

TTN Conference

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Restructuring and Tax Considerations
For IPO and Listing on Hong Kong Stock Exchange

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Why List on an Exchange

- **Access to capital for growth** - to raise funds both at the time of listing and at later stages
- **Broader shareholder base**
- **Employee incentive and commitment** - granting employee share options to key staff
- **Higher profile and visibility** - among the company's customers and suppliers - promotes business
- **Increased corporate transparency** - facilitates bank borrowing, issue of new shares and bonds
- **Improvement** in corporate management and internal control

Why Hong Kong (I)

- One of three major international stock exchanges – HK, NY and London
- Gateway to China
- Leverage on China's Growth
- Strong Legal System – Common Law and rule of law
- International Accounting Standard
- Sound Regulatory Framework – high level of disclosure, transparency and strong corporate governance requirement

Why Hong Kong (II)

- Free Flow of Capital and Income
- Advanced Clearing and Settlement Infrastructure
- Ample supply of experienced corporate and investment bankers, pension and hedge funds, lawyers, accountants and other professionals
- High Concentration of high net worths, family wealth, professional, retail and corner stone investors
- Gain on share dealings by individuals and dividends paid by listed companies not taxed in HK (and no WHT on payment to foreign investors)
- No estate duty or gift duty on shares listed on HK Exchange

Role of Sponsors

- Responsible for preparing the company (applicant) for listing, lodging the formal application and all supporting documents with the Exchange, and dealing with the Exchange on all matters arising from the listing
- A sponsor must be independent of the applicant
- The sponsor should make such enquiries as may be necessary until it can reasonably satisfy itself on the disclosure in the listing document. It should examine with professional scepticism the accuracy and completeness of statements and representations made by the applicant in the listing documents

Experts (I)

- “Tax Advisor” is not listed in the HK Listing Rules as one of the experts required to give opinion on matters disclosed in the listing documents
- However, in view of the increased obligations and liabilities, more and more sponsors would engage tax advisors who are independent (not involved in tax planning or other tax work for the applicant, in some cases independent of the reporting accountants) to give opinion on tax matters arising from the business operations and listing application of the applicant, to discharge its own responsibilities

Experts (II)

- The Exchange expects the sponsor to satisfy itself of the competence of the tax advisor and that the opinion given by the tax advisor is logical, reasonable and not contradictory
- The Exchange and SFC are seen more and more raising questions on tax issues, asking for independent tax opinions and legal opinions on tax matters

Acceptable Overseas Jurisdictions as Place of Incorporation (I)

- Prior to 2007, the HK Listing Rules only recognised HK, China, Cayman Islands and Bermuda as acceptable places of incorporation for listing
- To ensure HK remains an attractive listing venue for overseas companies, other jurisdictions have since been accepted, on condition that the applicant can demonstrate that the jurisdiction of incorporation has shareholder protection standards at least equivalent to those under HK law

Acceptable Overseas Jurisdictions as Place of Incorporation (II)

The main considerations are: Shareholder protection standards; regulatory co-operation arrangement with an overseas jurisdiction, in particular with statutory securities regulator in that jurisdiction; accounting and auditing standards and disclosure requirements

Acceptable Jurisdictions for HK Listing (as at 27 September 2013)

- In addition to China, Cayman Islands and Bermuda - Australia, Brazil, BVI, Canada (Alberta, BC, Ontario), Cyprus, France, Germany, Guernsey, IOM, Japan, Jersey, Republic of Korea, Labuan, Luxemburg, Singapore, UK, USA (California and Delaware) are acceptable jurisdictions
- A potential applicant incorporated in a jurisdiction not on the list above may make a pre-IPO enquiry with the Exchange

Tax advice for investors on applying for and dealing with the Listed Shares

It must be clearly stated in the Prospectus that it is the responsibility of the share investors (themselves) to seek professional advices on their own tax implications resulting from subscribing for, holding, disposal of or dealing with the issued shares of the listed company incorporated in a particular jurisdiction

