



New Listing Regime in Hong Kong – Companies from Emerging and Innovative Sectors

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Background of the listing reforms

After a two-month consultation, the Stock Exchange of Hong Kong Limited ("**HKEx**") published the Consultation Conclusions on Listing Regime for Companies from Emerging and Innovative Sectors on 24 April 2018 ("**Consultation Conclusions**"). New listing rules and three guidance letters were introduced to implement the new listing regime with effect on 30 April 2018.

The new listing rules are set out in three new chapters in the Main Board Listing Rules ("**Listing Rules**"), namely:

1. Chapter 8A to govern listings of innovative companies with weighted voting rights ("**WVR**") structures;
2. Chapter 18A to permit listings of pre-revenue biotech issuers that do not meet any of the Main Board financial eligibility tests; and
3. Chapter 19C to establish a concessionary secondary listing route for innovative companies primary listed in major international stock exchanges to list in Hong Kong.

To assist listing applicants understand the suitability requirements under the new chapters, HKEx has also published the following guidance letters:

1. Guidance Letter (HKEX-GL93-18) on "Suitability for Listing with a WVR Structure";
2. Guidance Letter (HKEX-GL92-18) on "Suitability for Listing of Biotech Companies"; and
3. Guidance Letter (HKEX-GL94-18) on "Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C".

This article provides a summary of the key points of the new chapters and the guidance letters under the new regime.



Chapter 8A Innovative companies with WVR structures

Entry requirements

HKEx will consider applications for primary listings with a WVR structure from new applicants only. Existing listed issuers cannot apply to adopt a WVR structure.

High market capitalisation at the time of listing

1. \geq HK\$40 billion; or
2. if \geq HK\$10 billion but $<$ 40 billion, then need to have revenue of \geq HK\$1 billion in the most recent audited financial year

Guidance Letter (HKEX-GL93-18) on suitability for listing

Innovative company

To be qualified as an innovative company, the listing applicant has to demonstrate more than one of the following characteristics:

1. its success is the result of the application of new technologies, innovations and/or a new business model to the company's core business;
2. its research and development ("R&D") contributes significantly to its value and constitutes a major activity and expense;
3. its success is demonstrated to be attributable to its unique features or intellectual property; and/ or
4. it has an outsized market capitalisation or intangible asset value relative to its tangible asset value.

Success of the company

The listing applicant must demonstrate a track record of high business growth, which can be measured by different variables, for example, business operations, users, customers, unit sales, revenue, profits and/or market value. The applicant must also show projection of high business growth.

External validation

The listing applicant must have received meaningful third party investment from at least one sophisticated investor who must retain at least 50% of its investment at the time of listing with a minimum six-month lockup period post-listing.

When determining whether an investor is "sophisticated", HKEx will consider factors such as net assets or assets under management, relevant investment experience, and the investor's knowledge and expertise in the relevant field.

HKEx does not provide a bright line test for "meaningful third party investment" in Guidance Letter (HKEX-GL93-18). The nature of the investment, amount invested, size of the stake taken up and timing of the investment will all be relevant considerations.



**Guidance Letter
(HKEX-GL93-18)
on suitability for
listing
(cont'd)**

Role and contribution of WVR beneficiaries

Each WVR beneficiary must be an individual (as opposed to a corporate entity) and:

1. be a director at the time of listing and remain a director afterwards;
2. have an active executive role within the business and have contributed to the ongoing growth of the business to a material extent; and
3. have been materially responsible for the growth of the business, by way of skills, knowledge and/or strategic direction.

The holder of the WVR can be a limited partnership, trust, private company or other vehicle holding the relevant share for the director for estate planning and/or tax planning purposes.

**Limits and
restrictions on
WVR shares**

The WVR structure must be share-based such that WVR must be attached to a specific class of unlisted shares.

Save for enhanced voting power, the rights attached to its WVR shares must be the same in all other aspects as those attached to the ordinary shares.

Voting power attached to WVR shares is capped at not more than 10 times the voting power of ordinary shares.

The WVR beneficiaries must beneficially own collectively at least 10% of the underlying economic interest in total issued share capital at the time of initial listing.

After listing, the issuer must not increase the proportion of shares with WVR in issue.

