

**For discussion  
on 3 April 2018**

**Legislative Council Panel on Financial Affairs**

**Report on Consultation on a Listing Regime for  
Companies from Emerging and Innovative Sectors**

**Background**

1. On 16 June 2017, Hong Kong Exchanges and Clearing Limited (the **HKEX**) and its subsidiary, The Stock Exchange of Hong Kong Limited (the **Exchange**), published a New Board Concept Paper<sup>1</sup> to seek public feedback on a package of proposals to broaden capital markets access in Hong Kong and strengthen Hong Kong's listing regime. The New Board Concept Paper identified gaps in the Hong Kong market, including a concentration of issuers that do not feature high growth or innovative exposure.
2. The paper proposed the establishment of a New Board designed to enhance Hong Kong's ability to attract companies from New Economy sectors with one or more of the following characteristics that currently prohibit them from listing here:
  - (a) emerging companies that cannot meet the financial eligibility tests for the Main Board;
  - (b) companies with non-standard governance features; and
  - (c) Mainland Chinese companies that wish to list on the Exchange as a secondary listing venue.
3. The Exchange received 360 responses to the Concept Paper from a broad range of respondents representing all relevant stakeholders.
4. HKEX and the Exchange published conclusions to the New Board

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<sup>1</sup> The New Board Concept Paper is available at <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/Concept-Paper-on-New-Board/cp2017061.pdf>.

Concept Paper (**New Board Conclusions**<sup>2</sup>) on 15 December 2017. The conclusions cited a clear consensus from respondents on expanding the listing regime to ensure Hong Kong remains competitive and strong support for measures to help attract more listings by innovative companies.

5. Market feedback on whether to permit emerging companies to list in Hong Kong was highly supportive, but proposals to accommodate such issuers by a “lighter touch” approach to initial listing requirements was not broadly supported.
6. A large majority of feedback saw weighted voting right (**WVR**) structures as a competition issue and, on that basis, were supportive of permitting them in Hong Kong, so long as they are accompanied by certain safeguards that provided appropriate shareholder protection.
7. A majority of respondents supported widening Hong Kong’s access to listings, but many preferred a simpler structure that incorporated innovative companies directly on the Main Board.
8. Drawing on the feedback received in response to the Concept Paper and subsequent regulatory discussions with the Securities and Futures Commission (**SFC**), the New Board Conclusions set out a way forward to expand Hong Kong’s listing regime to: (a) permit listings of biotech issuers that do not meet any of the financial eligibility tests of the Main Board; (b) permit listings of companies with WVR structures; and (c) establish a new concessionary secondary listing route for Greater China and international companies that wish to secondary list in Hong Kong.
9. The biotech sector was chosen as the initial focus in widening market access for pre-revenue companies as the activities undertaken by biotech companies tend to be regulated under a regime that sets external milestones on development progress. This provides investors with a frame of reference to judge the nature of biotech companies, and their development progress, in the absence of traditional indicators of performance such as revenue and profit. Biotech companies also make

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<sup>2</sup> The New Board Conclusions are available at [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2017-Concept-Paper-on-New-Board/Conclusions-\(December-2017\)/cp2017061cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2017-Concept-Paper-on-New-Board/Conclusions-(December-2017)/cp2017061cc.pdf).

up a majority of companies in the pre-revenue stage of development seeking a listing in the US.

10. On 23 February 2018, the HKEX and the Exchange followed up by publishing a Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors (**Emerging and Innovative Consultation Paper**) (**Annex**). The proposals in this consultation paper closely tracked the way forward as set out by the Exchange on 15 December 2017 in the New Board Conclusions. The paper proposes separate new chapters in the Main Board Listing Rules for biotech, WVR structures and the new concessionary secondary listing route.

## **Key Proposals**

### **(a) Biotech Companies**

11. Since issuers listed under the proposed biotech chapter would not meet any of the financial eligibility tests of the Main Board, these issuers potentially carry additional risks to investors. Accordingly, the proposals include detailed eligibility and suitability criteria for determining appropriate applicants and a minimum market capitalisation requirement of at least HK\$1.5 billion at listing.
12. The Exchange proposes specific guidance on listing eligibility for biotech issuers engaged in the production and research and development (R&D) of pharmaceuticals (small molecule drugs), biologics, and medical devices (including diagnostics). Companies engaged in the production and R&D of other biotech products will be considered on a case by case basis.
13. The Exchange also proposes enhanced disclosure requirements and that biotech companies be differentiated from other issuers by a marker “B” at the end of their stock names. Holdings by cornerstone investments will not count towards their public float to help reduce the influence of pre-arranged deals on the book-building process and to also help ensure that the pricing process for the IPOs of such companies is as market-driven as possible.
14. To address concerns that biotech companies may become shell companies if they do not achieve their business plans, the Exchange

proposes to restrict these companies from effecting any transaction that will result in a fundamental change to their principal business without the prior consent of the Exchange. Also, biotech companies which fail to meet the continuing obligation under the Listing Rules to maintain sufficient operations or assets would be given a period of up to 12 months to re-comply with this requirement, failing which the Exchange will cancel their listing.

**(b) Innovative Issuers with WVR Structures**

15. On innovative issuers with WVR structures, an applicant will be required to demonstrate that it is eligible and suitable for listing with a WVR structure by reference to a number of characteristics, including the nature of the company.
16. WVR beneficiaries will be required to demonstrate that they have been materially responsible for the growth of the business, by way of their skills, knowledge and/or strategic direction. Each WVR beneficiary must be an individual who has an active executive role within the business, and must be a director at listing and thereafter.
17. Recognising the potential risks associated with WVR, the Exchange has proposed detailed safeguards, including limits on WVR power and measures to protect non-WVR holders' right to vote, enhanced corporate governance requirements as well as enhanced disclosure requirements. An issuer with a WVR structure will be differentiated with a marker "W" at the end of their stock names. Also, WVRs will fall away if WVR beneficiaries transfer their WVR shares, if they die or become incapacitated or if they cease to be a director. This will result in a "natural" sunset for WVRs so that they do not exist indefinitely.
18. After publishing the New Board Conclusions, the Exchange received feedback suggesting that there may be legitimate commercial and competition reasons to permit corporates to hold WVRs. Accordingly, if the proposed Listing Rules to permit the listing of companies with a WVR structure are implemented, the Exchange plans to launch a consultation within three months of the implementation of these Listing Rules to further explore this option.

**(c) New Concessionary Route to Secondary Listing**

19. For the proposed new secondary listings chapter, the Exchange aims to strike a balance between facilitating listings of innovative companies that are primarily subject to regulation overseas and providing appropriate investor protection. As a result, the Exchange has proposed a new regime for three types of companies that are primary listed on a Qualifying Exchange (QE) in the US or the UK<sup>3</sup>, namely: (a) Greater China issuers that were primary listed on a QE before the publication of the New Board Conclusions; (b) those Greater China issuers that were primary listed on a QE afterwards; and (c) non-Greater China issuers.
20. Companies listed under the new concessionary regime will be required to meet shareholder protection standards equivalent to those of Hong Kong by demonstrating how the applicable laws, rules and regulations of their places of incorporation and primary listing, as well as their constitutional documents, in combination, meet certain key shareholder protection standards set out in the Listing Rules. For this purpose, the Exchange may require an applicant to amend its constitutional documents to provide these standards.
21. The new secondary listing route will, for the first time, allow Greater China issuers to secondary list in Hong Kong. Due to investor interest in such companies in Hong Kong, there is a possibility that the bulk of trading in the shares of these companies will, at some point, migrate from the company's primary exchange to Hong Kong on a permanent basis<sup>4</sup>. If this happens, the Exchange proposes that Listing Rule waivers granted to the secondary listed Greater China issuers no longer apply. These companies would be treated as having a dual-primary listing in Hong Kong and would, on a case by case basis, be granted only Listing Rule waivers that are commonly granted to dual-primary listed issuers.

## **Timetable**

22. The Exchange invites market feedback on the substance of the proposals

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<sup>3</sup> New York Stock Exchange, NASDAQ or the Main Market of the London Stock Exchange (and belonging to the UK's Financial Conduct Authority's "Premium Listing" segment).

<sup>4</sup> If 55% or more of the total trading volume of those shares over the issuer's most recent fiscal year takes place on the Exchange's markets.

and the proposed Listing Rules to give effect to the proposals. The public comment period ends on 23 March 2018.

