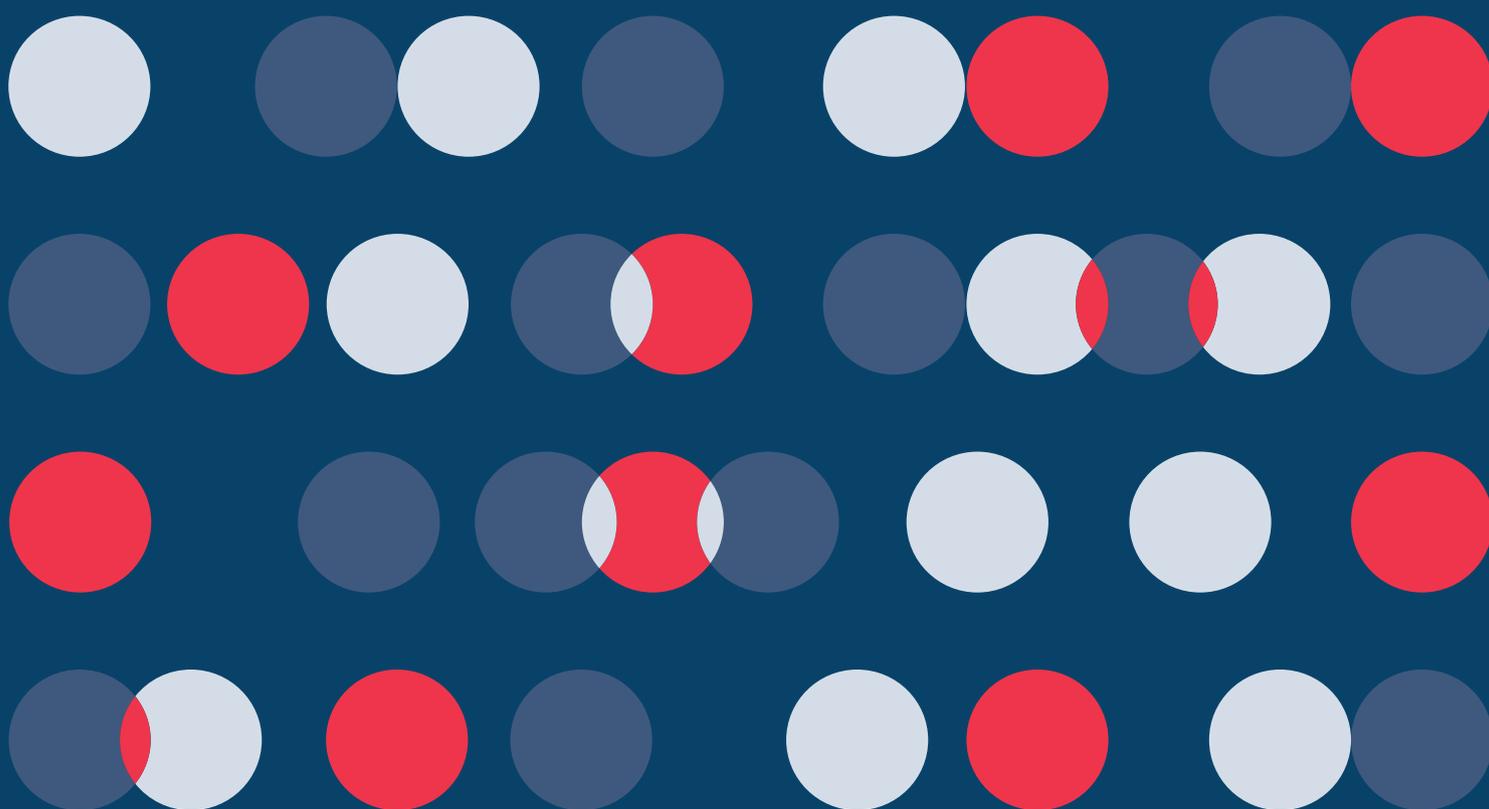


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RESEARCH REPORT

REFORM AND BREAKTHROUGH OF
HONG KONG'S LISTING REGIME



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SUMMARY

The Stock Exchange of Hong Kong Limited (SEHK, or the Exchange) consulted the market in February 2018 on proposed amendments to its Listing Rules to expand the original listing regime to facilitate the listing of companies from emerging and innovative sectors. In the consultation, a new concessionary route to secondary listing for large innovative companies already listed on qualified exchanges was also proposed. With broad market support, the relevant amendments to the Main Board Listing Rules were implemented on 30 April 2018.

This paper presents, in a succinct way, the listing requirements stipulated in the respective newly introduced chapters of the Listing Rules for companies with weighted voting rights (WVR) structures, biotech companies and companies seeking a secondary listing in Hong Kong.

1. NEW CHAPTER FOR COMPANIES WITH WEIGHTED VOTING RIGHTS (WVR) STRUCTURES

1.1 Rationale and principles behind

The concept of proportionality between the voting power and equity interest of shareholders, commonly known as the “one-share, one-vote” principle, is an important aspect of investor protection. It helps align controlling shareholders’ interests with those of other shareholders, and makes it possible for incumbent management to be removed, if they underperform, by those with the largest equity interest in the issuer.

The Exchange believes that the “one-share, one-vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company. As such, companies wishing to list with a WVR structure shall be able to meet relevant qualifying requirements, and demonstrate the necessary characteristics of innovation and growth and the contribution of their proposed beneficiaries of WVR.

It is under this rationale that the Exchange launched a new Chapter 8A of the Listing Rules, allowing companies with WVR structures to list in Hong Kong subject to certain conditions. By 30 June 2019, two companies, Xiaomi-W (stock code: 01810) and Meituan-W (03690), had successfully landed on Hong Kong’s capital market under this chapter.

1.2 Listing qualifications and basic conditions

- Only applicable to new applicants; companies already listed are not allowed to apply for a change into WVR structures;