After listing, the issuer must not change the rights attached to WVR shares to increase the WVR but it can reduce such rights with prior approval of HKEx and an announcement.

Unlike other overseas markets, there is no time-defined “sunset” clause for the WVR. Instead, the WVR will lapse when:

1. a WVR beneficiary dies;
2. a WVR beneficiary ceases to be a director;
3. a WVR beneficiary is deemed by HKEx to be incapacitated for the purpose of performing directors' duties or to no longer meet directors' requirements; or
4. there is a transfer of WVR shares (other than a transfer to a limited partnership, trust, private company or other vehicle for estate planning and/or tax planning purposes).



Protection measures for non-WVR shareholders

Non-WVR shareholders must be able to cast at least 10% of the votes eligible to be cast at general meetings.

Non-WVR shareholders holding at least 10% of the voting rights on a one-vote-per-share basis must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda.

Certain key matters have to be decided on a one-share-one-vote basis:

1. changes to the constitutional documents;
2. variation of class rights;
3. appointment or removal of an independent non-executive director ("**INED**");
4. appointment or removal of auditors; and
5. voluntary winding-up of the issuer.

Enhanced disclosure and corporate governance

A listed issuer with a WVR structure will have a stock marker "W" at the end of its stock name.

A prominent warning statement must be included on the front page of the listing documents, periodic financial reports, circulars, notifications and announcements.

Identities of WVR beneficiaries are disclosed in the listing documents and periodic reports.

The issuer must disclose all circumstances in which WVR attached to its shares will cease in the listing documents and periodic reports.

It is mandatory for the issuer to establish a corporate governance committee comprised entirely of INEDs (one of whom must act as the chairman) to review, monitor and report on compliance with WVR safeguards.

The issuer must engage a compliance adviser on a permanent basis and consult with the adviser on matters involving the WVR structure, transactions in which WVR shareholders have an interest and a potential conflict of interest.

End of WVR structure

WVR structure must cease when none of the WVR shareholders at the time of initial listing have beneficial ownership of shares with WVR.



Remarks

Chapter 8A and Guidance Letter HKEX-GL93-18 require listing applicants with WVR structure to show they are innovative internally (e.g. distinctive core business, significant investment in R&D, unique intellectual property and an outsized market capitalisation) and externally (e.g. receipt of meaningful third party investment from at least one sophisticated investor) in order to satisfy the eligibility and suitability requirements. Given the high market capitalisation requirement, applicants applying for listing under Chapter 8A will be mega-sized companies.

Even though listing applicants with WVR structure may now submit listing applications under Chapter 8A, the introduction to Chapter 8A emphasises that the “one-share, one-vote” principle remains “the optimum method of empowering shareholders and aligning their interests in a company”. HKEx will consider deviations from the “one-share, one-vote” principle if the listing applicant can demonstrate that it is eligible and suitable for listing with the conditions and safeguards set out in Chapter 8A. There are safeguards in place to protect the interests of non-WVR shareholders. For example, certain matters, including changes to constitutional documents and variation of class rights, have to be resolved on a one-share-one-vote basis. An issuer with a WVR structure must also establish a corporate governance committee comprised entirely of INEDs to ensure the issuer is managed for the benefit of all shareholders.

Going forward, HKEx intends to provide further guidance and clarity on the new Listing Rules, including the assessment of an applicant’s suitability to list with a WVR structure as it gains more experience on the listings of companies from emerging and innovative sectors. HKEx is also exploring the possibility of permitting corporate entities to benefit from WVR and it plans to launch a separate consultation by 31 July 2018 on this issue.

The first listing applicant under Chapter 8A was Chinese smartphone maker Xiaomi Corporation which filed its listing application on 3 May 2018. It was listed and commenced trading on HKEx on 9 July 2018 with a market capitalisation of approximately US\$49 billion.



Chapter 18A Biotech Companies

Entry requirements

Pre-revenue biotech company

The listing applicant must meet the definition of a “Biotech Company” –which is defined as a company primarily engaged in the R&D, application and commercialisation of biotech products, processes or technologies that involve the application of science and technology to produce commercial products with a medical or other biological application.

Market capitalisation at the time of listing

≥ HK\$1.5 billion

Track record

The listing applicant must have been in operation in its current line of business under substantially the same management for at least two financial years prior to listing.

