

New Hong Kong Listing Rules Welcome Emerging and Innovative Companies

July 6, 2018

In February 2018, the Hong Kong Stock Exchange (the “HKEx”) published “A Listing Regime for Companies from Emerging and Innovative Sectors,” a consultation paper aimed at facilitating the listing of companies from these sectors on the main board of the HKEx (the “Main Board”). After considering the feedback and responses to the paper, the HKEx issued its conclusions and final listing rule amendments in the second quarter of this year. The updated listing rules cover the following:

- Permitting the listing of high growth and innovative companies with weighted voting right (“WVR”) structures, or companies referred to as having “dual-class shares.”
- Permitting the listing of biotech companies that do not presently meet the pre-existing financial eligibility criteria under the current Main Board listing rules.
- Creating a new concessionary route to encourage companies with primary listings on the NYSE, NASDAQ or the main board of the London Stock Exchange to apply for a secondary listing on the HKEx Main Board.

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This memorandum provides a brief summary of the updated listing rules and eligibility requirements for companies seeking to list under these new regimes.

A. Listing of companies with WVR structures

Historically, technology companies with WVR structures have not been able to list in Hong Kong due to regulatory constraints. In order to encourage more of these companies to list in Hong Kong, the updated rules permit WVR structured companies that are in high growth and innovative sectors to list on the Main Board. The new Chapter 8A outlines the prerequisites of an applicant company with a WVR structure as well as the conditions and safeguards that the HKEx requires of those applicants.

Suitability

New applicants	The HKEx will only consider listing applications by companies with a WVR structure if the company is a new applicant.
Innovative company	<p>The applicant must be an innovative company. The HKEx considers a company to be “innovative” for the purposes of listing on the Main Board if it possesses <i>at least two</i> of the following characteristics:</p> <ol style="list-style-type: none"> i. its success is attributable to new technology, innovations and/or new business model in its core business, and such attributes differentiate the applicant company from other existing players in the market; ii. research and development is a significant contributor of its expected value and constitutes a major activity and expense; iii. its success is attributable to its unique features or intellectual property; and/or iv. it has an outsized market capitalization/intangible asset value relative to its tangible asset value.

The HKEx has noted that what is considered “innovative” in a market or industry may vary as technologies and market conditions develop and/or change over time.

High growth	The applicant must show that it has a track record of high business growth that can be objectively measured by operational metrics, such as business operations, users, customers, unit sales, revenue, profits and/or market value (if appropriate), and such high growth trajectory is expected to continue.
Contribution and role of WVR holders	<p>Each holder of WVR shares must:</p> <ol style="list-style-type: none"> i. be a director of the applicant company at the time of listing; ii. be an individual who has an active executive role within the applicant company’s business; and

- iii. have materially contributed to the growth of the applicant company's business.

Independent investment

The applicant company must have previously received a meaningful, non-token third party investment from at least one "sophisticated investor" which must remain at the time of listing.

The HKEx designates "sophisticated investors" based on factors that include net assets, assets under management, relevant investment experience, and such investors' knowledge and expertise in the relevant field.

Such investors must be required to retain an aggregate 50 percent of their investment at the time of listing for at least six months after the initial public offering ("IPO").

An applicant company that is a spin-off from its parent company can be exempted from the independent investment requirement.

Market capitalization

At the time of listing, the applicant company must have:

- i. a market capitalization of at least HK\$40 billion; or
- ii. a market capitalization of at least HK\$10 billion and revenue of at least HK\$1 billion in its most recent audited financial year.

Other conditions

Permissible WVR structure and restrictions

- The WVR structure should only apply to the equity securities of the applicant company.
- The WVR shares must only confer enhanced voting powers for resolutions voted on during general meetings. All other rights attached to the WVR class of shares must be the same as the listed ordinary shares of the applicant company.
- The WVR shares must not be listed.
- Holders of WVR shares must collectively own at least 10% of the underlying economic interest in the applicant company's total issued share capital at the

time of listing. (The HKEx may accept, on a case-by-case basis, a lower economic interest by WVR shareholders if the economic interest represents a very large amount in absolute dollar terms.)

- WVR shares may be held by a limited partnership, trust, private company or vehicle on behalf of beneficiaries for facilitating tax and/or estate planning.
- Rights and voting powers
- Voting powers of WVR shares must not be more than 10 times the voting power of ordinary shares on any resolutions voted on during any general meetings.
 - Holders of non-WVR shares must be entitled to cast at least 10 percent of the votes that are eligible for casting with respect to resolutions being voted on at any general meetings.
 - Holders of non-WVR shares must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10 of the voting rights on a one vote per share basis in the share capital of the company.
 - The weighted voting rights of WVR shares must be disregarded with respect to any resolutions on the following matters, in which each shareholder must be entitled to one vote per share:
 - Changes to the listed issuer's constitutional documents;
 - Variation of rights attached to any class of shares;
 - Appointment or removal of any independent non-executive director;
 - Appointment or removal of independent auditors; and
 - The voluntary winding-up of the listed company.