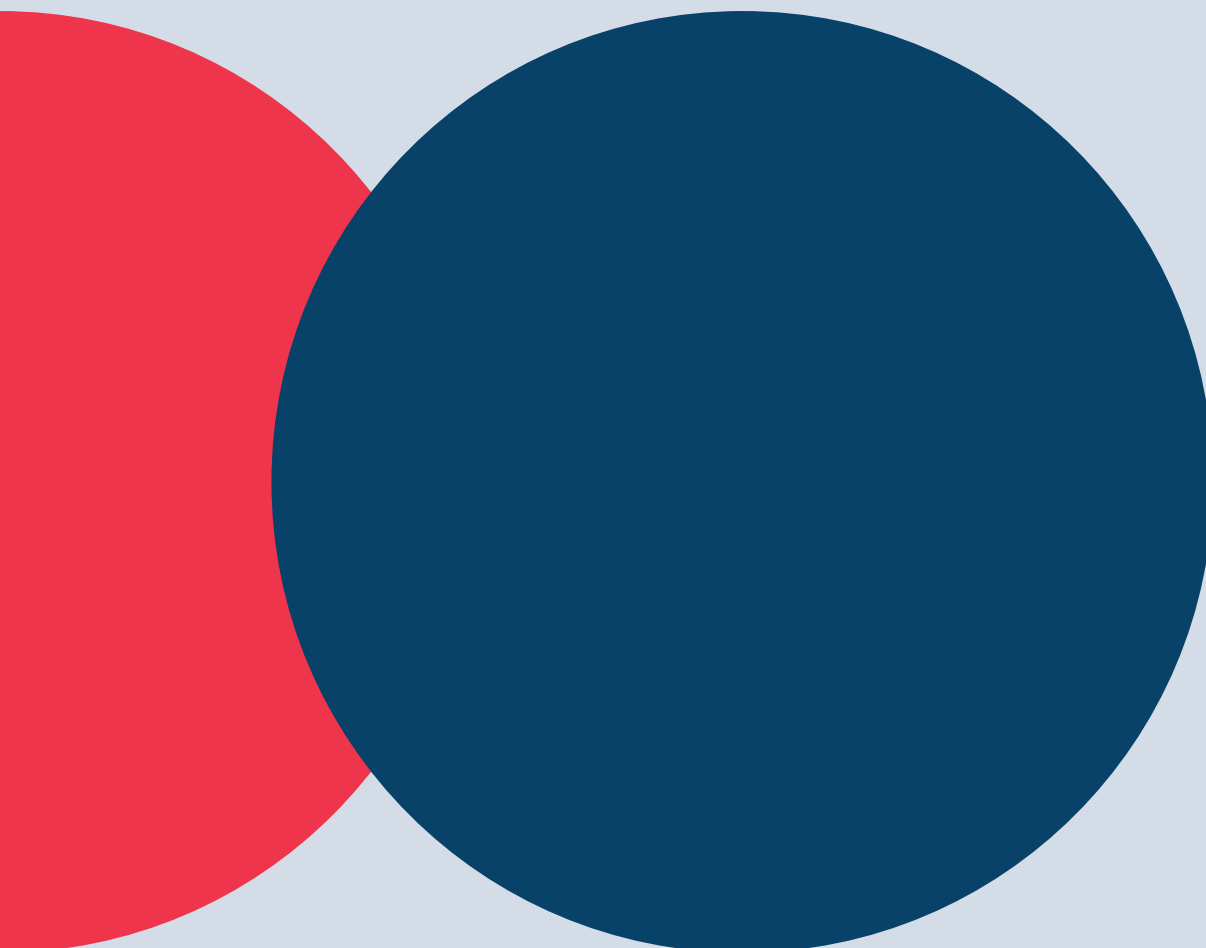
23. If the proposals are implemented, a prospective listing applicant and its sponsor(s) may, after the Listing Rules are published, submit a formal pre-IPO enquiry to the Exchange regarding the interpretation of the final Listing Rules and their application to the prospective listing applicant's circumstances. Before then, the Exchange will respond to any such enquiries on an informal basis. Companies may submit a formal application for listing under the new regime only after the Listing Rules to implement the regime come into effect.

The Stock Exchange of Hong Kong Limited  
March 2018

February 2018

CONSULTATION PAPER

A LISTING REGIME FOR COMPANIES  
FROM EMERGING AND INNOVATIVE SECTORS



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- I DRAFT AMENDMENTS TO THE RULES
- II PRIVACY POLICY STATEMENT





## DEFINITIONS

TERM	DEFINITION
“2013 JPS”	The Joint Policy Statement Regarding the Listing of Overseas Companies jointly issued by the SFC and SEHK in September 2013 ( <a href="#">here</a> )
“2014 WVR Concept Paper”	“Weighted Voting Rights Concept Paper”, published in August 2014 ( <a href="#">here</a> )
“2015 WVR Concept Paper Conclusions”	“Consultation Conclusions to Concept Paper on Weighted Voting Rights” published in June 2015 ( <a href="#">here</a> )
“Authorised Institution”	An institution or committee duly authorised or recognised by, or registered with, a Competent Authority for conducting, assessing and supervising clinical trials in the relevant clinical fields
“Biotech”	The application of science and technology to produce commercial products with a medical or other biological application
“Biotech Company”	A company primarily engaged in the R&D, application and commercialisation of Biotech Products (see also Appendix I, Rule 18A.01).
“Biotech Product”	Biotech products, processes or technologies
“CFDA”	China Food and Drug Administration
“CG Code”	Appendix 14 of the Rules – Corporate Governance Code and Corporate Governance Report
“close associate”	As defined in Rule 1.01
“Competent Authority”	FDA, CFDA, EMA or any other national or supranational authority which the Exchange recognises as a Competent Authority on a case by case basis
“Controlling Shareholder”	Any person (including a holder of depositary receipts) who is or group of persons (including any holder of depositary receipts) who are together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer or who is or are in a position to control the composition of a majority of the board of directors of the issuer; or in the case of a PRC issuer, the

TERM	DEFINITION
	meaning ascribed to that phrase by Rule 19A.14 provided always that a depositary shall not be a controlling shareholder merely by reason of the fact that it is holding shares of the issuer for the benefit of the holders of depositary receipts
“core connected person”	As defined in Rule 1.01
“Core Product”	A Regulated Product that (alone or together with other Regulated Products) forms the basis of a Biotech Company’s listing application under Chapter 18A of the Listing Rules
“Corporate Governance Committee”	A committee of the board of an issuer that has the responsibility for performing the corporate governance duties set out in the terms of reference of CG Code Provision D.3.1
“Country Guides”	Guides published on the Exchange’s website setting out, amongst other things, the methods that an issuer incorporated in a particular jurisdiction can use to meet the Key Shareholder Protection Standards
“Dual-Class Share Structure”	Authorised and/or issued share capital that includes two classes of shares carrying unequal voting rights at general meetings
“EMA”	European Medicines Agency
“Exchange” or “SEHK”	The Stock Exchange of Hong Kong Limited
“Exchange Participant”	A person (a) who, in accordance with the Rules, may trade on or through the Exchange; and (b) whose name is entered in a list, register or roll kept by the Exchange as a person who may trade on or through the Exchange
“FCA”	Financial Conduct Authority of the United Kingdom
“FDA”	US Food and Drug Administration
“Financial Eligibility Tests”	<p>The financial eligibility requirements of the Main Board, being:</p> <ul style="list-style-type: none"> <li>(i) Rule 8.05(1)(a) (profit test);</li> <li>(ii) Rule 8.05(2)(d), (e) and (f) (the market capitalisation/revenue/cash flow test); or</li> <li>(iii) Rule 8.05(3)(d) and (e) (the market capitalisation/revenue test)</li> </ul> <p>of the Rules</p>

TERM	DEFINITION
<b>“Foreign Private Issuer”</b>	<p>A term defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time to time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time to time. The term refers to an issuer incorporated or organised under the laws of a foreign country, except an issuer meeting both of the following conditions:</p> <ul style="list-style-type: none"> <li>(i) more than 50 per cent. of the outstanding voting securities of the issuer are directly or indirectly held of record by residents of the United States; and</li> <li>(ii) any one of the following: <ul style="list-style-type: none"> <li>a. the majority of the executive officers or directors of the issuer are United States citizens or residents;</li> <li>b. more than 50 per cent. of the assets of the issuer are located in the United States; or</li> <li>c. the business of the issuer is administered principally in the United States.</li> </ul> </li> </ul>
<b>“Grandfathered Greater China Issuers”</b>	<p>Greater China Issuers that were primary listed on a Qualifying Exchange on or before the publication of the New Board Concept Paper Conclusions (15 December 2017)</p>
<b>“Greater China Issuer”</b>	<p>A Qualifying Issuer with a “centre of gravity” in Greater China as set out in the definition of “Greater China Issuer” (Appendix I, Rule 19C.01)</p>
<b>“HKEX”</b>	<p>Hong Kong Exchanges and Clearing Limited</p>
<b>“HKSCC”</b>	<p>Hong Kong Securities Clearing Company Limited</p>
<b>“INED”</b>	<p>Independent non-executive director</p>
<b>“IPO”</b>	<p>Initial public offering</p>
<b>“Key Shareholder Protection Standards”</b>	<p>The shareholder protection standards set out in Section 1 of the 2013 JPS (<a href="#">here</a>), which in summary comprise:</p> <ul style="list-style-type: none"> <li>(i) super-majority vote of members is required to approve fundamental matters (material changes to constitutional documents, variation of rights attached to any class of shares and voluntary winding-up);</li> <li>(ii) no alteration to the constitutional documents to increase an existing member’s liability unless approved by such member;</li> <li>(iii) appointment, removal and the remuneration of auditors require the approval of a majority of</li> </ul>

TERM	DEFINITION
	<p>shareholders or other body independent of the board of directors;</p> <p>(iv) issuer must hold an annual general meeting at least every 15 months, give reasonable notice of meetings and members to have the right to speak and vote at the shareholders' meeting;</p> <p>(v) minority shareholders must be allowed to convene an extraordinary general meeting (the level of members' support required to convene a meeting must not be higher than 10%); and</p> <p>(vi) HKSCC must be able to appoint proxies.</p>
<b>“Listing Committee”</b>	A committee of the SEHK board of directors that exercises all the powers and functions of the board in relation to listing matters
<b>“Listing Documents”</b>	A Prospectus, a circular or any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with an application for listing
<b>“Listing Rules” or “Rules”</b>	The Rules Governing the Listing of Securities on SEHK (Main Board unless otherwise stated)
<b>“LSE”</b>	London Stock Exchange plc
<b>“Main Board”</b>	The main board of the SEHK
<b>“NASDAQ”</b>	Nasdaq Stock Market
<b>“New Board Concept Paper”</b>	The Concept Paper on a New Board published on 16 June 2017 ( <a href="#">here</a> )
<b>“New Board Concept Paper Conclusions”</b>	The Conclusions to the New Board Concept Paper published on 15 December 2017 ( <a href="#">here</a> )
<b>“Non-Grandfathered Greater China Issuers”</b>	Greater China Issuers that are primary listed on a Qualifying Exchange after the publication of the New Board Concept Paper Conclusions
<b>“Non-Greater China Issuer”</b>	A Qualifying Issuer that is not a Greater China Issuer
<b>“Non-WVR Shareholder”</b>	A holder or beneficiary of the listed shares of an issuer with a WVR structure who is not also a beneficiary of WVR
<b>“NYSE”</b>	New York Stock Exchange LLC