- A market capitalisation of at least HK\$40 billion at the time of listing; or a market capitalisation of at least HK\$10 billion at the time of listing and a revenue of at least HK\$1 billion for the most recent audited financial year;
- The applicant shall be an innovative company;
- Successful business operation: the applicant must demonstrate a track record of high business growth, as can be objectively measured by operational metrics such as business operations, users, customers, revenue, profits or market values, and its high-growth trajectory is expected to continue;
- External validation: the applicant must have previously received meaningful third-party investment from at least one Sophisticated Investor¹.

1.3 Definition of innovative sectors²

The applicant must be an innovative company which is expected to possess more than one of the following characteristics:

- (1) The success of its operation is demonstrated to be attributable to the application, to the company’s core business, of new technologies, innovations and/or new business models, which also serves to differentiate the company from existing competitors.

The applicant should elaborate on how its operations differ from conventional practices in its industry which sets it apart from peers. If the applicant's peers are employing similar technology/business model, the Exchange will take into account whether the applicant

¹ An investor that the Exchange considers to be sophisticated by reference to factors such as net assets or assets under management, relevant investment experience, and the investor’s knowledge and expertise in the relevant field.

² See HKEX Guidance Letter HKEX-GL93-18 for details.

was the “first mover” in the industry by reference to the timeline of the implementation of its technology, innovations and/or business models compared to its closest peers.

- (2) Research and development (R&D) is a significant contributor of its expected value and constitutes a major activity and expense.

The applicant should, in addition to providing the amount of its R&D expenses during the track record period (both as a figure and as a percentage of revenue/total expenses), also explain how the R&D contributes value to the applicant. In this connection, the Exchange will examine whether the R&D expenses are capitalised as intangible assets in the accounts of the applicant as an indicator of the value generated through the R&D activities. Where a significant portion of the R&D expenses are not capitalised, the applicant should provide the reasons for this.