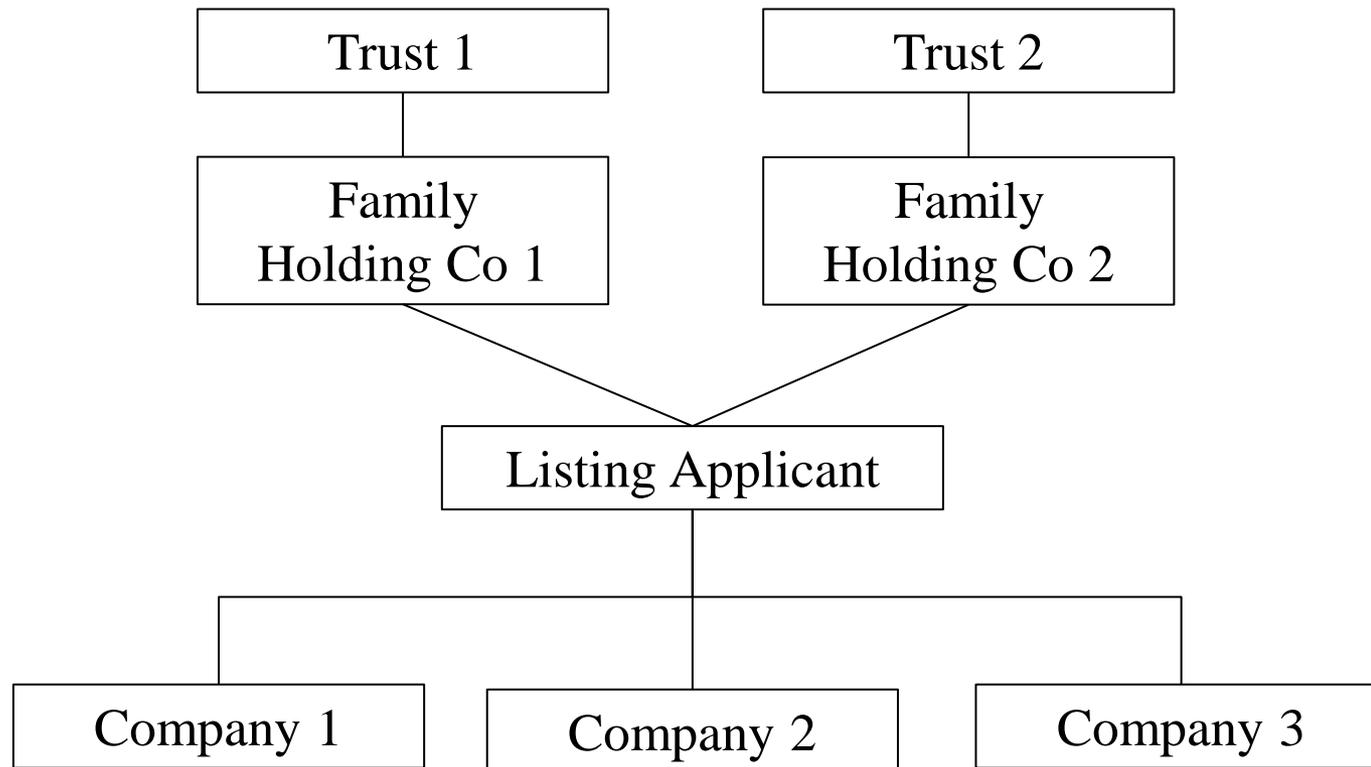
Restructuring prior to listing (1)

It is quite common for a group of companies to go through restructuring prior to listing, for various reasons:

1. Creation of holding companies and trusts to hold the listed shares of the major shareholders - it may be necessary to obtain a tax opinion on whether there are any tax implications on the transfer of shares and injection of the shares into the holding companies and trusts, which may give rise to potential liability to the listed group, for which the controlling shareholders may have to give an indemnity (Diagram 1)

Restructuring prior to listing (2)