<b>TERM</b>	<b>DEFINITION</b>
<b>“Overseas Issuer”</b>	An issuer incorporated or otherwise established outside Hong Kong
<b>“Phase I clinical trials”</b>	Clinical trials on human subjects categorised as Phase I clinical trials by the FDA (or an equivalent process regulated by another Competent Authority)
<b>“Phase II clinical trials”</b>	Clinical trials on human subjects categorised as Phase II clinical trials by the FDA (or an equivalent process regulated by another Competent Authority)
<b>“PRC” or “Mainland”</b>	The People’s Republic of China
<b>“Prospectus”</b>	A prospectus as defined under Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32. of the Laws of Hong Kong)
<b>“Qualifying Exchange”</b>	NYSE, NASDAQ or the Main Market of the LSE (and belonging to the FCA’s “Premium Listing” segment)
<b>“Qualifying Issuer”</b>	An issuer primary listed on a Qualifying Exchange
<b>“Regulated Product”</b>	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
<b>“R&amp;D”</b>	Research and development
<b>“SFC”</b>	Securities and Futures Commission
<b>“SFO”</b>	Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)
<b>“SMLR”</b>	Securities and Futures (Stock Market Listing) Rules (Cap. 571V of the Laws of Hong Kong)
<b>“Sophisticated Investor”</b>	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
<b>“Takeovers Code”</b>	The Codes on Takeovers and Mergers and Share Buy-backs
<b>“US”</b>	United States of America

TERM	DEFINITION
“VIE Guidance”	Guidance issued by the Exchange entitled “Guidance on listed issuers using contractual arrangements for their businesses”, HKEX-GL77-14.
“VIE Structure”	“Variable Interest Entity Structures” or “Structured Contracts” that allow a foreign company to control and receive the economic benefits of a company owning assets or operating in an industry sector that is subject to foreign investment restrictions.
“WVR”	Weighted voting rights
“WVR Companies”	Companies with a WVR structure
“WVR structure”	A structure that results in any party having WVR

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# EXECUTIVE SUMMARY

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## Purpose

1. This consultation paper sets out proposals to expand the existing listing regime to facilitate the listing of companies from emerging and innovative sectors, subject to appropriate safeguards.
2. This consultation paper seeks comments on the proposals and proposed amendments to the Rules to allow the listing on the Main Board of:
  - (a) Biotech Companies that do not meet any of the Financial Eligibility Tests, including companies that do not have any prior record of revenue or profit (see Chapter 2);
  - (b) high growth and innovative companies that have WVR structures (see Chapter 3); and
  - (c) Qualifying Issuers seeking a secondary listing on the Exchange (see Chapter 4).

## Summary

### Introduction

3. The New Board Concept Paper was published on 16 June 2017, pursuant to a holistic review by the Exchange, which identified certain gaps within Hong Kong's listing regime affecting its overall competitiveness versus other major global listing venues, particularly in respect of attracting companies from emerging and innovative sectors<sup>1</sup>.
4. Drawing on the feedback received in response to the New Board Concept Paper and subsequent regulatory discussions with the SFC, the Exchange determined in the New Board Concept Paper Conclusions (published on 15 December 2017) to proceed to expand the existing listing regime by introducing two new chapters to the Rules to allow the listing of (a) Biotech Companies which do not meet the Financial Eligibility Tests; and (b) innovative and high growth issuers that have WVR structures, subject to additional disclosure and safeguards<sup>2</sup>. The Exchange also proposed to modify the existing Rules in relation to overseas companies (and make consequential changes to the 2013 JPS) to create a new secondary listing route to attract innovative issuers that are primary listed on a Qualifying Exchange.
5. The Exchange has further refined the views it set out in the New Board Concept Paper Conclusions through discussions with the SFC and stakeholders, and is now presenting, for comment, its proposals in detail and proposed amendments to the Rules to give effect to the way forward set out in the New Board Concept Paper Conclusions.

### Biotech Companies

6. We propose to allow listing of Biotech Companies that do not meet the Financial

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<sup>1</sup> The New Board Concept Paper is available [here](#).

<sup>2</sup> The New Board Concept Paper Conclusions are available [here](#). In drafting the proposals on WVR Companies, the Exchange also referred to the 2015 WVR Concept Paper Conclusions.



Eligibility Tests (including companies with no revenue or profit) whilst providing appropriate investor protection from the risks associated with such companies. The Exchange proposes to do so through the addition of a new Biotech chapter of the Rules, supplemented with guidance on the factors that the Exchange will take into account when determining an applicant's eligibility and suitability to list without meeting the Financial Eligibility Tests.

7. In the US, Biotech Companies make up a majority of companies seeking a listing in the early stage of the company's development and the development of the company's Biotech Products.<sup>3</sup> Regulation by internationally recognised bodies such as the FDA and the stages involved in their approval process provide an indication as to the nature of Biotech Companies, and their development progress, in the absence of traditional indicators such as revenue and profit. This provides investors with a frame of reference to form their own judgement about a Biotech Company's value.

*Suitability to list*

8. We propose that a new Biotech Company applicant be expected to demonstrate the following features:
  - (a) the Biotech Company must have developed at least one Core Product beyond the concept stage. The Exchange would consider a Core Product to have been developed beyond the concept stage if it has met the developmental milestones specified for the relevant type of product (see paragraph 75);
  - (b) it must have been primarily engaged in R&D for the purposes of developing its Core Product(s);
  - (c) it must have been engaged with the R&D of its Core Product(s) for a minimum of 12 months prior to listing;
  - (d) it must have as its primary reason for listing the raising of finance for R&D to bring its Core Product(s) to commercialisation;
  - (e) it must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s);
  - (f) 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 those potential products; and
  - (g) it must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor at least six months before the date of the proposed listing (which must remain at IPO)<sup>4</sup>.

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<sup>3</sup> Source: Bloomberg (data as of 29 December 2017). The analysis includes all US listed companies since 1 January 2012 that are in the early stage of development. Early stage of development is defined by reference to those companies which are unable to meet any of the Financial Eligibility Tests. Biotech companies in this paragraph 7 are defined using the Global Industry Classification Standard (GICS) and includes all industries in the health care sector except health care providers & services.

<sup>4</sup> This factor is intended to demonstrate that a reasonable degree of market acceptance exists for the applicant's R&D and Biotech Product. The Exchange may not require compliance with this factor where the applicant is a spin-off from a parent company if the applicant is able to otherwise demonstrate to the

9. The Exchange will recognise the FDA, the CFDA and the EMA as Competent Authorities for the purpose of the new Biotech chapter. The Exchange may, at its discretion, recognise other national or supranational authorities as Competent Authorities in individual cases (depending on the nature of the Biotech Product). The Exchange will seek the SFC's consent before making such a recognition.

*Expected Market Capitalisation*

10. We propose that Biotech Company applicants must have a minimum expected market capitalisation at the time of listing on the Exchange of HK\$1.5 billion. This will likely limit applicants to those that have achieved a higher degree of investment from pre-IPO investors on the basis of confidence that the company and its management have the capability to achieve success in their R&D activities.

*Enhanced Disclosure Requirements*

11. Biotech Companies applying for a listing will be required to provide prominent warning statements and enhanced risk disclosures. This will include disclosures on:
- (a) the phases of development for its Core Product(s);
  - (b) material communications with all relevant Competent Authorities in relation to its Core Product(s) (unless disclosure is restricted under applicable laws or regulations or the direction of the Competent Authority);
  - (c) all material safety data relating to its Core Product(s);
  - (d) the immediate market opportunity and any potential increased market opportunity of its Core Product(s);
  - (e) its rights and obligations in respect of any in-licensed Core Products;
  - (f) disclosure of operating costs, capital expenditure and working capital including details of spending on R&D;
  - (g) patents granted, registered and applied for and other intellectual properties relating to the Core Product(s) (unless the applicant is able to demonstrate to the satisfaction of the Exchange that such disclosure would require the applicant to disclose highly sensitive commercial information); and
  - (h) the R&D experience of management.
12. Biotech Companies will also be required to provide ongoing disclosures regarding their R&D activities in their interim and annual reports.

*Restriction on Cornerstones*

13. The Exchange proposes that shares subscribed by cornerstone investors should not count towards determining whether a Biotech Company has met the minimum initial public float requirement at the time of listing and at all times prior to the expiry of the six-month lock up period applicable to cornerstone investors from the date of listing. The proposed restriction on cornerstone investors will help reduce the influence of pre-arranged deals on the book-building process and will also help ensure that the

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Exchange's satisfaction that a reasonable degree of market acceptance exists for its R&D and Biotech Product (for example, in the form of collaboration with other established R&D companies).

pricing process for the IPOs of such companies is as market-driven as possible.

14. Existing shareholders of the applicant may subscribe for shares in the IPO to avoid a dilution to their shareholdings under the existing regulatory framework<sup>5</sup>. Where an existing shareholder does not meet the conditions under the existing guidance, the Exchange is proposing to allow such a shareholder to participate in the IPO of a Biotech Company as a cornerstone investor. Shares subscribed by existing shareholders in the IPO will not be counted towards determining whether the Biotech Company has met the minimum initial public float requirement but any shares held by existing shareholders 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 recognised by the Exchange to be a member of the public in accordance with Rule 8.24<sup>6</sup>.