None of these resolutions may enable non-WVR shareholders to remove or modify the company's WVR structure by way of changing its constitutional documents.

Constitutional backing and undertaking

- In compliance with Chapter 8A of the Main Board listing rules, applicant companies must incorporate WVR structures into their articles of association or equivalent documents.
- At the time of listing, the holders of WVR shares must confirm to the applicant company that they intend to comply with Chapter 8A regarding the rights and limitations relating to holding WVR shares.

Training

- As part of its listing application, an applicant company must confirm to the HKEx that its directors, senior management and company secretary have undertaken training on the rules and risks associated with a WVR structure.

Disclosure

Applicant companies must include a warning statement on the front page of their listing documents, periodic financial reports, circulars, notifications and announcements of the WVR structure as well as the following details:

- Description of the WVR structure;
- The applicant company's rationale for having the WVR structure;
- Associated risks for shareholders;
- Identities of the WVR shareholders;
- Impact of any potential conversion of WVR shares into ordinary shares on its share capital; and
- All possible circumstances under which the WVR attached to the applicant company's shares will cease.

Stock marker The listed equity securities of the applicant company with a WVR structure will have a stock marker that ends in “W”.

Post-listing restrictions and requirements

Restrictions to WVR shares post-listing

- Companies with WVR structures may not increase the proportion of WVR shares above the proportion of WVR shares existing at the time of listing.
- Companies with WVR structures may not change the terms of a class of WVR shares to increase the weighting of voting rights to that class of shares.

Ceasing of WVR attached to shares The weighted voting rights to any WVR shares shall cease if the holder of the WVR shares:

- is deceased;
- ceases to be a member of the company’s board of directors;
- is deemed by the HKEx to be incapacitated for the purpose of performing his or her duties as a director;
- is deemed by the HKEx to no longer meet the applicable requirements of serving as a director of the company; or
- transfers the beneficial ownership, control or economic interests of the WVR shares to another person.

Corporate governance

- The board of directors of the applicant company must establish a nomination committee chaired by an independent non-executive director. The establishment of a nomination committee in general listings (i.e., not under Chapter 8A) is not mandatory, but considered to be good practice pursuant to the Corporate Governance Code set forth in Appendix 14 of the Main Board listing rules.
- The board of directors of the applicant company must include a corporate governance committee comprised entirely of independent non-executive directors (one of whom must act as chairman) whose charter

includes the reviewing, monitoring and reporting of the applicant company's compliance with the protections and safeguards applicable to companies with WVR structures. The corporate governance committee should also issue a corporate governance report summarizing the committee's work during the accounting period covered by both the interim and annual reports. The corporate governance report should disclose any significant subsequent events for the period up to the date of publication of the interim and annual report, to the extent possible.

- Each independent non-executive director on the board of directors must be subject to retirement by rotation at least once every three years; however, the independent non-executive director is eligible for re-appointment at the end of his/her three-year term.
- An applicant company must appoint a compliance advisor on a permanent basis commencing on the date of its IPO. The company must consult with the compliance advisor on any matters related to its WVR structure going forward.

B. Listing of biotech companies

The HKEx introduced a new Chapter 18A into the Main Board listing rules to determine the eligibility requirements for biotech companies that do not meet the typical Main Board listing requirements.

Suitability

Biotech company A biotech company is defined as a company that is primarily engaged in the research and development in the application and commercialization of products, processes or technologies to apply science and technology to produce medical or biological commercial products.

Core product At least one core product of the company must be beyond its concept stage.

Core product

A core product means any biotech product that is required by applicable laws, rules or regulations to be evaluated and

approved by a competent authority (i.e., the U.S. Food and Drug Administration, the European Medicines Agency or any other national or supranational authority which the HKEx recognizes as a competent authority) based on the data derived from clinical trials before it could be marketed and sold in the market regulated by that competent authority.

