on AIM.

Mounting pressure from investors and regulatory bodies regarding the need for accounting, corporate governance and tax transparency has meant that the Channel Islands (Jersey and Guernsey, in particular) have continued to strengthen their position as favoured locations for the incorporation of offshore group holding companies listed in London, relative to "sandy beach" jurisdictions such as Bermuda, the British Virgin Islands and the Cayman Islands.

Shares

Shares are capable of being admitted to listing on the premium and standard segments of the Official List and to trading on both the Main Market and AIM.

Only shares of issuers incorporated in the UK, Channel Islands, Isle of Man or Ireland may be eligible for direct electronic settlement through CREST. Shares of issuers incorporated in other jurisdictions may be settled through CREST in the form of depositary interests (DIs), which are legal wrappers that convert into CREST-eligible securities that can be dematerialized and settled electronically when placed around shares of a non-UK, Channel Islands, Isle of Man or Irish incorporated company. The company's registrar, acting as depositary, holds

the underlying shares through a custodian and issues DIs representing them. DIs are held on trust by the registrar for their holders. DIs do not affect an investor's economic rights; for example, a DI holder will receive dividends or interest payments and may cast votes at shareholder meetings as if they held shares directly.

Global depositary receipts

GDRs are capable of being admitted to listing on the standard segment of the Official List and to trading on the Main Market. Sovereign-controlled commercial companies alone may list GDRs on the premium segment of the Official List.

GDRs are distinct from DIs. GDRs are securities in their own right and are listed, traded and settled. With DIs, the underlying shares are the listed security; DIs are used to settle trades in CREST.

GDRs are certificates representing a proportion of underlying shares in a company and are issued by an international depositary bank that has a legal entity or branch in the UK. The underlying shares are deposited by the company and/or existing shareholders in an account of a custodian (which tends to be based in the same jurisdiction in which the company is incorporated) on behalf of the depositary bank. The depositary bank holds the shares on trust for the GDR holders, and maintains a GDR register.

GDRs are typically held and traded through Euroclear and/or Clearstream. A GDR facility provides flexibility in allowing transfers of shares in and out of the GDR facility and, in certain circumstances, investors may apply to withdraw the underlying shares.

International institutional investors investing in London are familiar with GDRs and, as such, a London listing of GDRs allows a company to access foreign capital markets and unlocks a substantial pool of potential additional investors, which is also a benefit for existing shareholders looking to transfer their holdings.

GDRs provide investors with many of the economic and other benefits of holding shares, including voting rights and claims to dividends.

In contrast to the generally applicable 25% free float requirement for London listings of shares (i.e., 25% of the underlying shares being held in public hands by unconnected public investors in one or more European Economic Area (EEA) member states), the free float requirement for GDRs is limited to 25% of the GDRs deposited in a depositary facility.

Factors to consider in choice of market

Eligibility. Whether a prospective issuer will meet the entry requirements of the relevant market.

Peer group. Companies in the same sector or providing similar products/services/goods as a prospective issuer being traded on a market might have a bearing on its suitability as a listing venue.

Level of regulation. Higher levels of regulation may equate to increased compliance costs, but can have a positive impact on investor confidence.

Accounting requirements. If a company wants to join a regulated market, such as the Main Market, the financial information in the prospectus and periodically reported financial information will have to be prepared in accordance with the International Financial Reporting Standards (IFRS) as adopted by the European Union (EU), or equivalent GAAP for companies that are not incorporated in the EEA; Chinese GAAP has equivalence status for these purposes. However, an issuer with shares admitted to AIM would not be permitted to prepare its financial information in accordance with Chinese GAAP.

Disclosure regime. The Market Abuse Regulation ((EU) 596/2014) (MAR) applies to all companies listed on European regulated and exchange regulated markets, including the Main Market and AIM, and regulates interactions between those companies and prospective investors in their securities (including a company's securities which are not otherwise listed in the EU). It underpins the EU market abuse regime, and related criminal and civil sanctions. In the case of a dual-listing, the issuer will need to coordinate disclosure of inside information across the two markets (which, in the case of the UK and China, have significant time differences).

Investor-base sought. If a company wants to reach a wide retail base of shareholders, it should consider seeking admission for its shares to trading on the Main Market or AIM; GDRs tend to be traded by more sophisticated financial investors.

Public relations. A London listing may attract international research analyst and media coverage, and raise the company's profile more broadly.

