

HKEX GUIDANCE LETTER HKEX-GL94-18

(April 2018) (Updated in January 2022)

Subject	(A) Suitability for Grandfathered Greater China Issuers and Non-Greater China Issuers that meet the conditions set out in Rule 8A.46 to list with weighted voting rights (“WVR”) structure and (B) the Contractual Arrangements of Grandfathered Greater China Issuers and Non-Greater China Issuers
Listing Rules and Regulations	Main Board Listing Rules 8.04, 8A.46, 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 Division 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 (Updated in January 2022)

1.1 This letter provides guidance on:

- (a) the factors that the Exchange will take into account when considering whether a Grandfathered Greater China Issuer or a Non-Greater China Issuer with a WVR structure that meets the conditions set out in Rule 8A.46 is suitable for a dual primary listing under Chapter 19 or a secondary listing under Chapter 19C (for the avoidance of doubt, all other applicants shall refer to HKEX-GL93-18 for guidance on the assessment of suitability for listing with a WVR structure);
- (b) the use of contract-based arrangements or structures (“**Contractual Arrangements**”) to indirectly own and control part of its businesses by Grandfathered Greater China Issuers and Non-Greater China Issuers.

1.2 *(Deleted in January 2022)*

2. Relevant Listing Rules (Updated in January 2022)

2.1 Rule 1.01 states that:

- Grandfathered Greater China Issuer means a Greater China Issuer that was (a) primary listed on a Qualifying Exchange on or before 15 December 2017; or (b) primary listed on a Qualifying Exchange after 15 December 2017, but on or before 30 October 2020 and controlled by corporate WVR beneficiaries as at 30 October 2020;
- Non-Greater China Issuer means a Qualifying Issuer that is not a Greater China Issuer; and
- Qualifying Issuer means an overseas issuer primary listed on a Qualifying Exchange, that is, either 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).

2.2 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.

2.3 Main Board Listing Rule 8A.46 states that Main Board Rules 8A.07 to 8A.36, 8A.43 and 8A.44¹ do not apply to a Grandfathered Greater China Issuer or a Non-Greater China Issuer with a WVR structure that has or is seeking (a) a dual primary listing on the Exchange under Chapter 19, on the condition that the issuer satisfies the qualification requirements under Main Board Listing Rule 8A.06 and has a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange of primary listing; or (b) a secondary listing under Chapter 19C.

2.4 Main Board Listing Rule 19C.02 states that an overseas issuer seeking a secondary listing under Chapter 19C must demonstrate to the Exchange that it is both eligible and suitable for listing.

3. Guidance (*Updated in January 2022*)

Suitability

3.1 The Exchange would normally consider a Grandfathered Greater China

¹ The exemption is only applicable to the WVR structure in effect at the time of an issuer's dual primary listing or secondary listing on the Exchange.

Issuer and a Non-Greater China Issuer with a WVR structure that meet the conditions set out in Rule 8A.46 to be suitable for a dual primary listing under Chapter 19 or 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.

3.3 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 with a WVR structure under Chapter 19 or Chapter 19C. Accordingly, the fact that a particular company has qualified for listing with a WVR structure under Chapter 19 or Chapter 19C does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing with a WVR structure under Chapter 19 or Chapter 19C.

3.4 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.

- 3.5 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.
- 3.6 The Exchange retains the discretion to find an overseas issuer not suitable for listing with a WVR structure under the concessionary route referred to in paragraph 2.3 above even if it satisfies the features set out in paragraphs 3.2 to 3.4 and the applicant must, in any case, satisfy the general suitability requirement in Main Board Listing Rules 8.04 and 19C.02 (where applicable).
- 3.7 In the event that a Grandfathered Greater China Issuer or a Non-Greater China Issuer applying for a dual primary listing under Chapter 19 or secondary listing under Chapter 19C seeks to demonstrate compliance with the PRC Foreign Investment Law through WVR after obtaining favourable legal advice and/or regulatory assurance from the relevant PRC government authorities, and the WVR in question will 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 explain and disclose the risk that its WVR may fall away and it may not be able to comply with the PRC Foreign Investment Law as a result. ***(Added in January 2022)***

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 part of their businesses 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 will be required to demonstrate that they are able to comply with the applicable laws, rules and regulations. ***(Updated in January 2022)***

- 4.3 The Exchange notes that the requirements of Qualifying Exchanges regarding Contractual Arrangements are not as extensive as the Exchange's requirements and many of the Greater China Issuers listed on Qualifying Exchanges may have adopted Contractual Arrangements that do not fully comply with our existing guidance. 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 dual primary or secondary listing. **(Added in January 2022)**
- 4.4 To facilitate the dual primary or secondary listing of Grandfathered Greater China Issuers, these issuers may dual primary or secondary list with their existing Contractual Arrangements in place (where there is no substantial change in the Contractual Arrangements since the issuer's listing on their Qualifying Exchange), without complying with all of the requirements of HKEX-LD43-3 subject to the suitability assessment (as set out in paragraph 4.4A below) but they must comply with the following requirements²:
- (a) provide the Exchange with a PRC legal opinion that their Contractual Arrangements comply with PRC laws, rules and regulations; and
 - (b) comply with the disclosure requirements set out in Listing Decision HKEX-LD43-3. **(Added in January 2022)**
- 4.4A In general, for the purpose of assessing suitability, the Exchange will consider the Contractual Arrangements, if any, of each Grandfathered Greater China Issuer and Non-Greater China Issuer on a case-by-case basis, taking into account, amongst other matters, the following factors:
- (a) the extent to which their existing Contractual Arrangements depart from the standard Contractual Arrangements contemplated under Listing Decision HKEX-LD43-3;
 - (b) the materiality of the operations conducted via their Contractual Arrangements to their financial position and prospects; and
 - (c) the reasons for the adoption of the Contractual Arrangements. **(Added in January 2022)**
- 4.5 **(Deleted in January 2022)**

² The treatment described in this paragraph also applies to Non-Greater China Issuers so that they would be able to dual primary or secondary list with their existing Contractual Arrangements, if they have them.

4.6 ***(Deleted in January 2022)***

4.7 All applicants with Contractual Arrangements are reminded to monitor any future changes in the relevant PRC laws and regulations over Contractual Arrangements before and after listing on the Exchange and ensure compliance. ***(Added in January 2022)***