- (3) The success of its operation is demonstrated to be attributable to its unique business features or intellectual property, and/or it has an outsized market capitalisation or intangible asset value relative to its tangible asset value.

Providing a list of patents and trademarks alone is not sufficient to demonstrate this characteristic. The applicant should provide detailed explanation on how its intellectual properties enabled it to achieve business success.

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. Accordingly, the fact that a particular company is qualified for listing with a WVR structure does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing with a WVR structure. The Exchange will review the facts and circumstances of each case to determine if an applicant has met the relevant requirements. The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out in this section.

1.4 Restrictions on WVR beneficiaries

- Individuals only: materially responsible for the growth of the business (separate consultation will be carried out on corporate beneficiaries);
- Directors only: each WVR beneficiary shall be a director at listing and afterwards;
- Minimum shareholding: $\geq 10\%$ at listing (collectively);
- Prohibition of shares transfer: natural sunset clause, allow trusts and legitimate tax planning.

1.5 Additional listing requirements and shareholder protection

- After listing, the WVR shares are not tradable, and their proportion should not be increased to above the proportion in issue at the time of listing;
- No increase in the ratio of WVR shares' voting rights after listing;
- Voting rights of WVR shares must not entitle the beneficiaries to more than ten times the voting power of ordinary shares, on any resolution tabled at the issuer's general meetings;
- Holders of ordinary shares must be entitled to cast at least 10% of the votes on resolutions at the issuer's general meetings;
- WVR beneficiaries must beneficially own collectively at least 10% of the applicant's underlying economic interest at the time of its initial listing.

The following material matters must be decided on a “one-share one-vote” basis:

- Changes to constitutional documents;
- Appointment and removal of an independent non-executive director (INED);
- Appointment and removal of auditors;
- Variation of rights attached to any class of shares; and
- Voluntary winding-up of the listed issuer.

Enhanced disclosure and corporate governance:

- Warnings in listing documents and corporate communications;
- Marker “W” at the end of the stock name;
- Establish a Corporate Governance Committee to review, monitor and report on compliance with WVR safeguard measures;
- Ongoing appointment of a Compliance Adviser to provide advice to issuers on compliance with WVR safeguards and related rules;
- The Corporate Governance Committee must be comprised entirely of INEDs.

Constitutional backing and legal remedies:

- WVR safeguards must be incorporated into constitutional documents;
- WVR beneficiaries must give an undertaking to the issuer in a form acceptable to the Exchange to comply with WVR safeguards.

2. NEW CHAPTER FOR BIOTECH COMPANIES

2.1 Rationale and principles behind

In April 2018, the Exchange also introduced a new Chapter 18A “Biotech Companies” to its Main Board Listing Rules, to mainly accommodate biotech companies seeking to list on the Main Board but fail to meet the relevant “profit test” or “market capitalisation/revenue test” or “market capitalisation/revenue/cash flow test” under Chapter 8 of the Listing Rules, in a bid to further enhance the capabilities of the Hong Kong market to serve new-economy companies³.

Under this guiding rationale, Hong Kong has become the second largest biotech listing venue in the world in just less than two years. Since the introduction of this new chapter up to 30 June 2019, a total of 14 biotech companies have been listed on the Main Board, raising funds of HK\$47.5 billion in total. Of these companies, eight are pre-revenue biotech companies, raising funds of HK\$23.5 billion in total. Besides, five more biotech companies have already submitted the A1 application form. Looking forward, Hong Kong’s position as a leading capital market for biotech companies could be further strengthened.

³ It should be noted that biotech companies shall not apply for listing under Chapter 18A if they meet the relevant “profit test” or “market capitalisation/revenue test” or “market capitalisation/revenue/cash flow test” under Chapter 8. Listing applicants are encouraged to contact the Exchange early for confirmation on compliance/qualification.