FTSE Index inclusion. A company with a premium listing may be eligible for the FTSE UK Index Series (100, 250, 350 and All-Share), which brings greater liquidity and a basis for portfolio trading by both active and passive investors. Standard listed companies are not eligible for inclusion in any indices. AIM has the FTSE AIM Index (50, 100 and All-Share), but the liquidity in-flows do not tend to be comparable to those for premium listed companies.

Taxation. UK stamp duty and stamp duty reserve tax (**SDRT**) at a rate of 0.5% are chargeable on acquisitions of securities in UK incorporated companies admitted to trading on the Main Market, a recognised stock exchange for the purposes of UK tax laws; no such UK stamp duty or SDRT is chargeable on acquisitions of securities admitted to trading on AIM, a recognised growth market for the purposes of UK tax laws.

Admission to the Official List and trading on the Main Market

Regulatory regime

The FCA sets and administers the criteria governing admission to the Official List. Its listing regime is comprised of three parts:

Listing Rules (LRs): these set out the basic conditions that need to be satisfied if a company's securities are to be eligible for admission to listing on the Official List (standard or premium segments).

Prospectus Regulation Rules (PRRs): these implement and, where appropriate, replicate the Prospectus Regulation ((EU) 2017/1129). The PRRs require a prospectus to be published when securities are to be admitted to listing on a regulated market or offered to the public.

Disclosure Guidance and Transparency Rules (DTRs): these implement the Transparency Directive (2004/109/EC) and set continuing obligations for securities admitted to a regulated market.

Companies listed on the Main Market must also comply with the LSE's Admission and Disclosure Standards.

Listing process

If a company wants a listing of its securities in the UK, it will have to apply to the FCA to join its Official List (premium or standard segment).

Alongside the application for admission to listing of its securities, a company must also make an application to the LSE for admission to trading on the Main Market, an EU-regulated market.

The listing process itself will take on average four to six months to complete and involves:

Appointment of advisers and counterparties. These include: (i) legal counsel to the company and underwriters; (ii) reporting accountants and tax advisers; (iii) public relations advisers; (iv) underwriting banks and/or financial advisers (on premium listings a sponsor must be appointed and liaise with the FCA; on standard listings, the company's legal counsel tend to interface with the FCA). On GDR transactions, a depositary bank will also be appointed, which requires separate legal counsel.

Due diligence. Legal counsel, reporting accountants, tax advisers and the underwriting banks/financial advisers will conduct fulsome due diligence, involving management meetings, review of a virtual data room (populated by the company and its advisers) and, in certain circumstances, site visits and key customer/supplier interviews.

Public documentation. Both a registration statement and prospectus are usually required; each will be reviewed by the FCA, subject to a prescribed timetable, and must contain all information necessary (including risk factors, details of the company's business, its industry, regulatory background and detailed financial information) to ensure that investors can make an informed assessment of the company, its business and an associated investment decision, as prescribed by the PRRs and Listing Rules. The registration document is a component part of the prospectus with information about the issuer and is relevant where analysts employed by members of the underwriting syndicate will be publishing research on the issuer. The registration document will be published at the beginning of the public phase of the listing process, typically one week before the publication of syndicate research. Each document must be accurate, complete and not misleading. Various public announcements will need to be drafted and, at the appropriate time, disseminated to the market.

Research. Pre-deal research is typically produced on a UK listing process. This will usually involve a detailed presentation from management to analysts employed by members of the underwriting syndicate. The research reports prepared by these "connected analysts" will be published at the time of the issuer's announcement of its intention to list, after which connected analysts will use their research to discuss the issuer with potential investors (a process known as "pre-deal investor education"). Recent reforms enacted in the UK impose additional regulatory requirements, including obligations to give access to unconnected third party analysts to allow them to produce research on the issuer.

Corporate documentation. An issuer's internal corporate governance policies, codes and terms of reference of various committees will need updating to reflect the provisions of the UK Corporate Governance Code if a premium listing is sought; in the case of a standard listing of shares or GDRs, "home country practices" may be followed. Insurance policy coverage and employee incentive arrangements should be reviewed, and disclosure procedures and share dealing codes will need to be revised for MAR purposes. If the issuer is undertaking a pre-IPO reorganization (for example, to insert a new holding company), documentation will also need to be prepared to effect that.

Deal-specific documentation. Where an offering is being underwritten, an underwriting agreement is required; for a premium listing, a sponsor agreement is also required – those documents are often combined. On GDR transactions, a deposit agreement between the company and depositary bank is required. Engagement and indemnity letters for underwriters, reporting accountants and other advisers are also customary.

Marketing process. Management will be required to meet with potential investors at various stages of the process in order to generate demand and obtain valuation feedback on the company and its equity story.

