



New listing regime proposals for emerging and innovative companies

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On 23 February 2018, the Stock Exchange of Hong Kong Limited (the "**HKEx**") published a [consultation paper](#) seeking public comments on Listing Rules amendments aimed at expanding the listing regime to help list companies from emerging and innovative sectors, which the HKEx identified as gaps in Hong Kong's current listing regime affecting its overall competitiveness versus other major global listing venues. This consultation paper gives effect to the [New Board Concept Paper Conclusions](#) published in December 2017.

Key proposals include seeking amendments to the Listing Rules, under three new chapters, to allow the following three new types of companies to list on the Main Board:

1. biotech companies that do not meet any of the financial eligibility tests, including companies without any prior record of profit or revenue;
2. high growth and innovative companies with weighted voting right ("**WVR**") structures; and
3. qualifying issuers seeking a secondary listing on the HKEx.

Summarized below are the key proposed amendments under each of these chapters.

Biotech Companies – these are companies engaged in the R&D, application and commercialization of biotech products, processes or technology.	
Proposal	Biotech Companies that fulfill the eligibility and suitability requirement can seek to list on the Main Board without satisfying the financial eligibility tests under LR8.05.
Eligibility for listing	<ul style="list-style-type: none"> – Minimum expected market capitalization of HK\$1.5 billion at the time of listing; – Maintain a track record period of 2 financial years, where there is no material change of business and is under substantially same management; and – Enhanced working capital requirements to cover 125% of the group's costs (which must substantially consist of the general, administrative and operating costs and R&D costs) for at least 12 months from the date of publication of the prospectus, after taking into account the IPO proceeds.
Suitability for listing	<ul style="list-style-type: none"> – Have a regulated biotech product which is required by applicable laws, rules or regulation to be evaluated and approved by a competent authority i.e. US Food and Drug Administration, China Food and Drug Administration or European Medicines Agency, based on data derived from clinical trials before it could be marketed and sold (a "Core Product"); – At least one Core Product must have proceeded beyond the concept stage (guidance on developmental milestones for different types of biotech companies is provided in the consultation paper - generally speaking, the applicant must have completed the first phase or at least one clinical trial together with endorsement or no objection from one of the

	<p>competent authorities listed above);</p> <ul style="list-style-type: none"> – Primarily engaged in R&D for its Core Product for a minimum of 12 months before listing; – Primary reason for listing must be the raising of finance for R&D to bring its Core Product to commercialization; – Have durable patent(s), registered patent(s), patent applications(s), and intellectual property in relation to its Core Product; – Have received meaningful third party investment from at least one investor considered by the HKEx to be sophisticated for at least 6 months before the IPO (which must remain at IPO), except for the spin-off from a parent company in which case the HKEx may dispense with this requirement if a reasonable degree of market acceptance can be demonstrated; and – For applicants engaged in the R&D of pharmaceuticals or biologic products, it must demonstrate a pipeline of those potential products.
Investor protection	<ul style="list-style-type: none"> – Prominent warning statements and enhanced risk disclosures including the phases of development of its Core Product(s), material communications with competent authorities, material safety data relating to its Core Product, intellectual properties, and R&D experience of management; – Cornerstone investment shares will not count towards the minimum initial public float requirement at the time of listing or during the 6 month lock-up period; and – Existing shareholders may participate in the IPO as a cornerstone investor and the new shares subscribed will not count towards the minimum initial public float requirement, although the existing shareholding prior to the IPO will be counted towards the public float provided that the existing shareholder is not a core connected person or otherwise not recognized by HKEx as a member of the public.
Risk management measures	<ul style="list-style-type: none"> – Fundamental change of principal business will require prior consent from the HKEx, although consent will normally be given for a legitimate business expansion or diversification that forms part of its business strategies; – Accelerated de-listing process (i.e. 12-month period) if it fails to maintain sufficient operations or assets; and – Identification through a stock marker "B" at the end of its stock name. <p>A Biotech Company which has developed its business and is able</p>

	to demonstrate that it is able to satisfy one of the financial eligibility tests will no longer be subject to these measures.
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Companies with WVR structure	
Proposal	Eligible companies that are innovative with a high business growth track record may be allowed to list with a WVR structure. A new Chapter 8A is proposed.
Eligibility of WVR issuers	<ul style="list-style-type: none"> – New listing applicants only; – Minimum expected market capitalization of HK\$10 billion at the time of listing (and if the market capitalization is below HK\$40 billion, then it must meet a higher revenue test of HK\$1 billion); – Must be an innovative company to be determined by the HKEx on a case-by-case basis and is expected to demonstrate one or more of the following characteristics: <ul style="list-style-type: none"> • Its success is attributable to the application of (1) new technologies, (2) innovations, and/or (3) a new business model; • R&D is a significant contributor of its expected value and constitutes a major activity and expense; • Its success is attributable to its unique features or intellectual property; and • It has an outsized market capitalization / intangible asset value relative to its tangible asset value. – Demonstrate a track record of high business growth that can be objectively measured; and – The applicant must have received meaningful third party investment from at least one sophisticated investor (which must remain at IPO and subject to some lock-up restrictions), except for a spin-off from a parent company.
Responsibility and contribution of WVR beneficiaries	<p>Each WVR beneficiary:</p> <ul style="list-style-type: none"> – Must have been materially responsible for the growth of the business by way of his skills, knowledge and/or strategic direction in circumstances where the value of the company is largely attributable to intangible human capital; – Must be an individual with an active executive role within the business; and – Be a director of the issuer at the time of listing and remain as a director afterwards.
Investor protection provisions	<p>(a) Restrictions on the WVRs</p> <ul style="list-style-type: none"> – All WVR beneficiaries are required to collectively beneficially