Table 1. New listings on the SEHK under the Biotech Chapter (End-Jun 2019)

	Stock short name	Stock code	Listing date	Principal business location
1	Ascletis-B	01672	01/08/2018	Hangzhou
2	BeiGene	06160	08/08/2018	Beijing
3	Hua Medicine-B	02552	14/09/2018	Shanghai
4	Innovent Bio-B	01801	31/10/2018	Suzhou
5	Junshi Bio-B	01877	24/12/2018	Shanghai
6	Cstone Pharma-B	02616	26/02/2019	Shanghai
7	CansinoBio-B	06185	28/03/2019	Tianjin
8	MabPharm-B	02181	31/05/2019	Taizhou

Note: The affixed letter "B" to the stock name of BeiGene has been removed as a result of the approval granted by the Exchange on 28 June 2019 for the company's dis-application of Chapter 18A due to its satisfaction of the market capitalisation/revenue test in Rule 8.05(3).

Source: HKEX.

2.2 Listing qualifications and basic conditions⁴

(1) The applicant must have developed at least one core product beyond the concept stage

A biotech product that is required by applicable laws, rules or regulations to be evaluated and approved by a Competent Authority⁵ based on data derived from clinical trials (i.e. on human subjects) before it could be marketed and sold in the market regulated by that Competent Authority, is one of the most important bases on which a biotech company can apply for listing under Chapter 18A of the Listing Rules. Depending on the type of product, the Exchange would normally consider the following products have developed beyond the concept stage:

- **Pharmaceutical (small molecule drugs)** — It has passed Phase I clinical trials, or for products already approved (for example, the 505(b)(2) of FDA of the US), has successfully passed at least one clinical trial conducted on human subjects; and the relevant Competent Authority has no objection for it to commence Phase II (or subsequent) clinical trials.
- **Biologics** — In case of new biologic products, it has passed Phase I clinical trials, or for biosimilar, has passed at least one clinical trial conducted on human subjects; and the relevant Competent Authority has no objection for it to commence Phase II (or subsequent) clinical trials.
- **Medical devices (including diagnostic devices)** — The product is categorised as Class II (or equivalent) medical device (under the classification criteria of the relevant Competent Authority) or above; it has passed at least one clinical trial on human subjects; the Competent Authority has endorsed or not expressed objection for further clinical trials or the commencement of sales of the device.
- **Other biotech products** — This will be considered on a case by case basis; the applicant shall demonstrate that the relevant biotech product has been developed

⁴ See HKEX Guidance Letter HKEX-GL92-18 for details.

⁵ Competent Authority means the US Food and Drug Administration (FDA), the China Food and Drug Administration (CFDA), the European Medicines Agency (EMA) or any other authority recognised on a case by case basis.

beyond the concept stage; the applicant shall have an appropriate framework or objective indicators for investors to make an informed investment decision.

(2) The applicant shall be primarily engaged in R&D for the purposes of developing its core product(s)

- It must have been engaged in the R&D of its core product(s) for a minimum of 12 months prior to listing;
- It must have, as its primary reason for listing, the raising of funds for R&D to bring its core product(s) to commercialisation;
- It must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its core product(s);
- If the applicant is engaged in the R&D of pharmaceutical (small molecule drugs) products or biologic products, it must demonstrate that it has a pipeline of these potential products.

(3) The applicant shall have recognition and secured investment from Sophisticated Investors

The applicant shall demonstrate that a reasonable degree of market acceptance exists for its R&D and biotech product. It must have previously received “meaningful investment” from at least one Sophisticated Investor at least six months before the date of the initial public offering (IPO) (which must remain invested in the applicant at IPO).

“Sophisticated Investor” refers to an investor that the Exchange considers to be sophisticated by reference to factors such as net assets or assets under management, relevant investment experience, and the investor’s knowledge and expertise in the relevant field. Generally speaking, Sophisticated Investors include the following four types:

- A dedicated healthcare or biotech investment fund or an established fund with a division/department that specialises or focuses on investments in the biopharmaceutical sector;
- A major pharmaceutical/healthcare company;
- A venture capital fund of a major pharmaceutical/healthcare company; and
- An investor, investment fund or financial institution with minimum assets under management of HK\$1 billion.