#### *Material Change of Business and De-listing Process*

15. Given their nature, there are concerns that Biotech Companies listed under the Biotech chapter may become shell companies if they do not achieve their business plans and hence targets for attempts to list new assets or businesses in circumvention of the listing requirements for new applicants. Accordingly the Exchange proposes to restrict a Biotech Company listed under the new Biotech chapter from effecting any transaction that will result in a fundamental change to its principal business without the prior consent of the Exchange. Biotech Companies listed under the Biotech chapter which fail to meet the continuing obligation under the Rules to maintain sufficient operations or assets would be given a period of up to 12 months to re-comply with this requirement, failing which the Exchange will cancel its listing. The Exchange will require Biotech Companies listed under the Biotech chapter to be prominently identified through a unique stock marker “B” at the end of their stock name to help investors to differentiate them from other listed issuers. A Biotech Company which has developed its business and is able to demonstrate to the Exchange that it is able to satisfy one of the Financial Eligibility Tests will no longer be subject to these measures.

#### **Issuers with WVR Structures**

16. 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. The main objective behind the proposal to expand the listing regime to allow WVR structures is to attract good quality and high growth companies from innovative sectors to list in Hong Kong. Consequently, the Exchange will consider all circumstances in exercising its discretion to find an applicant suitable to list with a WVR structure and will do so only in appropriate cases where the applicant fits the profile of companies targeted by the proposed regime. Demonstration of any or all of the characteristics specified in the relevant listing guidance may not of itself ensure an

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<sup>5</sup> See Guidance Letters HKEX-GL-43-12 and HKEX-GL-85-16.

<sup>6</sup> Rule 8.24 provides that the Exchange will not recognise as a member of “the public”:

- (1) any person whose acquisition of securities has been financed directly or indirectly by a core connected person;
- (2) any person who is accustomed to take instructions from a core connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.

applicant's suitability to list with a WVR structure.

17. The Exchange proposes to implement a new Chapter 8A of the Rules setting out the qualifications for listing of companies with a WVR structure and the safeguards that they must put in place to protect investors on an ongoing basis, supplemented with guidance on the factors that the Exchange will take into account when assessing whether such an applicant is eligible and suitable for listing with a WVR structure.

*Companies Suitable to List with a WVR Structure*

18. The Exchange proposes that a company would normally be considered suitable for listing in Hong Kong with a WVR structure if it is able to demonstrate the characteristics set out below. However, the Exchange would retain absolute discretion to reject an application for listing with a WVR structure even if the applicant meets these requirements to ensure only "bona fide" candidates who fit the target profile are listed.

(a) Nature of the company: the applicant must be an innovative company. The Exchange considers that an innovative company for the purpose of the Rules would normally be expected to possess more than one of the following characteristics:

- 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;
- R&D is a significant contributor of its expected value and constitutes a major activity and expense;
- its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

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. Accordingly, the fact that a particular company has 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 demonstrated that it is an innovative company for the purpose of this sub-paragraph (a). The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out above. 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 with a WVR structure if it does not exhibit other distinctive features or characteristics.

- (b) Success of the company: 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, unit sales, revenue, profits and/or market value (as appropriate) and its high growth trajectory is expected to continue.
- (c) Contribution of WVR beneficiaries: Each WVR beneficiary 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 or attached to intangible human capital.
- (d) Role of WVR beneficiaries:
  - (i) each WVR beneficiary must be an individual who has an active executive role within the business, and has contributed to a material extent to the ongoing growth of the business; and
  - (ii) each WVR beneficiary must be a director of the issuer at the time of listing.
- (e) External validation: the applicant must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor (which must remain at IPO). Such investors will be required to retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO (subject to exceptions for de minimis investments by specific investors provided that the main investors are in compliance). The Exchange would not normally require an applicant to demonstrate that it has received meaningful third party investment if the applicant is a spin-off from a parent company.<sup>7</sup>

#### *Expected Market Capitalisation*

19. In addition to satisfaction of the relevant criteria under Rule 8.05 (or draft Rule 18A.03 in the case of a Biotech Company eligible for listing under Chapter 18A), the Exchange proposes initially to limit applicants permitted to list with WVR structures to those companies that have an expected market capitalisation at listing of not less than HK\$10 billion. If an applicant with a WVR structure has an expected market capitalisation at listing of less than HK\$40 billion, the Exchange will also require the applicant to have at least HK\$1 billion of revenue in its most recent audited financial year. This requirement is intended to limit applicants to established and high profile companies that have already received substantial investment from at least one Sophisticated Investor.

#### *Ring-fencing*

20. Only new applicants will be able to list with a WVR structure and the Exchange will seek to ensure that companies do not use artificial means to circumvent this and other restrictions. Any circumvention of or non-compliance with a requirement under the regime for WVR structures may also amount to a contravention of the SMLR and, in these circumstances, the SFC may exercise its powers under the SMLR in relation to

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<sup>7</sup> For the purpose of assessing the eligibility and suitability of an applicant to list with a WVR structure, a spin-off applicant will be assessed on a stand-alone basis separate from the characteristics and track record of the parent (irrespective of whether the parent is listed on the Exchange or overseas).

the listing applicant or listed issuer (as the case may be).

21. After listing, issuers with WVR structures will be prohibited from increasing the proportion of WVR in issue or from issuing any further WVR shares. WVR beneficiaries will have a limited right of pre-emption in the case of a pro rata offering to all shareholders (i.e. a rights issue or open offer) or a pro rata issue of securities by way of scrip dividends, or a stock split (or similar transaction), provided that the proportion of WVRs in issue afterwards is not higher than that in issue immediately before the corporate action.

#### *Minimum and Maximum Economic Interest at Listing*

22. The Exchange will require all the beneficiaries of a company's WVR structure to collectively beneficially 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 its initial listing. This will help ensure that, at the time of listing, the economic interest in the company held by all WVR beneficiaries, as a group, is large enough, in dollar terms, to align their interests to some extent with those of other shareholders. The Exchange does not propose to impose this requirement on an ongoing basis after listing.
23. The Exchange may be prepared to accept a lower minimum shareholding percentage on a case by case basis if the lower percentage shareholding still represents a very large amount in absolute dollar terms (for example if the company has a market capitalisation of over HK\$80 billion at the time of its initial listing) taking into account such other factors about the company as the Exchange may in its discretion consider appropriate.

#### *Ongoing Requirements for WVR Beneficiaries*

24. Beneficiaries of WVR will be restricted to those individuals who are directors of the issuer at listing and remain directors afterwards. The WVRs attached to a WVR beneficiary's shares will lapse permanently if a WVR beneficiary: (a) dies; (b) ceases to be a director; (c) is deemed by the Exchange to be incapacitated; or (d) is deemed by the Exchange to no longer meet the requirements of a director set out in the Rules. The WVRs attached to a WVR beneficiary's shares will also lapse permanently if a WVR beneficiary transfers his beneficial interest or economic interest in those shares, or the voting rights attached to them, to another person (subject to limited exceptions in the case of trust and other structures for estate and/or tax planning purposes).
25. The effect of the above requirements on WVR beneficiaries is that their WVRs will only continue whilst the original WVR beneficiaries at listing benefit from them and continue to be responsible for the business of the issuer. This means that WVRs should naturally fall away over time.

#### *Limits on WVR Power*

26. The Exchange will require a WVR structure to be attached to a specific class (or classes) of shares. This class must be unlisted and the WVRs attached to them must confer to a beneficiary only enhanced voting power on resolutions tabled at the issuer's general meetings. To mitigate expropriation and entrenchment risks, the Exchange will require the voting power attached to WVR shares to be capped at not more than ten times of the voting power of ordinary shares.

### *Protecting Non-WVR Shareholders' Right to Vote*

27. The Exchange will require that a listed issuer's WVR structure must enable Non-WVR Shareholders to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings. The Exchange will also require that Non-WVR Shareholders holding at least 10% of the voting rights on a one-share one-vote basis (or such lower threshold as required under the laws of incorporation of the issuer) must be able to convene a general meeting and to add resolutions to the meeting agenda.
28. The Exchange will require the following key matters to be decided on a one-share one-vote basis and WVR beneficiaries will not be able to exercise WVRs on these matters:
  - (a) changes to the issuer's constitutional documents, however framed;
  - (b) variation of rights attached to any class of shares;
  - (c) the appointment or removal of an independent non-executive director;
  - (d) the appointment or removal of auditors; and
  - (e) the voluntary winding-up of the issuer.

### *Enhanced Corporate Governance*

29. The Exchange will require issuers with WVR structures to establish a Corporate Governance Committee comprised of a majority of INEDs and chaired by an INED to help ensure that the issuer is operated and managed for the benefit of all shareholders and complies with the Rules. The Exchange will require an issuer with a WVR structure to include a summary of the work of its Corporate Governance Committee in the Corporate Governance Report that it discloses in its half-yearly and annual report in compliance with the Rules.
30. The Exchange also proposes to mandate certain provisions of the CG Code regarding the role of an INED, the establishment of a nomination committee (comprised of a majority of INEDs and chaired by an INED) and the retirement of INEDs by rotation at least once every three years. The nomination committee will be solely responsible for making recommendations to the board of directors regarding the nomination of INEDs.
31. The Exchange will also require that the issuer engage a compliance adviser on a permanent basis and consult with this adviser on any matters related to its WVR structure, transactions in which the WVR beneficiaries have an interest and where there is a potential conflict of interest between Non-WVR Shareholders and WVR beneficiaries.
32. Directors and senior management of an issuer with a WVR structure will also be required by the Rules to undergo appropriate training on WVR and its associated risks.