	<p>own a minimum of at least 10% and a maximum of not more than 50% of the underlying economic interest in the applicant's total issued share capital at the time of listing;</p> <ul style="list-style-type: none"> – WVR structure is required to be attached to a specific class of shares which must be unlisted, and the rights attached to WVR shares must be the same in all other respects to those attached to ordinary shares except for the voting rights; – No increase in proportion of shares with WVRs in issue or to issue any further WVR shares. This includes situations where the number of non-WVR shares is reduced following a share buyback; – Voting powers will be limited to not more than 10 times voting power of ordinary shares. – Non-WVRs holders must be entitled to cast at least 10% of the votes on a resolution proposed at a general meeting; and – Certain key matters must be decided on a one-share one-vote basis and WVR beneficiaries will not be able to exercise WVRs on these matters (e.g. changes to the constitutional documents, variation of class rights and, importantly, the appointment and removal of independent non-executive directors and auditors). <p>(b) Major enhanced corporate governance measures</p> <ul style="list-style-type: none"> – Engagement of a compliance adviser on permanent basis; – Constitutional backing for the WVR safeguards to allow private legal action by shareholders and an undertaking by WVR beneficiaries in favour of the issuer and all existing and future shareholders; and – Corporate governance committee comprising a majority of INEDs to review, monitor and report on the company's compliance with the Listing Rules, and to ensure the issuer is operated and managed for the benefit of all shareholders.
<p>Safeguards and other provisions to note</p>	<ul style="list-style-type: none"> – WVRs attached to a WVR beneficiary's shares will lapse permanently if a WVR beneficiary (1) dies, (2) ceases to be a director, (3) is deemed by the HKEx to be incapacitated, (4) is deemed by the HKEx to no longer meet the requirements of a director set out in the Listing Rules, or (5) transfer his beneficial or economic interest or voting rights to another person; – In the event of failure to comply with the HKEx rules and the safeguards, the HKEx may impose or issue sanctions against the relevant WVR beneficiary, make decision for a WVR beneficiary to give up the WVRs and, if the breach is material,

	<p>may result in suspension or cancellation of listing; and</p> <ul style="list-style-type: none"> – Identification through a stock marker "W" at the end of its stock name and other prominent warning statements in listing documents, announcements, financial reports and documents of title.
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Secondary listing of qualifying issuers	
Proposal	New concessionary secondary listing route for emerging and innovative companies already listed on other major international exchanges
Qualifications for listing	<p>A "Qualifying Issuer" is defined as an issuer primarily listed on New York Stock Exchange LLC, Nasdaq Stock Market, or the Main Market of London Stock Exchange plc (each, a "Qualifying Exchange"). A Qualifying Issuer must:</p> <ul style="list-style-type: none"> – be an innovative company as described above; – have a good record of compliance for at least 2 full financial years; – have a minimum expected market capitalization at the time secondary listing in Hong Kong of at least HK\$10 billion; and – a secondary listing applicant with a WVR structure and/or a centre of gravity in the Greater China region must also meet a revenue test of HK\$1 billion in the most recent financial year if it has an expected market capitalization of less than HK\$40 billion at the time of listing.
Listing Rules applicability and shareholder protection standard	<ul style="list-style-type: none"> – Automatic waivers apply (for example, requirements regarding connected transactions, notifiable transactions and the Corporate Governance Code); – Must fulfill minimum key shareholder protection standards, including: <ul style="list-style-type: none"> • Holding an annual general meeting at least every 15 months, giving reasonable notice of meetings and members to have the right to speak and vote at the shareholders' meeting; • Minority shareholders holding not less than 10% must be allowed to convene an extraordinary general meeting; • Minority shareholders holding not less than 10% must be allowed to convene an extraordinary general meeting; • No alteration to the constitutional documents to increase an existing member's liability unless approved by such member; • Super-majority vote of members is required to approve fundamental matters (e.g. changes to rights attached to any

	<p>class of shares, changes to the constitutional documents or a voluntary winding-up); and</p> <ul style="list-style-type: none"> • The appointment, removal and remuneration of auditors to be approved by a majority of the members or another body independent of the company's board of directors. – For applicants with WVR structure and without a “centre of gravity” in Greater China or ones with a “centre of gravity” in Greater China but were primarily listed on a Qualifying Exchange on or before 15 December 2017, they are not required to meet WVR safeguards (except on disclosure) nor change its WVR structure to meet primary listing requirements. – For applicants with a "centre of gravity" in Greater China that are listed on a Qualifying Exchange after 15 December 2017, the above concessions will not be granted and they are required to change constitutional documents in accordance with the existing rules and must meet WVR safeguards and WVR structure must conform with primary listing requirements.
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Initial thoughts and expected timetable

The public comment period ends on 23 March 2018. Interested groups should submit their comments before that. If there are no major adjustments to the proposals following the consultation, the HKEx will publish the consultation conclusions in late April at the earliest.

While the proposals will bring significant changes to the existing listing regime, they are largely expected as they were drawn from the responses received from the New Board Concept Paper.

Companies may submit a formal listing application under the new regime after the new rules come into effect. From a practical perspective, any prospective listing applicants should start considering whether they are able to meet the new rules and criteria as the HKEx will permit formal pre-IPO enquiries regarding interpretation of the published final rules and their application to the applicant's circumstances. Before then, the HKEx will also respond to enquiries on an informal basis.

Given it is a new regime and the HKEx retains absolute discretion to find a listing applicant not suitable for listing even if it satisfies all the features set out in the Listing Rules, potential applicants are encouraged to consult with the HKEx prior to submitting a listing application. In this regard, we are happy and well-placed to assist any potential applicant in making such consultation.

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