The Exchange considers an investment to be meaningful by reference to the nature of the investment, the amount invested, the size of the stake taken up and the timing of the investment. In general, there are three thresholds for a meaningful investment as follows:

- For an applicant with a market capitalisation between HK\$1.5 billion to HK\$3 billion, an investment of not less than 5% of the issued share capital of the applicant at the time of listing;
- For an applicant with a market capitalisation between HK\$3 billion to HK\$8 billion, an investment of not less than 3% of the issued share capital of the applicant at the time of listing; and
- For an applicant with a market capitalisation of more than HK\$8 billion, an investment of not less than 1% of the issued share capital of the applicant at the time of listing.

(4) Additional listing requirements

- **Market capitalisation:** at least HK\$1.5 billion at the time of listing;
- **Track record:** in its current line of business for at least two financial years, under substantially the same management;
- **Working capital:** the applicant shall ensure that it has sufficient working capital (after taking into account the IPO proceeds), as much as 125% of the applicant's costs for at least 12 months from the date of its prospectus, including general, administrative and operating costs and R&D costs.

2.3 Requirements for placement to cornerstone investors and original shareholders

Cornerstone investors and existing shareholders of a biotech company listed under Chapter 18A may only be allocated shares in the IPO if the company meets the additional minimum public float requirement at the time of listing of at least HK\$375 million excluding shares allocated to them.

2.4 Special measures to manage risks

(1) Material changes in business activities

Without the prior consent of the Exchange, a biotech company listed under Chapter 18A must not effect any acquisition, disposal or other transaction or arrangement or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the relevant issuer as described in its listing application document.

(2) Shorter delisting procedures

For issuers who have financial difficulties to an extent which seriously impairs their ability to continue their business or which has led to the suspension of some or all of their operations, and/or for issuers whose liabilities exceed their assets as at the balance sheet date⁶, the Exchange will suspend the trading of, or even delist, their securities⁷. If the issuer fails to re-comply with the relevant requirements under Listing Rule 13.24 within 12 months, the Exchange will delist its securities.

(3) Special stock marker

The listed equity securities of a biotech company listed under Chapter 18A must have a stock name that ends with the marker "B". If a listed biotech company meets the relevant "profit test" or "market capitalisation/revenue test" or "market capitalisation/revenue/cash flow test" under Chapter 8, it can turn into a regular listed company upon the Exchange's approval, and its stock name will no longer bare the marker that ends with "B".

⁶ See Listing Rule 13.24 for details.

⁷ See Listing Rule 6.01 for issues relating to delisting and suspension.

3. NEW CHAPTER FOR SECONDARY LISTING

3.1 Concepts and advantages of a secondary listing

In practice, many issuers listed overseas also wish to list in Hong Kong for liquidity and valuation support from the Hong Kong capital market. A primary listing in Hong Kong is one that results in the company becoming fully subject to the Listing Rules. A secondary listing, on the other hand, will mean that the company will be principally regulated by the rules and authorities of the jurisdiction where it is primary listed. The Exchange would also expect the dominant trading of the company's securities to be on the primary overseas exchange. On this basis, the Exchange exempts or waives certain requirements of the Listing Rules for overseas issuers with, or seeking, a secondary listing on it.