Beyond concept stage

The HKEx considers a core product to be beyond concept stage if it meets the following requirements:

- For a *new* pharmaceutical (small molecule drug) product or new biologic product, it should have completed Phase I clinical trials, and the relevant competent authority has no objections for it to commence Phase II (or later stage) clinical trials;
 - For a pharmaceutical (small molecule drug) product *based on previously approved products or biosimilars*, it should have completed at least one clinical trial conducted on human subjects, and the relevant competent authority has no objection for it to commence Phase II (or later stage) clinical trials;
 - For a Class II or above medical device (including diagnostic devices), it should have completed at least one clinical trial on human subjects (which will form a key part of the application required by the competent authority), and either the competent authority has endorsed or not expressed objection for the applicant to proceed to further clinical trials, or the competent authority has no objection for the applicant to commence sales of the device; and
 - The HKEx will consider any other biotech products on a case-by-case basis.
- Business operations
- The applicant company must have been operating in its current line of business under the same management for at least two financial years prior to listing.
 - The HKEx will review any change in ownership of any applicant company in the 12 months prior to the date of

the listing application in order to assess its suitability.

Research and development	<ul style="list-style-type: none"> • The applicant company must have sufficient working capital to cover at least 125% of the group’s costs for at least 12 months from the date of publication of its listing document (taking into account the IPO proceeds). Costs must substantially include: (i) general, administrative and operating costs (including any production costs), and (ii) research and development costs. • The applicant company must have been primarily engaged in research and development for the purposes of developing its core product(s). • The applicant company must have been engaged with research and development of its core product(s) for a minimum of 12 months prior to the IPO. (For cases in which the core product was in-licensed or acquired from a third party, the company must be able to show research and development progress since the in-licensing or acquisition). • The applicant company should have a pipeline of those potential products for companies that are engaged in research and development of pharmaceutical products or biologic products. • The applicant company’s primary reason for listing should be to <i>raise financing for research and development</i> to bring its core product(s) to commercialization.
Intellectual property rights	The applicant company must have registered patent(s), patent application(s) and/or intellectual property with respect to its core product(s).
Market capitalization	The applicant company’s market capitalization at the time of listing must be at least HK\$1.5 billion.
Independent investment	The applicant company must have previously received a meaningful, non-token third party investment from at least one “sophisticated investor” at least six months prior to the date of the proposed IPO. Such investor must remain in place at the time of listing.

The HKEx designates “sophisticated investors” based on factors that include net assets, assets under management, relevant investment experience, such investors’ knowledge and expertise in the relevant field. Examples include:

- Dedicated healthcare funds, biotech funds or an established fund with a division/department that specializes or focuses on investments in the biopharmaceutical sector;
- Major pharmaceutical or healthcare companies;
- Venture capital funds of a major pharmaceutical or healthcare company; or
- Investors, investment funds or financial institutions with assets under management of at least HK\$1 billion.

“Meaningful investments” are assessed on a case-by-case basis considering the nature of the investment, amount invested, the size of the stake taken up and the timing of the investment. The following investment amount will generally be considered as a meaningful investment:

Applicant company’s market capitalization	“Meaningful investment” threshold
HK\$1.5 billion – HK\$ 3 billion	At least 5 percent of the issued share capital of the applicant company at the time of listing
HK\$3 billion – HK\$8 billion	At least 3 percent of the issued share capital of the applicant company at the time of listing
More than HK\$8 billion	At least 1 percent of the issued share capital of the applicant company at the time of listing

Other conditions

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| Disclosure | <ul style="list-style-type: none"> • The applicant company will be required to include prominent warning statements and enhanced risk disclosures in its listing documents during the IPO. • The applicant company shall also include all details of its research and development activities in its interim and annual reports after its listing. |
| Stock marker | The listed equity securities of the biotech company will have a stock marker that ends in “B.” |
| Public float | <ul style="list-style-type: none"> • The applicant company must have a public float of at least HK\$375 million (equivalent to 25% of the minimum HK\$1.5 billion market capitalization requirement). • Shares subscribed by cornerstone investors or existing shareholders at the IPO will be excluded from the company’s public float, unless it can be shown that they are not core connected persons. |

Post-listing restrictions and requirements

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| Continuity of principal business | <ul style="list-style-type: none"> • Without the HKEx’s consent, a biotech company listed under Chapter 18A is prohibited from effecting any acquisition, disposal or other transaction or arrangement which would result in a fundamental change in the principal business activities as described in its listing application. |
| Accelerated de-listing process | <ul style="list-style-type: none"> • If the HKEx finds that any biotech company listed under Chapter 18A fails in complying with continuing requirements in maintaining sufficient operations or assets, the HKEx may give the company a period of not more than 12 months to comply with the requirement(s). • The HKEx may cancel a company’s listing if it fails to comply with continuing requirements within the prescribed time period. |

C. New concessionary route for the secondary listing of Qualifying Issuers

In order to encourage emerging and innovative companies with primary listings on a “Qualifying Exchange” (i.e., NYSE, NASDAQ or the Primary Listing Segment of the main market on the London Stock Exchange) to seek a secondary listing in Hong Kong, the HKEx established a new set of conditions and qualifications for these companies, known as “Qualifying Issuers,” in Chapter 19C of the Main Board listing rules.