### *Enhanced Disclosure*

33. The Exchange will require issuers with WVR structures to be prominently identified through a unique stock marker "W" at the end of their stock name. This will help investors to differentiate companies with WVR structures from those that do not. The Exchange will also require an issuer with a WVR structure to include the warning "*a company controlled through weighted voting rights*" and describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders

prominently on the front page of all its Listing Documents, periodic financial reports, circulars, notifications and announcements required by the Rules.

#### *Enforcement*

34. A breach of the Rules by a company listed on the Exchange with a WVR structure will be enforced in the same way as a breach of Rules by any other company listed on the Exchange. As with any breach of the Rules by any issuer, the Exchange will take a breach of the Rules by an issuer with a WVR structure or by a WVR beneficiary very seriously. Where the conduct justifies it, the Exchange will take appropriate action against the relevant parties, including those responsible for the conduct and will refer the matter to other regulatory authorities as appropriate. A failure by a listed issuer to comply with the Rules in a manner which the Exchange considers material is grounds for suspension or cancellation of listing under Rule 6.01. A breach of the Rules by a WVR beneficiary may also result in disciplinary proceedings under Chapter 2A of the Rules. In addition, any circumvention of or non-compliance with a requirement under Chapter 8A may amount to a contravention of the SMLR and, in these circumstances, the SFC may exercise its powers under the SMLR in relation to the listing applicant or listed issuer (as the case may be).
35. The Exchange recognises that there may be circumstances where a WVR beneficiary acts in a manner that is contrary to the Rules and in such circumstances it may not be appropriate to penalise or sanction the listed issuer, its other directors or other shareholders for the action(s) of the WVR beneficiary. Accordingly, the Exchange is proposing measures to supplement its powers to impose or issue a sanction against a non-compliant WVR beneficiary.
36. The Exchange will also require WVR safeguards to be incorporated in the issuer's constitutional documents (see Appendix I, Rule 8A.44). As these documents function as a contract between a company and its shareholders, this is intended to allow a shareholder to take civil actions to enforce provisions (including WVR safeguards) in the constitutional documents against the issuer.

#### **Secondary Listing of Qualifying Issuers**

37. As noted in both the 2014 WVR Concept Paper and the New Board Concept Paper, a number of large Mainland and non-Mainland companies from emerging and innovative companies have primary listings in the US and on other major international exchanges. The Exchange proposes to create a new concessionary route to secondary listing for such companies, referred to as "Qualifying Issuers", whilst preserving the most important protections for Hong Kong investors.

#### *Qualifications for Listing*

38. The Exchange would normally consider a Qualifying Issuer to be suitable for secondary listing if it is an innovative company by reference to the characteristics set out in paragraph 18(a).
39. A Qualifying Issuer must also:
  - (a) have a good record of compliance for at least two full financial years on a Qualifying Exchange (NYSE, NASDAQ or the "premium listing" segment of the LSE's Main Market); and



- (b) have an expected market capitalisation at the time of secondary listing in Hong Kong of at least HK\$10 billion. A secondary listing applicant (i) with a WVR structure; and/or (ii) which is a Greater China Issuer will also be required to have at least HK\$1 billion of revenue in its most recent audited financial year if it has an expected market capitalisation at the time of secondary listing in Hong Kong of less than HK\$40 billion.

*Automatic Waivers*

40. The Exchange proposes to codify the waivers in the Rules that it currently automatically grants to eligible secondary listed companies.<sup>8</sup> Qualifying Issuers seeking a secondary listing under the new concessionary route would have the benefit of these codified waivers.

*Equivalence Requirement*

41. A Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange's satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the Key Shareholder Protection Standards. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them. An issuer can refer to the methods used to provide these standards specified in the Country Guides published on the Exchange's website.

*WVR Companies*

42. Qualifying Issuers with a WVR structure will be required to meet the market capitalisation requirement set out in paragraph 19 above. Non-Greater China Issuers and Grandfathered Greater China Issuers will be able to secondary list with their existing WVR structures and will not have to comply with the proposed ongoing WVR safeguards (see paragraphs 20 to 33) except for those that are disclosure requirements (see paragraph 33). This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 113; nor will it be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis as set out in paragraph 128 below.

*Non-Grandfathered Greater China Issuers*

43. To deter Greater China Issuers from listing on a Qualifying Exchange and then seek a secondary listing in Hong Kong to avoid Hong Kong's primary listing requirements, those that are primary listed on a Qualifying Exchange after 15 December 2017 (the date of the New Board Concept Paper Conclusions) will not be granted concessions relating to the equivalence requirement (see paragraph 41) or WVR structures (see paragraph 42). At the point of secondary listing, these Non-Grandfathered Greater China Issuers must vary their constitutional documents to meet the Key Shareholder Protection Standards (unless already provided for in their constitutional documents

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<sup>8</sup> The list of these waivers is set out in the Appendix to the 2013 JPS.

and/or the laws which they are subject to), and their WVR structure, if they have one, must conform to all primary listing requirements, including all ongoing WVR safeguards.

#### *Migration of the Bulk of Trading to Hong Kong*

44. The new concessionary route to secondary listing set out above will, for the first time, allow Greater China Issuers to secondary list in Hong Kong. Due to investor interest in such companies in Hong Kong, there is a possibility that the bulk of trading in the shares of these companies will, at some point, migrate from the company's primary exchange to Hong Kong. The Exchange believes it would not be appropriate to place reliance upon the regulatory regime in operation in an overseas jurisdiction of primary listing for a company whose securities were mostly traded in Hong Kong.
45. Where the bulk of trading in the shares of an issuer migrates to Hong Kong on a permanent basis<sup>9</sup>, the Exchange proposes that the codified waivers granted to Greater China Issuers (both Grandfathered Greater China Issuers and Non-Grandfathered Greater China Issuers) under the new concessionary route (see paragraph 40) will no longer apply. These companies would be treated as having a dual-primary listing in Hong Kong and would, on a case by case basis, be granted only waivers that are commonly granted to dual-primary listed issuers.
46. Following a migration of the bulk of trading to Hong Kong, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure will not need to comply with the Hong Kong WVR safeguards applicable to primary listings other than WVR safeguards that are disclosure requirements. This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 113; nor will they be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis as set out in paragraph 128 below.
47. All issuers affected by a permanent migration of the bulk of trading in their securities would be given a 12 month grace period to comply with the applicable requirements.

### **Proposals to Facilitate Compliance with Existing Rules for Applicants from Emerging and Innovative Sectors**

48. Certain respondents to the New Board Concept Paper urged the Exchange to make the Rules more appropriate to the characteristics of companies in the emerging and innovative sectors.
49. The Exchange is conducting a review of the existing rules and guidance and is in discussion with the SFC in relation to this matter and intends to publish further guidance in due course.

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<sup>9</sup> If 55% or more of the total trading volume of those shares over the issuer's most recent fiscal year takes place on the Exchange's markets (see Appendix I, Note 1 to Rule 19C.13).

## **Corporate WVR Beneficiaries**

50. Since the publication of the New Board Concept Paper Conclusions, the Exchange has engaged in discussions with stakeholders and received feedback from a number of parties that the Exchange should permit corporate entities to benefit from WVRs.
51. The Exchange recognises that allowing corporate entities to do so would be a significant new development from the proposed way forward in the New Board Concept Paper Conclusions. For this reason, if the Rules in Chapter 8A are implemented (in their existing or a modified form) following this consultation, the Exchange will launch a separate consultation within three months of the date of the implementation of those Rules to explore the option of allowing corporate entities to benefit from WVRs. This further consultation paper will propose requirements and safeguards applicable to corporate WVR beneficiaries that aim to balance legitimate commercial and competitive concerns with investor protection. The consultation paper will ask for feedback on whether, on this basis, corporate entities should be able to benefit from WVRs.

## **Request for Comment**

52. This consultation paper describes proposals to implement a new listing regime to attract more companies from emerging and innovative sectors to list in Hong Kong and substantive changes to the Rules to give effect to the proposals. The Exchange has drawn on the responses received to the New Board Concept Paper and its subsequent regulatory discussions with the SFC to develop the proposals (see Chapter 1). We would like to invite public comments on (a) the substance of the proposals, as well as (b) the draft Rule changes that would give effect to the proposals (assuming that the proposals are to be implemented as proposed in this consultation paper).
53. To the extent the proposals are modified (after the Exchange has considered the public comments received in response to this consultation paper), those modifications will be incorporated in the final Rule amendments. Any final Rule amendments and details regarding implementation will be published in a conclusions paper after we have considered the public's views.
54. When providing your comments please give reasons for your views.

## **Proposed Timetable and Next Steps**

55. Responses to this consultation paper should be submitted to us by 23 March 2018. The Exchange will take into account these responses and comments before deciding upon any further appropriate action and publishing a conclusions paper.

### **Listing Applications / Enquiries**

56. After the Exchange publishes its conclusions, a prospective listing applicant and its sponsor(s) may submit a formal pre-IPO enquiry regarding the interpretation of the published final Rules and their application to the prospective listing applicant's circumstances. Before then, the Exchange will respond to any such enquiries on an informal basis. Companies may submit a formal application for listing under the new regime only after the Rules to implement the regime come into effect.

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# CHAPTER 1: INTRODUCTION

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## Background to this Consultation

### New Board Concept Paper

57. The New Board Concept Paper was published on 16 June 2017 pursuant to a holistic review by the Exchange, which identified certain gaps within Hong Kong's listing regime affecting its overall competitiveness versus other major global listing venues, particularly in respect of attracting companies from emerging and innovative sectors.<sup>10</sup> The New Board Concept Paper stated that the Hong Kong regime currently does not accommodate: (a) pre-profit companies; (b) companies with non-standard governance features; and (c) Mainland Chinese companies that wish to secondarily list in Hong Kong. The purpose of the New Board Concept Paper was to solicit market feedback on whether or not it was necessary to broaden Hong Kong's listing criteria to better accommodate the needs of such companies and, if so, the most appropriate way of doing so.