Diagram 1

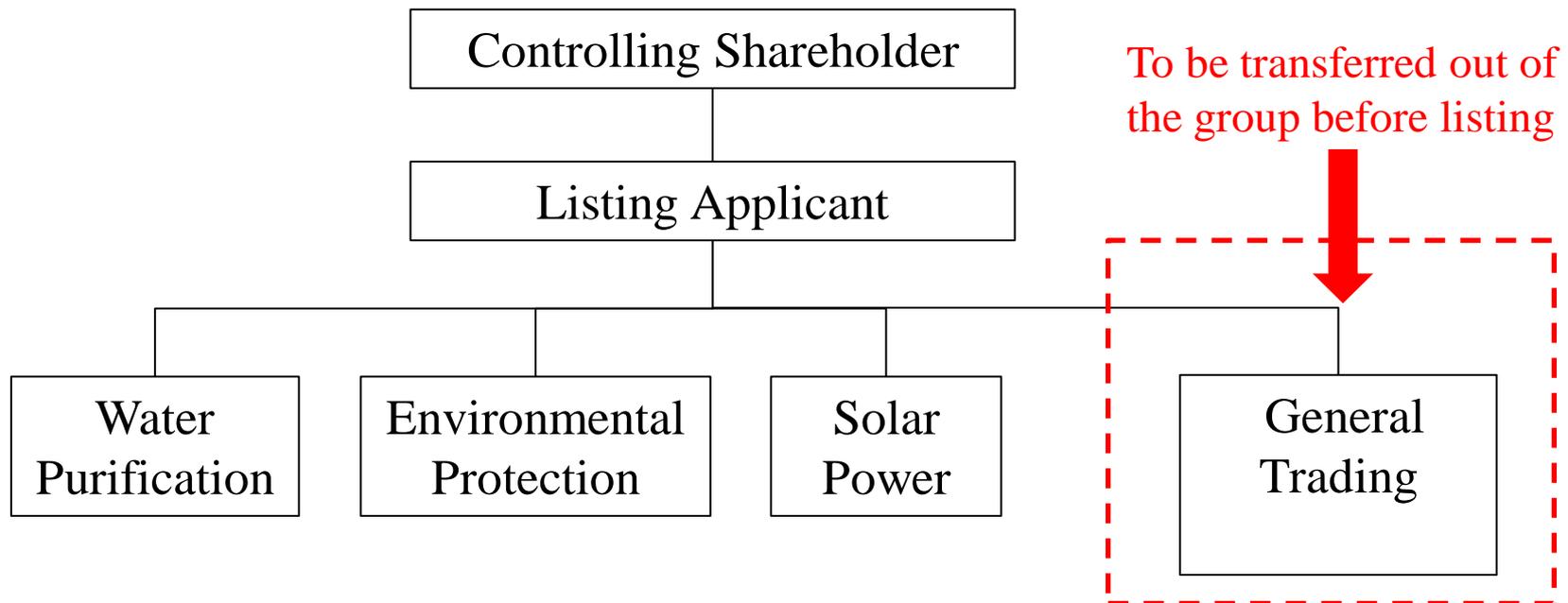


(Underlying Operating Companies)

Restructuring prior to listing (3)

2. To spin off non-core businesses, to present a leaner and better and easily understood structure, to get a better PE ratio, and fairer valuation (Diagram 2)

Diagram 2



Restructuring prior to listing (4)

3. To buy back some family properties/companies/trademarks
4. To transfer the management and staff from the family group management company to a new company to be formed in the group to be listed, so as to avoid connected transactions after listing

Connected transactions and transfer pricing study

As a result of the restructuring, there may be connected transactions after listing between the listed and unlisted groups. Examples include: sharing of offices and facilities, licensing of trademarks. In the group to be listed, there may be cross border transactions between wholly owned or partly owned subsidiaries, such as products manufactured in one country sold to a company in another country which then distributes the goods. The Exchange and SFC, both of which review the listing application under “dual filing system”, will ask for a transfer pricing study report and independent tax advice, to confirm that profits have not been shifted from one entity to another entity, within the same country or located in different jurisdictions

Tax and Compliance Issues (1)

- Compliance of the tax laws of each jurisdiction which the director and companies of the group may have exposure

Case 1

A company manufacturing car parts in China, sold its products through a fellow subsidiary Hong Kong company of the group to be listed, on CIF terms, mainly to its US customers. The group's directors attended tradeshows in US, visited its US customers from time to time. The US tax department of the big 4 reporting accountant considered that the title of goods passed in US, coupling with the activities of its directors in US, created a tax exposure in US in respect of its trading profits. The US tax exposure has not been provided for and caused the group to fail to fulfil the profit requirement of HK mainboard listing. Listing aborted.

Tax and Compliance Issues (2)

Case 2

A group manufacturing and selling certain consumer goods within China paid its directors and senior management through an offshore company, and failed to report personal taxes of such income in China or Hong Kong. The reporting accountant disclosed the facts to the sponsors, who demanded the applicant to rectify and voluntarily report such failure to the Hong Kong and Chinese tax authorities.

Filings were done, personal income taxes, late charges and penalties were fully settled, with an independent tax advisor giving opinion to the sponsors confirming that the filings were proper and accepted by the tax authorities, and the reason and justification for the small penalties imposed in comparison with the maximum penalties stipulated under the law. Disclosure of the failure, payment of taxes and penalties was made in the Prospectus as risk factors. Listing approved.

Tax and Compliance Issues (3)

Case 3

A group has operations in US, and paid US Federal and State taxes on part of its profits. The Exchange challenged the group asking why the Group paid a significant amount of taxes in Hong Kong and China, yet only a very small amount of taxes in US, while 90% of the sales are to US customers. The group finally aborted listing.

Tax and Compliance Issues (4)

Case 4

A group was advised by its tax advisor (prior to listing) that it is entitled to exemption from CIT and business tax in China under the China HK DTA, in respect of its carriage of goods business on vessels plying the waters between China and Hong Kong. No application for tax exemption under the DTA had ever been made to Chinese tax authorities in the cities where its vessels shipped goods to Hong Kong piers for transshipment. Subsequently taxes (CIT and business tax) were paid, late charges and penalty settled with the several Chinese local tax authorities. The Exchange required full disclosure in the Prospectus as risk factors, Chinese legal opinion on the independent tax advisor's opinions, training of the directors on HK and China taxes knowledge and compliance, and disclosure of measures made to avoid future non-compliance. Listing approved.

Thank You