Suitability

Innovative company The applicant company must be an innovative company, which for the purposes of listing on the Main Board means it possesses *at least two* of the following characteristics:

- i. Its success is attributable to its new technology, innovations and/or new business model of its core business and such attributes differentiate the applicant from other existing players in the market;
- ii. Research and development is a significant contributor of its expected value and constitutes a major activity and expense;
- iii. Its success is attributable to its unique features or intellectual property; and/or
- iv. It has an outsized market capitalization or intangible asset value relative to its tangible asset value.

The HKEx noted that what is considered “innovative” in a market or industry may vary as technologies and market conditions may develop and change over time.

Track record of the company The applicant company must show that it has a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.

Market capitalization At the time of secondary listing, the applicant company must meet the minimum market capitalization:

- Applicants from non-Greater China without WVR structure should have a market cap of at least HK\$10 billion.

- All other applicants should have a market capitalization of
 - At least HK\$40 billion; or
 - At least HK\$10 billion and revenue of at least HK\$1 billion in the most recent audited financial year.

Waivers and protections

The Main Board listing rules establish different standards for applicant companies subject to where they are based and when their primary listings took place:

	Greater China companies with primary listing on or before 15 December 2017	Greater China companies with primary listing after 15 December 2017	Non-Greater China companies
<i>Pursuant to Listing Rule 19C.11, exemptions are granted to companies seeking a secondary listing from compliance with certain Listing Rule requirements (including certain continuing obligations of a listed issuer, disclosure requirements and corporate governance requirements)</i>	Existing automatic waivers continue to apply. However, the automatic waivers will cease to apply in the event of a permanent migration of the bulk of trading in the shares of these companies to Hong Kong. Note 1 to the Main Board listing rule 19C.13 provides that “bulk of trading” means 55% or more of the total worldwide trading volume (by dollar value) of those shares (including the volume of trading in depositary receipts issued on those shares) over the applicant company’s most recent financial year.		Existing automatic waivers continue to apply.
<i>Equivalent shareholder protection requirements</i>	The applicant company must demonstrate how the domestic laws, rules and regulations which the company	At the time of the secondary listing, the applicant company must vary its constitutional	The applicant company must demonstrate how the domestic laws, rules and regulations to

	<p>is subject to and its constitutional documents provide the key shareholder protections. For this purpose, the HKEx may require the company to amend its constitutional documents.</p>	<p>documents in accordance with the requirements set out in the existing Listing Rules.</p>	<p>which the company is subject and its constitutional documents provide the key shareholder protections. For this purpose, the HKEx may require the company to amend its constitutional documents.</p>
<p><i>Companies with WVR structures</i></p>	<p>Companies are eligible to secondarily list on the HKEx with their existing WVR structure.</p> <p>These companies do not need to comply with the ongoing WVR safeguards found in Chapter 8A with the exception of the disclosure requirements.</p>	<p>The WVR structures for these companies must conform to all primary listing requirements, including all WVR safeguards in Chapter 8A of the Main Board listing rules.</p>	<p>Companies are eligible to secondarily list on the HKEx with their existing WVR structure.</p> <p>These companies do not need to comply with the ongoing WVR safeguards found in Chapter 8A with the exception of the disclosure requirements.</p>
<p><i>Variable Interest Entity (“VIE”) structures or contractual arrangements to be used by companies to indirectly own or control their business subject to foreign ownership</i></p>	<p>Companies will be allowed to secondarily list on the HKEx with their existing VIE structures.</p> <p>They will not be required to demonstrate compliance with the draft PRC Foreign</p>	<p>Companies’ VIE structures must comply with all requirements set forth in HKEx Listing Decision LD43-3 before listing.</p> <p>Under HKEx Listing Decision LD43-3, the</p>	<p>Non-Greater China companies will also be able to secondarily list on the HKEx with their existing VIE structures, if they have them.</p>

<p><i>restrictions</i></p>	<p>Investment Law, subject to (i) the provision of a PRC legal opinion that their VIE structures comply with PRC laws, rules and regulations, and (ii) compliance with the disclosure, but not the structuring, requirements set out in HKEx Listing Decision LD43-3.</p>	<p>contractual arrangements should be narrowly formed to achieve a company's business purposes and minimize the potential for conflict with relevant PRC laws, rules and regulations. Furthermore, the listing decision sets out the required disclosures by the company with respect to its contractual arrangements in its listing documents, and statements of the genuine efforts by the company seeking appropriate steps to ensure that the structure of its contractual arrangements are not in breach of any laws, rules or regulations.</p>	
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Please do not hesitate to contact us with any questions.

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