### New Board Concept Paper Conclusions

58. A wide variety of constructive views were received to the New Board Concept Paper, with a clear consensus that the Exchange must take measures to broaden capital markets access in Hong Kong and enhance its competitiveness as a global financial centre.
59. Drawing on the feedback received in response to the New Board Concept Paper and subsequent regulatory discussions with the SFC, the Exchange determined in the New Board Concept Paper Conclusions (published on 15 December 2017) to proceed to expand the existing listing regime by introducing changes to the Rules to allow the listing of (a) Biotech Companies which do not meet any of the Financial Eligibility Tests; and (b) issuers from emerging and innovative sectors that have WVR structures, subject to additional disclosure and safeguards.<sup>11</sup> The Exchange also proposed to modify the existing Rules in relation to overseas companies (and make consequential changes to the 2013 JPS) to create a new secondary listing route to attract innovative issuers that are primary listed on a Qualifying Exchange.
60. While the New Board Concept Paper had proposed to introduce a professionals-only segment for pre-profit / pre-revenue companies, this had been on the basis that such a segment would be subject to lower vetting standards versus the Main Board. The feedback to the New Board Concept Paper generally opposed lower vetting standards and, in addition, expressed concern that a professionals-only market might lack liquidity. Therefore, given all issuers under the proposed enhancements to our listing criteria would be subject to the full vetting standards of the Main Board, the previously proposed restriction on retail investment has been removed.

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<sup>10</sup> The New Board Concept Paper is available [here](#).

<sup>11</sup> The New Board Concept Paper Conclusions are available [here](#). In drafting the proposals on WVR Companies, the Exchange also referred to the 2015 WVR Concept Paper Conclusions.

## **The Purpose of this Consultation**

61. The Exchange has further refined its views set out in the New Board Concept Paper Conclusions through discussions with the SFC and stakeholders, and is now presenting for comment the proposals that reflect those views. In particular, we have consulted experts on the proposed definition of a Biotech Company, Biotech regulatory approval bodies and the stages of regulatory approval for certain types of biotechnology products, processes and technologies. We have also sought feedback on the minimum expected market capitalisation requirement for Biotech Companies from selected issuers, institutional investors and market participants (see also paragraph 80). This consultation paper also proposes for comment amendments to the Listing Rules that would give effect to the proposals.
62. The Exchange believes that these proposals represent the best way forward to develop the listing regime for companies from emerging and innovative sectors to meet the competitive demands while ensuring appropriate safeguards. The Exchange has included further explanations of the proposals where appropriate throughout this consultation paper to help the public better understand the thinking behind them.

## CHAPTER 2: BIOTECH COMPANIES

### Current Requirements

63. Table 1 below summarises the current Financial Eligibility Tests for companies seeking to list equity securities on the Main Board. It shows that an applicant has a choice of three tests. Each of these tests requires an applicant to have reached certain minimum profit or revenue thresholds over a track record period.

**Table 1: Current Main Board Eligibility Tests**

	<b>PROFIT TEST</b>	<b>MARKET CAPITALISATION / REVENUE / CASH FLOW TEST</b>	<b>MARKET CAPITALISATION / REVENUE TEST</b>
<b>Minimum profit attributable to shareholders</b>	At least HK\$30m total in first two financial years; and at least HK\$20m in most recent financial year.	Not applicable	Not applicable
<b>Minimum revenue</b>	Not applicable	At least HK\$500m for most recent financial year	At least HK\$500m for most recent financial year
<b>Minimum total cash flow</b>	Not applicable	At least HK\$100m in aggregate from operating activities for the last three financial years	Not applicable
<b>Assets</b>	Must not consist wholly or substantially of cash or securities with less than one year to maturity		
<b>Working capital</b>	Must have sufficient working capital for 12 months following publication of Listing Document		
<b>Minimum market capitalisation at listing</b>	At least HK\$500 million <sup>12</sup>	At least HK\$2 billion	At least HK\$4 billion
<b>Trading record</b>	Not less than three financial years	Not less than three financial years	Not less than three financial years <sup>13</sup>

<sup>12</sup> Effective from 15 February 2018.

<sup>13</sup> Rule 8.05A states that the Exchange will accept a trading record shorter than three years but the applicant must demonstrate that the directors and management of the new applicant have sufficient and satisfactory experience of at least three years in the line of business and industry of the new applicant, and management continuity for the most recent audited financial year.

## **Exemptions for Mineral Companies and in Other Circumstances**

64. The Exchange may waive the Financial Eligibility Tests for:
- (a) mineral company applicants if they can establish, to the Exchange's satisfaction, that:
    - (i) their inability to comply with the tests is due to the fact that, throughout their track record period, they have been in a pre-production, exploration and/or development phase. The mineral company must also demonstrate a clear path to commercial production if that has not been started;
    - (ii) their directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the mineral company is pursuing, and individuals relied on must have a minimum of five years relevant industry experience; and
    - (iii) their primary activity is the exploration for and/or extraction of natural resources;<sup>14</sup>
  - (b) newly formed "project" companies (e.g. a company formed to construct a major infrastructure project) that can meet the necessary conditions;<sup>15</sup> and
  - (c) in exceptional circumstances where the issuer or its group has a trading record of at least two financial years.<sup>16</sup>

## **Issues**

### **Target Companies**

65. Market feedback to the New Board Concept Paper was supportive of broadening the range of companies that may list before they had generated profits or revenues. Respondents acknowledged that many businesses involved in R&D intensive sectors (e.g. information technology and Biotech) have legitimate capital markets needs ahead of having a revenue-generating commercial product or service. Other respondents pointed to the listing regime for mineral companies as an example of where Hong Kong investors have shown they are capable of assessing and valuing companies before they have demonstrated revenue or profits.
66. Companies that are unable to satisfy the Financial Eligibility Tests potentially carry additional risks to investors. In particular, investing in early stage Biotech Companies that do not have any prior record of generating revenue would be new to the Main Board investors. Accordingly, the Exchange is proposing to initially target Biotech Companies engaged in the R&D, application and commercialisation of Regulated Products only. Further explanations for selecting Biotech Companies are set out in paragraph 73 below

### **Risks Associated with Early Stage Companies**

67. While early stage companies are recognised widely as essential engines for economic

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<sup>14</sup> Rule 18.04 and Guidance Letter HKEX-GL22-10 (October 2010) (Updated in August 2013)

<sup>15</sup> Rule 8.05B(2)

<sup>16</sup> Rule 8.05B(3)

growth with the potential to produce very high returns for their investors in the long term, many such companies will not succeed and could cause shareholders to lose part or possibly all of their investment. The US Bureau of Labor Statistics data on survival rates of Silicon Valley high-tech firms between 1991 and 2009 shows that about 50% of these firms survived five years after starting (i.e. about 50% fail). 10 years after starting, about 25% of these firms had survived. 15 years after starting, only about 13% of these firms were still in business<sup>17</sup>.

68. Revenues and profits are most commonly used by investors to judge their financial condition and future prospects of companies. Consequently, in respect of early stage companies that have not yet achieved a meaningful level of revenue or profit (or any), investors will need to make value judgements based on the potential of their businesses rather than on conventional metrics of earnings and cash flow.
69. The Exchange wishes to highlight that listing is not an endorsement by the Exchange of the R&D and/or the technology of the listing applicant and there is no guarantee that listing candidates will successfully commercialise their products or that they will generate sufficient revenue or cashflow to sustain their operations after listing.

## Proposals

70. We propose the following to attract more listings of early stage companies whilst providing appropriate investor protection from the associated risks.

### Structure of Proposals

71. The Exchange proposes to attract more listings of early stage companies through the addition of a new chapter of the Rules (Chapter 18A), supplemented with guidance on the factors that the Exchange will take into account when determining an applicant's eligibility and suitability to list without meeting the Financial Eligibility Tests.

### Suitability to List

72. The Exchange proposes to open a route to listing for early stage companies that do not meet the Financial Eligibility Tests, including companies with no revenue or profits, which are Biotech Companies.
73. The regulatory regime for the activities undertaken by Biotech Companies sets external milestones on development progress of the Regulated Product(s). Regulation by internationally recognised bodies such as the FDA and the stages involved in their approval processes provide investors with an indication as to the nature of the Biotech Companies and a frame of reference with which to judge the stage of development of the Regulated Products to be produced by these companies. Based on our analysis, in the US Biotech Companies make up a majority of companies seeking a listing at an early stage of development and so would not yet meet any of the Financial Eligibility

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<sup>17</sup> United States Department of Labor, Bureau of Labor Statistics, Monthly Labor Review, "Survival and Growth of Silicon Valley high-tech businesses born in 2000" (September 2011), Chart A1, page 27 (link [here](#)).



Tests<sup>18</sup>.

74. The Exchange proposes that a Biotech Company that does not meet any of the three Financial Eligibility Tests could be suitable to list under Chapter 18A if it can demonstrate the following features:
- (a) the Biotech Company must have developed at least one Core Product beyond the concept stage. The Exchange would consider a Core Product to have been developed beyond the concept stage if it has met the developmental milestones specified for the relevant type of product (see paragraph 75 below);
  - (b) it must have been primarily engaged in R&D for the purposes of developing its Core Product(s);
  - (c) it must have been engaged with the R&D of its Core Product(s) for a minimum of 12 months prior to listing;
  - (d) it must have as its primary reason for listing the raising of finance for R&D to bring its Core Product(s) to commercialisation;
  - (e) it must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s);
  - (f) 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 those potential products; and
  - (g) it must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor at least six months before the date of the proposed listing (which must remain at IPO). This factor is intended to demonstrate that a reasonable degree of market acceptance exists for the applicant's R&D and Biotech Product. Where the applicant is a spin-off from a parent company, the Exchange may not require compliance with this factor if the applicant is able to otherwise demonstrate to the Exchange's satisfaction that a reasonable degree of market acceptance exists for its R&D and Biotech Product (for example, in the form of collaboration with other established R&D companies).
75. With regards to paragraph 74(a) above, the Exchange would consider the following to demonstrate that a Regulated Product has developed beyond the concept stage.
- (a) Pharmaceutical (small molecule drugs)
    - (i) In the case of a Core Product that is a new pharmaceutical (small molecule drug) product, the applicant must demonstrate that it has completed Phase I clinical trials and that the relevant Competent Authority has no objection for it to commence Phase II (or later) clinical trials.