Enhanced working capital requirement

The listing applicant must have available sufficient working capital to cover at least 125% of its costs for at least 12 months from the date of the prospectus (taking into account the listing proceeds).

The costs must substantially consist of:

1. general, administrative and operating costs (including any production costs); and
2. research and development costs, of the listing applicant and its subsidiaries.

At least one core product beyond the concept stage

A core product is a biotech product regulated by a competent authority (i.e. the US Food and Drug Administration, the China Food and Drug Administration and the European Medicines Agency and other authorities recognised by HKEx on a case-by-case basis) that forms the basis of the listing application under Chapter 18A.

HKEx would consider a core product to have been developed beyond the concept stage if it has met the following developmental milestones:

	Core product	Developmental milestone
Pharmaceutical (small molecule drugs):	New pharmaceutical (small molecule drug)	Completed Phase I clinical trials and the relevant competent authority has no objection for it to commence Phase II (or later) clinical trials.
	Pharmaceutical (small molecule drug) which is based on previously approved products	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) clinical trials.
Biologics:	New biologic product	Completed Phase I clinical trials and the relevant competent authority has no objection for it to commence Phase II (or later) clinical trials.
	Biosimilar product	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) clinical trials to demonstrate bio-equivalency.
Medical devise (including diagnostics):		Completed at least one clinical trial on human objects; Categorised as Class II medical device or above; and Competent authority has no objection for the applicant to proceed to further clinical trials or to commence sales of the device.
Other biotech products:		HKEx will consider other biotech products on a case-by-case basis to determine if the relevant biotech product has been developed beyond concept stage.

Ownership continuity

HKEx will review any change in ownership of the listing applicant in the 12 months prior to the date of the listing application in assessing the suitability of the applicant for listing.

R&D

The listing applicant must:

1. have been primarily engaged in R&D for its core product(s) for a minimum of 12 months prior to listing (if a core product is in-licensed or acquired from third parties, the applicant must demonstrate R&D progress since the in-licensing or acquisition);
2. show that raising funds for R&D to commercialise the core product(s) is the primary reason for listing;
3. have registered patent(s), patent application(s) and/or intellectual property in relation to the core product(s); and
4. (if the applicant is engaged in the R&D of pharmaceutical or biologic products) have a pipeline of those potential products.

External validation

The listing applicant must have received meaningful third party investment from at least one sophisticated investor not less than six months before listing and the investment must remain in place at the time of the IPO.

HKEx may treat the following types of investors as sophisticated: a dedicated healthcare or biotech fund, a major pharmaceutical/ healthcare company, a venture capital fund of a major pharmaceutical/ healthcare company or an investor, investment fund or financial institution with a minimum of HK\$1 billion assets under management.

Whether a third party investment is a “meaningful investment” is assessed on a case-by-case basis. The following investment amount will generally be considered as a “meaningful investment”:

Applicant's market capitalisation	Investment amount
Between HK\$1.5 billion to HK\$3 billion	≥ 5% of the issued share capital
Between HK\$3 billion to HK\$8 billion	≥ 3% of the issued share capital
More than HK\$8 billion	≥ 1% of the issued share capital



Enhanced prospectus disclosures

The listing applicant is required to make enhanced disclosures in the prospectus – including but not limited to:

1. its strategic objectives;
2. details of each core product;
3. its R&D experience;
4. relevant experience of directors and senior management in R&D, manufacturing and commercialisation of biotech products; and
5. measures it has in place to retain key management or technical staff.

Cornerstone investment

At least HK\$375 million (i.e. 25% of the HK\$1.5 billion market capitalisation requirement) must be held by the public at the time of listing. Shares subscribed by cornerstone investors or existing shareholders will not count towards the minimum public float requirement.

But if the above minimum public float requirement is met, then subscriptions by cornerstone investors and existing shareholders can be counted as public float.

Post-listing requirements

An issuer listed under Chapter 18A will have a stock marker “B” at the end of its stock name.

The issuer must include its R&D activities in its periodic reports.

No fundamental change in the principal business activities (including through acquisition, disposal or other transaction or arrangement) will be allowed without HKEx’s prior consent.

