

DUAL-LISTING OF CANADIAN PUBLIC COMPANIES ON THE HONG KONG STOCK EXCHANGE

Posted on June 5, 2012

Categories: [Insights](#), [Publications](#)

For Canadian public companies looking to access global capital, "graduation" to an exchange south of the border or across the Atlantic may no longer be the obvious next step given the abundant liquidity and large investor base in Asia.

Hong Kong has a sophisticated capital market and is well-known for its savvy investment community. However, the robust liquidity and high P/E ratios on the Hong Kong Stock Exchange ("HKSE") are counter-balanced by higher transactional costs and stricter listing requirements (including a three-year track record period and one-year ownership continuity) than those of the Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSX-V"). Nevertheless, the HKSE is taking steps to attract foreign listing candidates that have cogent connecting factors to Asia and China, particularly companies in the mining sector.

relaxed rules

To induce mining and resource companies to seek listings on the HKSE, the new Chapter 18 Rules relax some of the most stringent profit and cash flow tests which had effectively prevented all but the most mature mining companies from listing. Chapter 18 now requires applicants to control at a minimum "indicated resources", possess 125% of working capital for the 12 months following listing, be led by a board of directors and management with at least 5 years relevant industry experience, and demonstrate a "clear pathway to production".

Of these new rules, the "clear pathway to production" requirement has caused considerable debate among legal advisors. Based on our experience, while the rules suggest that the pathway to production must be supported by at least a scoping study, in actuality the HKSE listing committee requires indicative dates and cost estimates for achieving commercial production that would be found in a pre-feasibility report. In addition, most major investment banks would prefer a bankable feasibility study. The HKSE can also be expected to scrutinize in great detail the relevant experience of management in bringing mines into production^[1].

Under these new rules, two Canadian companies, South Gobi Energy Resources Ltd. (1878) and China Gold International Resources Corp. Ltd. (2099)^[2] have successfully listed on the HKSE raising a combined total of

approximately US\$750 million in 2010.

listing methods

There are several ways to achieve listing on the HKSE including through an initial public offering ("IPO") and through introduction [3]. The major advantage of listing by IPO is that a following of local investors (both retail and institutional) may be built up during the course of the listing and marketing process (which would not be the case where the listing is accomplished by introduction), and may result in improved liquidity post offering.

Based on our discussions with Hong Kong bankers, the range of IPO financing which would generate the most underwriting interest is approximately US\$200 million or more for a deal to be led by one of the large international banks, and between US\$20 million to US\$50 million for the smaller, regional banks.

issues to consider

Being listed in different jurisdictions presents unique challenges for the issuer including being regulated by the rules of two stock exchanges, having to deal with two or more securities regulators, [4] and having to comply with the corporate laws of the home jurisdiction which may or may not satisfy the requirements of the foreign exchange. You should carefully choose advisors who are experienced in such matters and who will be able to effectively help you navigate through such issues.

There is no jurisdictional agreement between Canada and Hong Kong similar to the Multilateral Jurisdictional Disclosure System that Canada enjoys with the United States. However, there is now precedent with the British Columbia Securities Commission to accept a prospectus reviewed by the Hong Kong regulators as the basis for granting prospectus and registration relief in British Columbia, which avoids having authorities from two different jurisdictions vetting the same disclosure document.

Another important issue to determine is whether the listing should be dual-primary or dual-secondary. A dual-secondary listing denotes that the HKSE will rank second in terms of turnover of the issuer's securities. In such cases, more waivers from strict compliance of the Hong Kong listings rules can be expected from the local regulators resulting in a relatively less onerous process as compared to a dual-primary listing, completion of which could easily exceed 12 months.

A related issue is whether there is any requirement for a TSX-V issuer to first graduate to the TSX before the HKSE will consider it for dual listing. Based on our discussions with the HKSE, while there is no strict requirement to first graduate to the TSX before applying to the HKSE, it won't consider a TSX-V applicant unless it is applying for a dual-primary listing where it will be expected to fully comply with the Hong Kong listings rules. In most cases, an applicant issuer to the HKSE would be TSX listed.

Another peculiarity with the HKSE is the "requirement"⁵ to prepare a profit forecast in connection with the proposed listing. This creates a potential problem for Canadian issuers that are subject to Canadian securities laws (in particular rules governing forward-looking information under Part 4A of NI 51-102). There may also be conflicting interests between management who may wish to limit their risk exposure in relation to the forecast period, and underwriters who may push for bolder projections.

Despite challenges, we believe that for the right Canadian company, dual listing in Hong Kong is a feasible way to take advantage of the liquidity and financing opportunities in Asia. At the same time, for those Asia based companies not yet ready for the HKSE, first listing on the TSX and TSX-V may be a viable way to develop sound corporate governance and benefit from Canada's strong banking system, before returning to the Asian capital markets armed with valuable public company experience.

McMillan LLP is experienced in assisting both foreign companies list on the TSX and TSX Venture Exchange, as well as Canadian public companies dual-list on the HKSE.

by Stephen D. Wortley and Michael Yang

¹ An article by Jayesh Wadhvani of Shearman & Sterling LLP provides further commentary on this topic and may be accessed at <http://www.shearman.com/is-hong-kong-digging-too-deep-01-24-2012/> (with permission from the author).

² McMillan LLP acted as Canadian counsel to Citigroup Global Markets Limited and Bank of China International Asia Limited as underwriters in the initial public offering by China Gold International Resources Corp. Ltd. We are also currently working on several potential offerings by Canadian public mining resources companies on the HKSE.

³ This is a method whereby the existing shares of a company, which are already widely held, are listed on the HKSE by introduction, and it follows that no new shares will be issued and no additional funds will be raised.

⁴ The securities administrator of Hong Kong is the "Securities and Futures Commission".

⁵ Rule 8.21B of the HKSE listings rules, which required that sponsors and underwriters must not include any profit forecast in their research report unless such statements are also included in the listing document, was repealed in February 2012. However, it remains to be seen whether, going forward, listing applicants continue to include profit forecasts in their listing documents due to the prevailing market practice.

by Stephen Wortley and Michael Yang

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2012