

Hong Kong Capital Markets Update

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HKEX's Consultation Conclusions on new listing regime for companies from emerging and innovative sectors

On 24 April 2018, the Hong Kong Stock Exchange (the Exchange) published the [Consultation Conclusions on a Listing Regime for Companies from Emerging and Innovative Sectors](#) (the Consultation Conclusions). This follows a consultation the Exchange launched on 23 February 2018¹ (the [Consultation](#)).

The Exchange received 283 responses, with the majority of respondents in support of the Exchange's proposals set out in the Consultation. Several respondents commented on some of the finer details of the proposals and requested further clarifications from the Exchange. Following the feedback from market stakeholders and discussions with the Securities and Futures Commission (the SFC), the Exchange has decided to implement the proposals with a number of additional amendments and further guidance.

The relevant new chapters and amendments to the Main Board Listing Rules and guidance letters will come into effect on 30 April 2018, which is also the earliest date a formal listing application can be submitted under the new regime.

BIOTECH COMPANIES

A new chapter – Chapter 18A – will be introduced to the Main Board Listing Rules. This will be supplemented by a guidance letter, which outlines the factors the Exchange will take into account when determining a Biotech applicant's eligibility and suitability to list. The proposals set out in the Consultation will be implemented with the following amendments and clarifications:

- **Suitability criteria** – If a Core Product² is “in-licensed” or acquired from a third party, the applicant must be able to demonstrate its R&D progress since the in-licensing or acquisition. This amendment was made in response to concerns that applicants might in-license or acquire a Core Product for the purpose of a listing.
- **Definitions of a “Sophisticated Investor” and “Meaningful Investment”** – Although no bright-line test was proposed, a number of guidance and benchmarks were provided:
 - o Examples of a “Sophisticated Investor”:
 - A dedicated healthcare or biotech 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
 - An investor, investment fund or financial institution with minimum assets under management (AUM) of HK\$1 billion

¹ Please refer to our [Hong Kong Capital Markets Update](#) published in February 2017 for an overview of the Consultation.

² A biotech product that is required by applicable laws, rules or regulations to be evaluated and approved by a competent authority 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 which forms the basis of a Biotech Company's listing application under Chapter 18A of the Main Board Listing Rules. Currently, the competent authorities recognised by the Exchange include the US Food and Drug Administration (“FDA”), the China Food and Drug Administration (“CFDA”) and the European Medicines Agency (“EMA”), and may, at the discretion of the Exchange, recognise other national or supranational authorities in individual cases.

- o Indicative benchmark of a “Meaningful Investment”:

Market capitalisation	Investment amount as a percentage of the issued share capital at the time of listing
HK\$1.5 billion - HK\$3 billion	≥ 5%
HK\$3 billion - HK\$8 billion	≥ 3%
> HK\$8 billion	≥ 1%

- **Public float** – Provided that the listing applicant has at least HK\$375 million of public float at the time of listing, which is exclusive of subscriptions by existing shareholders at IPO and through cornerstone investments, the shares subscribed for by cornerstone investors and existing shareholders who are not core connected persons or otherwise not recognised by the Exchange to be members of the public would be counted towards determining whether the listing applicant has met the public float requirement at the time of listing.

ISSUERS WITH WVR STRUCTURES

The Exchange will also be introducing a new chapter – Chapter 8A – to the Main Board Listing Rules. This chapter outlines the qualifications companies with weighted voting right (WVR) structures need to have in order to list. In addition, it contains safeguards to enhance investor protection and will be supplemented by a guidance on the eligibility and suitability of applicants with WVR structures. The proposals set out in the Conclusion will be implemented with the following key amendments and clarifications:

- **Maximum shareholding of WVR beneficiaries at listing** – The Exchange has removed the maximum shareholding restriction of 50% at listing. This takes into account that a controlling shareholder with more than 50% of the underlying economic interest in an applicant's total issued share capital may have legitimate reasons to be concerned about losing control in the absence of WVR given the dilutive effect of post-listing fundraisings and/or share incentivisation measures.
- **Disclosure requirements** – An amendment was made to require applicants to disclose in their Listing Documents as well as annual and interim reports the circumstances in which the WVRs attached to their shares will cease. In addition, the Exchange is no longer requiring applicants to include in the front page of all corporate documents disclosures regarding their WVR structures, the issuer's rationale for having it and the associated risks for shareholders. Instead, the front page of all corporate documents will only need to contain a warning statement, while detailed information shall be disclosed prominently in Listing Documents and periodic financial reports.
- **Corporate Governance Committee** – The composition of the Corporate Governance Committee is amended to be composed *entirely* by Independent Non-Executive Directors (INEDs) as opposed to a majority of INEDs. The Corporate Governance Committee will be required to make recommendations to the issuer's board on conflicts of interests / connected transactions involving WVR beneficiaries and on the appointment or removal of compliance advisers. To improve transparency, the Corporate Governance Committee is required, on a comply or explain basis, to disclose its recommendations to the board of the issuers on these matters in the report on the work of the Corporate Governance Committee published on a semi-annual basis.

SECONDARY LISTINGS

In the Consultation, the Exchange proposed to add a new Chapter 19C to the Main Board Listing Rules and amend the 2013 SFC and Exchange's *Joint policy statement regarding the listing of overseas companies* (2013 JPS) in order to create a new concessionary secondary listing route for Qualifying Issuers. This will be implemented with the following key amendments/clarifications:

- **Confidential filing** – An applicant applying for a secondary listing under Chapter 19C will be entitled to make a confidential filing of its application proof.
- **Migration of bulk of trading to Hong Kong** – The Exchange has clarified how it will determine whether the majority of trading in a Greater China Issuer's listed shares has moved to the Exchange's markets on a permanent basis.³

NEXT STEPS

- **Biotech Advisory Panel** – Given the specialised nature of the Biotech sector, the Exchange is in the process of assembling a panel of industry experts to assist the Exchange in assessing an applicant's suitability (including sustainability) and reviewing their listing applications. The Biotech Advisory Panel plays an advisory role and its members will be consulted on an individual and "as needed" basis.
- **Corporate WVR beneficiaries** – The Exchange plans to launch a separate consultation by 31 July 2018 to explore the option of allowing corporate entities to benefit from WVRs. The consultation paper will ask for feedback on whether and, if so, on what basis corporate entities should be able to benefit from WVRs.

If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and director.

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³ Where 55% or more of the total worldwide trading volume (by dollar value) of the Greater China Issuer's listed shares (including the trading volume in depositary receipts issued on those shares) over the issuer's most recent financial year has taken place on the Exchange's markets.