Therefore, for those issuers that are already listed overseas, application for a secondary listing in Hong Kong will be a most practical and least difficult option, compared to seeking a listing again in Hong Kong after being delisted from the overseas market, or seeking a dual primary listing in both markets. In particular, "China-concepts stocks" already listed overseas will have the following advantages from having a Hong Kong secondary listing:

- The US Generally Accepted Accounting Principles (GAAP) are acceptable for a secondary listing, so no extra auditing/re-auditing of the track record for three financial years and no reconciliations are needed, reducing the burden on the issuer in preparing the financial statements and relevant disclosure in the prospectus;
- Subject to conditions, a secondary listing applicant is entitled to a number of automatic and conditional waivers, including waivers of various continuing obligations of a primary listing on the Exchange (e.g. rules on notifiable transactions and connected transactions); certain qualified overseas listed issuers may submit its application on a confidential basis;
- A secondary listing could provide funding for the issuer's development through additional issuance of new shares; or the issuer can list by way of introduction, by way of sale of existing shares, or by way of repurchase and sale, without diluting existing shareholders' interests;
- Shares listed on the Exchange could serve as a valuation conduit between different trading venues, and are naturally closer to investors in Asian time zones, forming a full-day round circulation market for the securities, thus helping with more active trading in the shares;
- Given the convenience in capital operations in Hong Kong, a secondary listing in Hong Kong could provide better access to consumers in the Mainland and further improve brand recognition and presence.

Traditionally, the Exchange only accepts applications for a secondary listing from overseas issuers whose core businesses ("centres of gravity") are outside Greater China⁸. The primary purpose of this restriction is to prevent "regulatory arbitrage", i.e. companies with a centre of gravity in Greater China avoiding the full requirements of a primary listing by first listing on an overseas exchange and then a secondary listing in Hong Kong. In recent years, a number of large Mainland and non-Mainland companies from emerging and innovative sectors have been primary listed in the US or on other major international exchanges. Those from the Mainland sought these listings whilst the "centre of gravity" restriction was in force and therefore did so for reasons other than "regulatory arbitrage". The application of the "centre of gravity" prohibition has prevented these Mainland companies from accessing Hong Kong investors via a secondary listing.

⁸ For details, see HKEX's *Consultation Paper on A Listing Regime For Companies from Emerging and Innovative Sectors* published in February 2018.

As such, the Exchange added a new Chapter 19C “Secondary Listings of Qualifying Issuers” to the Listing Rules since 30 April 2018 to attract fast-growing and innovative companies and, in particular, facilitate secondary listings in Hong Kong of applicants from Greater China.

3.2 Additional conditions and exceptions for a secondary listing on the Exchange by qualifying issuers under Chapter 19C

3.2.1 Qualifying issuers

There are three categories of “qualifying issuers” under Chapter 19C:

- **“Grandfathered Greater China Issuer”**: an issuer with its centre of gravity in Greater China and was primary listed on a Qualifying Exchange⁹ on or before 15 December 2017;
- **“Non-Grandfathered Greater China Issuer”**: an issuer with its centre of gravity in Greater China and was primary listed on a Qualifying Exchange after 15 December 2017;
- **“Non-Greater China Issuer”**: an issuer with its centre of gravity outside of Greater China and is primary listed on a Qualifying Exchange.

3.2.2 The applicant shall be an innovative company

In addition to the general requirements for secondary listings, a qualifying issuer seeking a secondary listing under Chapter 19C shall be an innovative company. In general, an innovative company have two or more of the following characteristics:

- Applying new technologies, innovations or new business models, which also serve to differentiate the company from existing competitors;
- R&D is a significant contributor to its expected market value and a principal activity of the applicant and constitutes a major expense;
- The success of its operation is attributable to its unique business features or intellectual property; and/or
- It has an outsized market capitalisation or intangible asset value relative to its total tangible asset value.

The definition of “innovation” varies with the industry and market environment of the applicant, and will change with developments in technologies, market conditions and the sector concerned.

3.2.3 Grandfathered Greater China Issuers

Conditions and qualifications for listing:

- The issuer shall be primary listed on a Qualifying Exchange and have good regulatory compliance records for at least two full financial years;
- A market capitalisation of at least HK\$40 billion at the time of listing; or a market capitalisation of at least HK\$10 billion at the time of listing and a revenue of at least HK\$1 billion for the most recent audited financial year;
- The issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide protection equivalent to

⁹ Qualifying Exchanges include The New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment).

the key shareholder protections in Hong Kong (changes to constitutional documents may be required, as necessary).