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<sup>18</sup> Source: Bloomberg (data as of 29 December 2017). The analysis includes all US listed companies since 1 January 2012 that are in the early stage of development. Early stage of development is defined by reference to those companies which are unable to meet any of the Financial Eligibility Tests. Biotech companies in this paragraph are defined using the Global Industry Classification Standard (GICS) and includes all industries in the health care sector except health care providers & services.

- (ii) In the case of a Core Product that is a pharmaceutical (small molecule drug) product which is based on previously approved products (for example, the FDA's 505(b)(2) application process in the US), the applicant must demonstrate that it has successfully 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.
- (b) **Biologics**
  - (i) In the case of a Core Product that is a new biologic product, the applicant must demonstrate that it has completed Phase I clinical trials and the relevant Competent Authority has no objection for it to commence Phase II (or later) clinical trials.
  - (ii) In the case of a Core Product that is a biosimilar, the applicant must demonstrate that it has 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.
- (c) **Medical devices (including diagnostics)**

In the case of a Core Product that is a medical device (which includes diagnostic devices), the applicant must demonstrate that:

  - (i) The product is categorised as Class II medical device (under the classification criteria of the relevant Competent Authority) or above;
  - (ii) it has completed at least one clinical trial on human subjects (which will form a key part of the application required by the Competent Authority or the Authorised Institution); and
  - (iii) either the Competent Authority or the Authorised Institution has endorsed or not expressed objection for the applicant to proceed to further clinical trials; or the Competent Authority has no objection for the applicant to commence sales of the device.
- (d) **Other Biotech Products**
  - (i) the Exchange will consider Biotech Products which do not fall into the above criteria on a case by case basis to determine if an applicant has demonstrated that the relevant Biotech Product has been developed beyond the concept stage by reference to, amongst other things, the factors described above in this paragraph, and whether there is an appropriate framework or objective indicators for investors to make an informed investment decision regarding the listing applicant. A determination to accept such a listing application would be a modification that may only be made with the consent of the SFC under Rule 2.04.

76. At present the Exchange recognises the FDA, the CFDA and the EMA as Competent Authorities for the purpose of the new Biotech chapter. The Exchange may, at its discretion, recognise other national or supranational authorities as Competent Authorities in individual cases (depending on the nature of the Biotech Product). The Exchange will seek the SFC's consent before making such a recognition.

77. The factors set out in paragraph 74 are neither exhaustive nor binding and the Exchange will take into account all relevant circumstances in its assessment of the suitability of applicant for listing. The Exchange will retain the discretion under the Rules to find that a Biotech Company is not suitable for listing even if it satisfied the features set out in paragraph 74 and must, in any case, satisfy the general suitability requirement in Rule 8.04.

#### **Expected Market Capitalisation**

78. Based on analysis of Biotech listings in other markets and subsequent discussions with market practitioners and the SFC, we propose applicants for listing under the Biotech chapter must have a minimum expected market capitalisation at the time of listing on the Exchange of HK\$1.5 billion (see Appendix I, Rule 18A.03(2)).
79. This minimum expected market capitalisation requirement is three times that required for applicants listing under the Profit Test (see Table 1) and will likely limit applicants to those Biotech Companies that have achieved a higher degree of investment from pre-IPO investors on the basis of confidence that the company and its management have the capability to achieve success in their R&D activities.
80. As part of its efforts to refine its views set out in the New Board Concept Paper Conclusions, the Exchange has explored this proposed minimum expected market capitalisation requirement with issuers, institutional investors and market participants before putting forth this proposal.

#### **Track Record**

81. A Biotech Company applicant must also have been in operation in its current line of business for at least two financial years prior to listing under substantially the same management (see Appendix I, Rule 18A.03(3)). This will help to limit applications from Biotech Companies to those that have a reasonable duration of operations, period of establishment and management experience.

#### **Working Capital Requirements**

82. An applicant for listing under the Biotech chapter must also meet enhanced working capital requirements to reduce the risk that it is unable to meet its operational expenses after listing. The applicant will be required to have available working capital to cover at least 125% of the group's costs for at least the next 12 months (after taking into account the proceeds of the new applicant's initial listing) (see Appendix I, Rule 18A.03(4)). These costs must substantially consist of the following:—
- (a) general, administrative and operating costs; and
  - (b) R&D costs.

We also expect that a substantive portion of the IPO proceeds will be used to cover these costs.

#### **Enhanced Disclosure Requirements**

83. Biotech Companies applying for a listing on the Exchange under the Biotech chapter will also be required to provide prominent warning statements and enhanced risk disclosures; including disclosures on:
- (a) the phases of development for its Core Product(s);

- (b) material communications with all relevant Competent Authorities in relation to its Core Product(s) (unless disclosure is restricted under applicable laws or regulations or the direction of the Competent Authority);
- (c) all material safety data relating to its Core Product(s);
- (d) the immediate market opportunity and any potential increased market opportunity of its Core Product(s);
- (e) its rights and obligations in respect of any in-licensed Core Products;
- (f) disclosure of operating costs, capital expenditure and working capital including details of spending on R&D;
- (g) patents granted, registered and applied for and other intellectual properties relating to the Core Product(s) (unless the applicant is able to demonstrate to the satisfaction of the Exchange that such disclosure would require the applicant to disclose highly sensitive commercial information); and
- (h) the R&D experience of management.

Biotech Companies would also be required to provide ongoing disclosures regarding their R&D activities in their interim and annual reports (see Appendix I, Rules 18A.04, 18A.05 and 18A.07).

#### **Restriction on Cornerstones**

- 84. The Exchange proposes that shares subscribed by cornerstone investors will not count towards determining whether the Biotech Company has met the minimum initial public float requirement at the time of listing, and at all times prior to the expiry of the six-month lock-up period from the date of listing that applies to shares subscribed by cornerstone investors in the IPO (see Appendix I, Rule 18A.06).
- 85. The proposed restriction on cornerstone investors will help reduce the influence of pre-arranged deals on the book-building process and will help ensure that the pricing process for the IPOs of such companies is as market-driven as possible.
- 86. Existing shareholders of the applicant may subscribe for shares in the IPO to avoid a dilution to their shareholdings under the existing regulatory framework<sup>19</sup>. Where an existing shareholder does not meet the conditions under the existing guidance, the Exchange is proposing to allow such a shareholder to participate in the IPO of a Biotech Company as a cornerstone investor. Shares subscribed by existing shareholders in the IPO will not be counted towards determining whether the Biotech Company has met the minimum initial public float requirement but any shares held by existing shareholders 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 recognised by the Exchange to be a member of the public in accordance with Rule 8.24<sup>20</sup>.

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<sup>19</sup> See Guidance Letters HKEX-GL-43-12 and HKEX-GL-85-16.

<sup>20</sup> Rule 8.24 provides that the Exchange will not recognise as a member of "the public":

- (1) any person whose acquisition of securities has been financed directly or indirectly by a core connected person;

## **Measures to Manage Risks Associated with Biotech Companies**

87. Given their nature, there are concerns that Biotech Companies listed under the Biotech chapter may become shell companies if they do not achieve their business plans and hence targets for attempts to list new assets or businesses in circumvention of the listing requirements for new applicants. Accordingly the Exchange proposes the following measures to mitigate the related risks.

### *Material Change of Business*

88. We propose that a Biotech Company listed under the Biotech chapter would not be allowed to effect any acquisition(s), disposal(s) or other transaction(s) or arrangement(s) that would result in a fundamental change to its principal business without the Exchange's prior consent. This is not intended to restrict legitimate business development. Accordingly, such prior consent will normally be given if the Biotech Company listed under the Biotech chapter can satisfy the Exchange that it is engaging in a legitimate business expansion or diversification that forms part of its business strategies.

### *De-listing Process for Biotech Companies*

89. Under the current Rules, the Exchange may at any time cancel the listing of any securities for the purpose of protecting investors or maintaining an orderly market. The Exchange may do so for reasons including a failure by a listed issuer to maintain sufficient operations or assets or the listed issuer becoming no longer suitable for listing.
90. In the New Board Concept Paper Conclusions, we stated that we would not introduce a separate de-listing regime for "new economy" issuers on the Main Board. Having considered the matter further and, in particular that Biotech Companies listed under the new Biotech chapter are in an early stage of development whose lead program may fail and result in decreased interests from investors and may become shell companies, we consider it appropriate to impose a shorter remedial period where a Biotech Company listed under the Biotech chapter fails to maintain sufficient operations or assets.
91. Therefore, we propose that a Biotech Company listed under the Biotech chapter will be governed by the existing de-listing Rules except where the Exchange considers that such an issuer has failed to meet its continuing obligation to maintain sufficient operations or assets. In these circumstances, the Exchange will give the issuer a period of up to 12 months to re-comply with the requirement. If the issuer fails to do so, the Exchange will cancel its listing.

### *Stock Marker*

92. The Exchange will require Biotech Companies listed under the Biotech chapter to be prominently identified through a unique stock marker "B" at the end of their stock name. This will help investors to differentiate Biotech Companies which do not meet any of

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(2) any person who is accustomed to take instructions from a core connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.

the Financial Eligibility Tests from other listed issuers.