If HKEx considers that a company listed under Chapter 18A fails to comply with the requirement to maintain sufficient operations or assets, HKEx may give the issuer a period of not more than 12 months to re-comply. If the issuer still fails to comply within such period, HKEx will cancel its listing.



Remarks

Biotech companies that do not meet the financial eligibility tests in the Listing Rules may submit listing applications under Chapter 18A, but this chapter is only restricted to pre-revenue applicants from biotech sectors for the time being. HKEx views that the biotech sector is highly regulated. Regulation and approval processes by internationally recognised authorities serve to provide an indication as to the nature of the biotech companies and their R&D processes. On the other hand, emerging companies in other sectors may not be subject to equally rigorous external validation and therefore it is more difficult for HKEx to ascertain on a more objective standard as to whether a particular product is developed beyond concept stage. As a result, HKEx has decided not to expand the regime to cover pre-revenue companies from non-biotech sectors in the Consultation Conclusions.

Currently, “Competent Authority” includes only US, Chinese and European regulatory authorities. HKEx will consider listing applications with biotech products regulated by the Canadian, Australian or Japanese regulatory authority on a case-by-case basis. If HKEx later discovers that there are a significant number of listing applicants with core products that are regulated by the Canadian, Australian or Japanese regulatory authorities as it reviews more listing applications, it may consider expanding the definition of “Competent Authority” to include such regulatory authorities.

Due to the specialised nature of the biotech sector, HKEx has formed a 16-member Biotech Advisory Panel consisting of industry experts to advise and assist HKEx when reviewing listing applications (including prospectus disclosures and assessing the suitability of listing applicants) made under Chapter 18A. The panel’s function will be advisory and the panel members will be consulted on an individual and “as needed” basis.

On 7 May 2018, Hangzhou-headquartered Asclepis Pharma Inc. filed its listing application to HKEx, becoming the first listing applicant under Chapter 18A. As at the end of June 2018, two more companies namely MicuRx Pharmaceuticals, Inc. and Innovent Biologics, Inc. have also submitted their listing applications under Chapter 18A.



Chapter 19C Secondary Listings of Qualifying Issuers

Qualifying Issuer

It is an innovative company with a primary listing on a **Qualifying Exchange** (namely, 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)).

Entry requirements

The Qualifying Issuer must have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.

High market capitalisation at the time of listing

- For a Qualifying Issuer that is not a Greater China Issuer ("**a Non-Greater China Issuer**") and does not have a WVR structure: market capitalisation of ≥ HK\$10 billion.
- For all other Qualifying Issuers (e.g. (i) a Non-Greater China Issuer with a WVR structure, (ii) a Qualifying Issuer with its centre of gravity in Greater China ("**a Greater China Issuer**") with or without a WVR structure: market capitalisation of ≥ HK\$40 billion; or if market capitalisation of ≥ HK\$10 billion but < HK\$40 billion, then need to have revenue of ≥ HK\$1 billion in the most recent audited financial year.

To summarise:

	Greater China Issuer	Non-Greater China Issuer
With a WVR structure	≥ HK\$40 billion or ≥ HK\$10 billion but < HK\$40 billion + ≥ HK\$1 billion revenue	≥ HK\$40 billion or ≥ HK\$10 billion but < HK\$40 billion + ≥ HK\$1 billion revenue
Without a WVR structure	≥ HK\$40 billion or ≥ HK\$10 billion but < HK\$40 billion + ≥ HK\$1 billion revenue	≥ HK\$10 billion



Guidance Letter (HKEX-GL94-18) on suitability for secondary listing

Innovative company

The criteria for measuring “innovation” are same as the factors set out in Guidance Letter (HKEX-GL93-18) relating to suitability for listing with a WVR structure.

Benefit of concessions and waivers from compliance with certain listing rule requirements post-listing

A Qualifying Issuer may enjoy concessions and waivers from compliance with certain listing rule requirements post-listing, depending on which type of Qualifying Issuer it is. Please refer to the table below for a summary of the requirements and concessions for the three types of Qualifying Issuers:

	Non-Grandfathered Greater China Issuer	Grandfathered Greater China Issuer	Non-Greater China Issuer
Definition	Greater China Issuer primary listed on a Qualifying Exchange after 15 December 2017.	Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017.	Qualifying issuer that is not a Greater China Issuer.
Equivalent shareholder protection requirements	The issuer must amend constitutional documents in accordance with existing Listing Rules to meet key shareholder protection standards.	The issuer is not subject to the requirements of Appendix 3 and Appendix 13 of the Listing Rules (mandating changes to constitutional documents). The issuer must demonstrate, to HKEx’s satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents provide key shareholder protection standards. HKEx may require the issuer to amend its constitutional documents to provide them.	The issuer is not subject to the requirements of Appendix 3 and Appendix 13 of the Listing Rules (mandating changes to constitutional documents). The issuer must demonstrate, to HKEx’s satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents provide key shareholder protection standards. HKEx may require the issuer to amend its constitutional documents to provide them.



Benefit of concessions and waivers from compliance with certain listing rule requirements post-listing (Cont'd)	Non-Grandfathered Greater China Issuer	Grandfathered Greater China Issuer	Non-Greater China Issuer
	<p>Automatic waivers from compliance with certain Listing Rule requirements (e.g. requirements regarding connected transactions and notifiable transactions)</p> <p>Apply. (If there is permanent migration of the bulk of trading in the issuer's shares, the automatic waivers will cease to apply.)</p>	<p>Apply. (If there is permanent migration of the bulk of trading in the issuer's shares, the automatic waivers will cease to apply.)</p>	<p>Apply.</p>
	<p>WVR structures</p> <p>The issuer must comply with all primary listing requirements including all ongoing WVR safeguards.</p>	<p>The issuer may secondary list with existing WVR structures and is not required to comply with ongoing WVR safeguards except for disclosure requirements.</p>	<p>The issuer may secondary list with existing WVR structures and is not required to comply with ongoing WVR safeguards except for disclosure requirements.</p>
	<p>Variable Interest Entity (VIE) structures (using contract-based arrangements or structures to indirectly own and control businesses)</p> <p>The issuer must comply with the requirements set out in the Listing Decision HKEX-LD43-3.</p>	<p>The issuer may secondary list with existing VIE structure provided that it (i) provides HKEx with a PRC legal opinion that its VIE structures comply with PRC laws, rules and regulations and (ii) complies with the disclosure requirements set out in Listing Decision HKEX-LD-43-3.</p>	<p>The issuer may secondary list with existing VIE structure provided that it (i) provides HKEx with a PRC legal opinion that its VIE structures comply with PRC laws, rules and regulations and (ii) complies with the disclosure requirements set out in Listing Decision HKEX-LD-43-3.</p>
<p>Disclosure and corporate governance</p>	<p>The issuer must disclose any corporate governance provisions in its constitutional documents that are unusual compared with normal practices in Hong Kong in its listing documents.</p>		
<p>Confidential filing</p>	<p>A secondary listing applicant is entitled to make a confidential filing of its application proof of the prospectus.</p>		



Migration of trading

HKEx will regard the majority of trading in a Greater China Issuer's listed shares to have migrated to Hong Kong on a permanent basis if 55% or more of the total worldwide trading volume (by dollar value) of those shares (including the volume of trading in depository receipts issued on those shares) over the issuer's most recent financial year takes place on HKEX's markets.

In that case, HKEx will treat the issuer as having a dual-primary listing and the issuer will have a grace period of 12 months to comply with all applicable Listing Rules (i.e. the waivers and concessions will no longer apply).

Remarks

Currently, the concessionary measures under Chapter 19C apply to Greater China Issuers only if they are primary listed on a Qualifying Exchange on or before 15 December 2017 (Cut-off Date). HKEx made it clear that Greater China Issuers listed on a Qualifying Exchange after the Cut-off Date will not benefit from the concessionary measures. HKEx has concerns that some Greater China Issuers may have a primary listing on a Qualifying Exchange and then seek a secondary listing in Hong Kong to circumvent Hong Kong's primary listing requirements. HKEx believes that the Cut-Off Date is necessary to prevent potential "regulatory arbitrage attempts". Also, Chapter 19C concessionary measures do not apply to companies who had submitted a listing application to a Qualifying Exchange before the Cut-Off Date as these applicants could potentially make variations and modifications to its structure.

Chinese web portal and social media firm Sina Corp, which is listed on Nasdaq with a WVR structure, is rumoured to be planning a secondary listing in Hong Kong under Chapter 19C.