Premium segment

To obtain a premium listing, a company must comply with the listing requirements imposed by EU law and with more onerous "super-equivalent" standards set out in the Listing Rules, including the need to appoint a sponsor for certain transactions and in certain other situations.

Equity shares and, in the case of sovereign-controlled commercial companies only, GDRs can attain a premium listing and admission to trading on the Main Market.

Dual-class voting structures are not permitted on the premium segment.

Standard segment

To obtain a standard listing, a company must comply with the requirements imposed by EU law (subject to certain exceptions). There is no sponsor regime, or equivalent.

Equity shares and GDRs can attain a standard listing and admission to trading on the Main Market.

Dual-class voting structures are permitted, but are rarely utilized; a recent example is the S4 Capital "B share," which affords the holder one vote if voting for a resolution or such number of votes as may be required to defeat a resolution if voting against it.

Shanghai-London Stock Connect segment

Since 17 June 2019, the LSE and Shanghai Stock Exchange (SSE) have been "connected" through the

Shanghai-London Stock Connect. Companies listed on either market may now issue, list and trade securities on the other.

The Stock Connect is available to SSE listed companies that are approved by the FCA and LSE to list and admit to trading GDRs on the Official List and Main Market, respectively.

LSE-listed companies may list Chinese depositary receipts (CDRs) on the SSE Main Board, subject to receipt of regulatory approval from the China Securities Regulatory Commission (CSRC).

CDRs and GDRs are now fungible with the securities they represent; there are a limited number of brokers on both markets authorized to exchange them.

For example, an investor that wishes to buy GDRs may either buy GDRs on the LSE or request a designated broker to buy "A" shares on the SSE and instruct the depositary to create GDRs representing such "A" shares, while an investor that wishes to sell GDRs can either sell the GDRs on the LSE or request a designated broker to redeem the GDRs and sell the underlying "A" shares on the SSE.

In addition to the eligibility criteria for being admitted to the Official List, a Chinese issuer will need to comply with applicable Chinese law requirements and:

- Have a minimum market capitalization of RMB 20 billion (approximately US $2.9 billion)
- Be listed on the SSE with an "A" share listing
- Obtain CSRC approval
- Have any newly issued shares admitted to listing on the SSE
- Satisfy the LSE's free float requirement by having at least 25% of the GDRs held in public hands in the EEA (subject to any derogation granted by the FCA)

Admission to trading on AIM

As an alternative to joining the Official List, companies can access capital in the UK through admission to trading on AIM, a multilateral trading facility regulated by the LSE.

Regulatory regime

Lower regulatory burden. Securities traded on AIM are not "listed" and therefore do not need to comply with the full FCA listing regime applicable to those listed on the Official List or the LSE's Admission and Disclosure Standards. However, AIM companies must comply with the LSE's AIM Rules for Companies, and appoint and retain a nominated adviser (Nomad) and broker at all times.

Lower entry requirements. Eligibility requirements for listing on the Main Market often preclude companies from joining; these include having a three year revenue-earning track record (for a premium listing) and a 25% free float requirement. AIM requires no such trading record, nor is any prescribed level of shares in public hands or minimum market capitalization required.

Acquisitions and follow-on offerings. AIM companies are not generally required to seek shareholder approval when effecting acquisitions or disposals and are not generally required to produce further admission documents for follow-on capital raisings.

However, certain elements of the FCA's listing regime still apply, such as the requirement in the PRRs for a company to publish a prospectus, if a company is offering shares to the public.

Admission process

If a company wants its securities to be admitted to trading on AIM, it must apply to the LSE.

The admission process on AIM is quicker and more flexible than the process for admission to the Main Market. The number of advisers and counterparties, scope of due diligence and scale of internal and deal-specific

documentation are not dissimilar to that required for the Main Market. However, the public documentation will be limited to an admission document, which is reviewed by the Nomad rather than the FCA or the LSE.

AIM has a fast track route to listing for issuers already listed on designated markets including the top-tier markets of: Australian Stock Exchange; Deutsche Börse Group; Johannesburg Stock Exchange; NASDAQ; NYSE; NYSE Euronext; NASDAQ OMX Stockholm; Swiss Exchange; TMX Group; and the Official List.

Equity shares, but not GDRs, can attain admission to trading on AIM.

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Key Contacts

Will Cai Hong Kong	wcai@cooley.com +852 3758 1210
Claire Keast-Butler London	ckeastbutler@cooley.com +44 20 7556 4211
Michael Yu Hong Kong	michael.yu@cooley.com +852 3758 1212

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