For example, super-majority vote of shareholders is required to approve certain matters (including variation of rights attached to any class of shares, material changes to constitutional documents and voluntary winding-up); appointment, removal and the remuneration of auditors require the approval of a majority of shareholders or other body(ies) independent of the board of directors.

Exceptions:

- As in the case of traditional non-innovative companies with a centre of gravity outside of Greater China seeking a secondary listing in Hong Kong, Grandfathered Greater China issuers are waived from complying with a number of continuing obligations of a primary listing on the Exchange (e.g. notifiable transaction and connected transaction rules);
- No need to comply with requirements in the Listing Rules relating to the content and provisions of the constitutional documents;
- The issuer can secondary list with their existing WVR structures and variable interest entity (VIE) structures intact (if they have them);
- No need for the issuer to comply with WVR safeguards in the Listing Rules (other than those requiring disclosure);
- If the “bulk of trading” of the issuer’s shares moves permanently to the Exchange’s markets¹⁰, then the requirements in the Listing Rules relating to a primary listing, but not WVR safeguards (other than disclosure requirements), would apply.

3.2.4 Non-Grandfathered Greater China Issuers

Conditions and qualifications for listing:

- The issuer shall be primary listed on a Qualifying Exchange and have good regulatory compliance records for at least two full financial years;
- A market capitalisation of at least HK\$40 billion at the time of listing; or a market capitalisation of at least HK\$10 billion at the time of listing and a revenue of at least HK\$1 billion for the most recent audited financial year;
- The issuer must demonstrate the shareholder protections in the overseas exchange on which it is primarily listed are at least equivalent to those provided in Hong Kong;
- The issuer must comply with requirements in the Listing Rules relating to the content and provisions of constitutional documents.

Exceptions:

- As in the case of traditional non-innovative companies with a centre of gravity outside of Greater China seeking a secondary listing in Hong Kong, Non-Grandfathered Greater China issuers are waived from complying with a number of continuing obligations of a primary listing on the Exchange (e.g. notifiable transaction and connected transaction rules).

¹⁰ The Exchange will consider this is the case if 55% or more of the global trading value (including that of depositary receipts) of the issuer's shares during the issuer's most recent financial year took place on the Exchange's markets.

To deter “regulatory arbitrage”:

- WVR structures and VIE structures (if they have them) must conform to all requirements in the Listing Rules relating to a primary listing;
- If the “bulk of trading” of the issuer’s shares moves permanently to the Exchange’s markets, then requirements in the Listing Rules relating to a primary listing would apply.

3.2.5 Non-Greater China IssuersConditions and qualifications for listing:

- The issuer shall be primary listed on a Qualifying Exchange and have good regulatory compliance records for at least two full financial years;
- Non-WVR issuers shall have a market capitalisation of at least HK\$10 billion at the time of listing. WVR issuers shall have a market capitalisation of at least HK\$40 billion at the time of listing; or a market capitalisation of at least HK\$10 billion at the time of listing and a revenue of at least HK\$1 billion for the most recent audited financial year;
- The issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide protection equivalent to the key shareholder protections in Hong Kong (changes to constitutional documents may be required, as necessary).

Exceptions:

- As in the case of traditional non-innovative companies with a centre of gravity outside of Greater China seeking a secondary listing in Hong Kong, Non-Greater China Issuers are waived from complying with a number of continuing obligations of a primary listing on the Exchange (e.g. notifiable transaction and connected transaction rules);
- The issuer can secondary list with their existing WVR structures and VIE structures intact (if they have them);
- No need for the issuer to comply with WVR safeguards in the Listing Rules (other than those requiring disclosure);
- Applicable regulatory requirements and exceptions remain unchanged if the “bulk of trading” of the issuer’s shares moves permanently to the Exchange’s markets.

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