Subject | Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C
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Listing Rules and Regulations | Main Board Listing Rules 8.04, 19C.02
HKEX-LD43-3

**Important note:** This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter. Unless otherwise specified, defined terms in the Listing Rules shall have the same meanings in this letter.

1. **Purpose**

1.1 This letter provides guidance to applicants applying for a secondary listing under Chapter 19C on the factors that the Exchange will take into account when considering whether an applicant is suitable for listing under Main Board Listing Rule 19C.02.

1.2 This letter also provides guidance to applicants applying for a secondary listing under Chapter 19C on the use of contract-based arrangements or structures ("Contractual Arrangements") to indirectly own and control the parts of their business.

2. **Relevant Listing Rules**

2.1 Main Board Listing Rule 8.04 provides that in the opinion of the Exchange both the issuer and its business must be suitable for listing.

2.2 Main Board Listing Rule 19C.02 states that a Qualifying Issuer seeking a secondary listing under Chapter 19C must demonstrate to the Exchange that it is both eligible and suitable for listing.
3. **Guidance**

**Suitability**

3.1 The Exchange would normally consider a Qualifying Issuer to be suitable for secondary listing under Chapter 19C if it is an innovative company by reference to the characteristics set out in paragraph 3.2 below.

3.2 The Exchange considers an innovative company for the purpose of the Listing Rules would normally be expected to possess more than one of the following characteristics:

(a) its success is demonstrated to be attributable to the application, to the company’s core business, of (1) new technologies; (2) innovations; and/or (3) a new business model, which also serves to differentiate the company from existing players;

(b) research and development is a significant contributor of its expected value and constitutes a major activity and expense;

(c) its success is demonstrated to be attributable to its unique features or intellectual property; and/or

(d) it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

The Exchange recognises that what is considered “innovative” depends on the state of the industry(ies) and market(s) in which an applicant operates, and will change over time as technology, markets and industries develop and change. For example, a new and “innovative” business model may cease to be so if it is adopted by numerous industry players over time. Conversely, a company may develop an “innovative” way of deploying existing technologies that qualifies it for listing under Chapter 19C. Accordingly, the fact that a particular company has qualified for listing under Chapter 19C does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing under Chapter 19C.

The Exchange will review the facts and circumstances of each case to determine if an applicant has demonstrated that it is an innovative company for the purpose of this paragraph. The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out in this paragraph. So, for example, the Exchange may consider that an applicant that operates a retail business with an online sales platform may not be suitable to list under Chapter 19C if it does not exhibit other distinctive features or characteristics.
3.3 Applicants should note that the factors set out in this section 3 are neither exhaustive nor binding and the Exchange will take into account all relevant circumstances in its assessment of the applicant.

3.4 The Exchange retains the discretion to find a Qualifying Issuer not suitable for listing under the new concessionary route even if it satisfies the features set out in paragraph 3.2 and the applicant must, in any case, satisfy the general suitability requirement in Main Board Listing Rule 8.04.

4. Contractual arrangements

4.1 Companies operating in an industry sector that is subject to foreign ownership restrictions often use Contractual Arrangements to indirectly own and control the parts of their business which are subject to foreign ownership restrictions.

4.2 The Exchange’s current approach in relation to Contractual Arrangements is set out in Listing Decision HKEX-LD43-3. Among other things, Contractual Arrangements are required to be narrowly tailored to achieve the applicant’s business purpose and minimise the potential for conflict with relevant PRC laws and regulations, and issuers may be required, on a case by case basis, to demonstrate that it is able to comply with the requirements under the draft PRC Foreign Investment Law in the event that the legislation is promulgated.

4.3 The Exchange notes that the requirements of Qualifying Exchanges regarding Contractual Arrangement are not as extensive as the Exchange’s requirements. This means that many of the Mainland companies listed on Qualifying Exchanges have done so with Contractual Arrangements that do not meet our existing guidance in all respects. These companies may find it undesirable or impractical to vary their corporate structures to incorporate all aspects of the Exchange’s requirements for Contractual Arrangements for the sake of a secondary listing.

4.4 Consistent with the purpose of Chapter 19C to facilitate the secondary listing of innovative companies, Grandfathered Greater China Issuers, being those Greater China Issuers which have been listed on a Qualifying Exchange before the Exchange published its proposals (and therefore did not list overseas for the purpose of regulatory arbitrage), will be able to secondary list with their existing Contractual Arrangements in place and will not be required to demonstrate that it is able to comply with the draft PRC Foreign Investment Law provided that they comply with the following requirements:¹

¹ Non-Greater China Issuers would also be able to secondary list with their existing Contractual Arrangements, if they have them.
(a) The applicant is required to provide the Exchange with a PRC legal opinion that their Contractual Arrangements complies with PRC laws, rules and regulations; and

(b) The applicant must comply with the disclosure requirements set out in Listing Decision HKEX-LD43-3.

4.5 Non-Grandfathered Greater China Issuers applying for a secondary listing under Chapter 19C must ensure that it complies with the Exchange’s requirements set out in Listing Decision HKEX-LD43-3. They may also be required, on a case by case basis, to demonstrate that it is able to comply with the requirements under the draft PRC Foreign Investment Law in the event that the legislation is promulgated.

4.6 In the event that an applicant applying for a secondary listing under Chapter 19C uses weighted voting rights to demonstrate its ability to comply with the draft PRC Foreign Investment Law, and the weighted voting rights in question do not exist indefinitely (for example, they are personal to the holder and incapable of being transferred, or are subject to sunset), the applicant must clearly disclose the risk that its weighted voting rights may fall away and it may not be able to comply with the PRC Foreign Investment Law as a result.

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