93. The above measures are intended to mitigate the risks associated with Biotech Companies listed under the Biotech chapter as these companies do not meet any of the Financial Eligibility Tests. The Exchange recognises that these measures will no longer be appropriate once a Biotech Company has developed into a profit-making and/or revenue-generating business. Accordingly, we propose that upon a Biotech Company's demonstration that it is able to meet one of the Financial Eligibility Tests, the above measures will no longer apply to it.

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## CHAPTER 3: ISSUERS WITH WVR STRUCTURES

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### Current Requirements

94. A company is generally not permitted to list on the Exchange with shares that have a voting power that does not bear a reasonable relationship to the equity interest of those shares.<sup>21</sup> This restriction also applies after listing. A company can list with such shares only in “exceptional circumstances”. To date, the Exchange has not listed a company using this exception.
95. The most common form of WVR structure used by companies listed in the US is a Dual-Class Share Structure. Under this structure one unlisted “super-voting” share class carries voting power per share that is several times that of the listed “one-share, one-vote” class (most commonly ten votes per share).

### Issues

#### Target Companies

96. It is our intention to attract more good quality, high growth and innovative companies to list in Hong Kong.
97. As we stated in the New Board Concept Paper, WVR structures have been a feature of many such companies, including innovative high growth Mainland companies that have listed in the US. These companies sometimes rely heavily upon the technical expertise, market knowledge and foresight of their owner managers. However, the shareholdings of these persons are often diluted to a low level after the company has raised funds several times from outside investors prior to listing. These companies put in place WVR structures upon listing to enhance the voting power of these key individuals to enable them to maintain control despite their relatively small shareholdings.

#### Risks

98. Empirical studies argue that Controlling Shareholders may be more likely to extract benefits from a company for themselves (e.g. excessive salary, expensive perks), at the expense of other shareholders, as their economic interest in a company falls.<sup>22</sup> This is on the basis that they can enjoy 100% of the benefits they take out of a company whilst suffering a smaller downside (through the reduction in the value of their equity stake in the company resulting from their extraction of private benefits). A Dual-Class Share Structure allows Controlling Shareholders to maintain control whilst holding a disproportionately small equity interest in a company; consequently, they may have less disincentive to extract private benefits of control (see Appendix IV of the 2014 WVR Concept Paper, paragraphs 15 to 20).

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<sup>21</sup> Rule 8.11.

<sup>22</sup> For example, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer and Robert W. Vishny, “*Investor Protection and Corporate Governance*” (1999); Stijn Claessens, Simeon Djankov and Larry H.P. Lang, “*The separation of ownership and control in East Asian Corporations*” (2000); and Mara Faccio and Larry H.P. Lang, “*The ultimate ownership of Western European corporations*” (2002).

99. Also, a smaller equity interest may potentially incentivise Controlling Shareholders to move quality assets away from a listed company to other companies in which they have a higher stake, and vice versa (known as “tunneling” or “value shifting”).<sup>23</sup> This may place a greater burden on the connected transaction Rules that aim to prevent such actions. In Hong Kong, listed companies conduct a large number of connected transactions. These are carried out, mainly, between listed companies, on the one hand, and groups controlled by their major shareholder, on the other.
100. It is impractical for shareholders to make decisions collectively on a day-to-day basis, so they delegate this decision making power to managers and vote to decide on only the most important decisions, such as the election or removal of those managers. In theory, the knowledge that they can be removed by shareholders means managers are incentivised to act in the best interests of the company as a whole, and to perform well. If a company has a WVR structure, its managers may be insulated (to a degree that depends on the nature of the WVR structure) from the threat of removal. For example, “minority” shareholders with superior voting rights have a greater ability to vote down takeover proposals at general meetings. This means that no matter how poorly they perform, it is difficult for the company’s fortunes to be revived by an outside bidder replacing management, without management consent (see also Appendix IV, of the 2014 WVR Concept Paper).

## Proposals

101. In response to market feedback, the Exchange proposes to broaden Hong Kong’s listing criteria to facilitate the listing of companies with non-standard governance features (including WVR structures) subject to appropriate shareholder protection safeguards.
102. The safeguards proposed in this section aim to mitigate the risks associated with WVR structures set out above whilst facilitating the listing of the target companies.

### Structure of Proposals

103. We propose to implement a new Chapter 8A of the Rules setting out the qualifications for listing of companies with a WVR structure and the safeguards that they must put in place to protect investors on an ongoing basis<sup>24</sup> (see Appendix I).
104. Applicants will be required to establish that they are both eligible and suitable for listing with a WVR structure. For the purpose of defining suitability to list with a WVR structure, the Exchange proposes to publish guidance setting out the factors that the Exchange will take into account when assessing whether such an applicant is eligible and suitable for listing with a WVR structure.<sup>25</sup>

### Scope of the Regime

105. Our definition of “weighted voting rights” includes both share-based structures (e.g.

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<sup>23</sup> Simon Johnson, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, “*Tunneling*”, (2000), *American Economic Review* 90, 22–27.

<sup>24</sup> A consequential modification is proposed to Rule 8.11 of the Rules to create an exception to the general restriction against WVR (see Appendix I).

<sup>25</sup> These factors would be in addition to the suitability for listing requirement of Rule 2.06 and the guidance on suitability for listing contained in guidance letters HKEX-GL68-13 and HKEX-GL68-13A.



Dual-Class Share Structure) and non-share based structures (e.g. board control mechanisms). The WVR structure of a company applying for a primary listing, under our proposed Rules, would need to be share-based. This is by far the most common form of WVR structure in use today (e.g. by companies listed on US exchanges) and the most familiar to investors. A company could be permitted to list on the Exchange with a non-share based structure only if it was already listed<sup>26</sup> on a Qualifying Exchange and sought a secondary listing via the new concessionary route set out in Chapter 4.

### **Companies Suitable to List with a WVR Structure**

106. The Exchange proposes that a company would normally be considered suitable for listing in Hong Kong with a WVR structure if it is able to demonstrate the following characteristics:

(a) Nature of the company: the applicant must be an innovative company. The Exchange considers that an innovative company for the purpose of the Rules would normally be expected to possess more than one of the following characteristics:

- 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;
- R&D is a significant contributor of its expected value and constitutes a major activity and expense;
- its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- it has an outsized market capitalisation / intangible asset value relative to its tangible asset value.

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. Accordingly, the fact that a particular company has 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 demonstrated that it is an innovative company for the purpose of this sub-paragraph (a). The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the

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<sup>26</sup> Listed prior to 15 December 2017.

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 with a WVR structure if it does not exhibit other distinctive features or characteristics.

- (b) Success of the company: 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, unit sales, revenue, profits and/or market value (as appropriate) and its high growth trajectory is expected to continue.
- (c) Contribution of WVR beneficiaries: Each WVR beneficiary 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 or attached to intangible human capital.
- (d) Role of WVR beneficiaries:
  - (i) Each WVR beneficiary must be an individual who has an active executive role within the business, and has contributed to a material extent to the ongoing growth of the business; and
  - (ii) each WVR beneficiary must be a director of the issuer at the time of listing (see Appendix I, Rule 8A.11).
- (e) External validation: the applicant must have previously received meaningful third party investment (being more than just a token investment) from at least one Sophisticated Investor (which must remain at IPO). Such investors will be required to retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO (subject to exceptions for de minimis investments by specific investors provided that the main investors are in compliance). The Exchange would not normally require an applicant to demonstrate that it has received meaningful third party investment if the applicant is a spin-off from a parent company.<sup>27</sup>

107. 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 discussed elsewhere, the main objective behind the proposal to expand the listing regime to allow WVR structures is to attract good quality and high growth companies from innovative sectors to list in Hong Kong. Consequently, the Exchange will consider all circumstances in exercising its discretion to find an applicant suitable to list with a WVR structure and will do so only in appropriate cases where the applicant fits the profile of companies targeted by the proposed regime. Demonstration of any or all of the characteristics set out in paragraph 106 may not of itself ensure an applicant’s suitability to list with a WVR structure. The Exchange would retain absolute discretion to reject an application for listing with a WVR structure even if the applicant meets the requirements set out in paragraph 106 to ensure that only “bona fide” candidates who fit the target profile are listed.

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<sup>27</sup> For the purpose of assessing the eligibility and suitability of an applicant to list with a WVR structure, a spin-off applicant will be assessed on a stand-alone basis separate from the characteristics and track record of the parent (irrespective of whether the parent is listed on the Exchange or overseas).

108. The Exchange will also reserve the right to reject an applicant on suitability grounds if its WVR structure is an extreme case of non-conformance with governance norms (for example if the ordinary shares would carry no voting rights at all).
109. As this is a new regime, potential issuers are encouraged to consult with the Exchange prior to submitting a listing application as to the application of the factors set out in paragraph 106.<sup>28</sup>

#### **Expected Market Capitalisation**

110. In addition to satisfaction of the relevant criteria under Rule 8.05 (or draft Rule 18A.03 in the case of a Biotech Company eligible for listing under Chapter 18A), the Exchange proposes initially to limit applicants permitted to list with WVR structures to those companies that have an expected market capitalisation at listing of not less than HK\$10 billion. If an applicant with a WVR structure has an expected market capitalisation at listing of less than HK\$40 billion, the Exchange will also require the applicant to have at least HK\$1 billion of revenue in its most recent audited financial year (see Appendix I, Rule 8A.06). This requirement is intended to limit applicants to established and high profile companies that have already received substantial investment from at least one Sophisticated Investor.

#### **Ring-fencing**

111. The purpose of the following ring-fencing measures help ensure that the rights and interests of the existing shareholders of listed issuers are not unfairly reduced or restricted by the introduction by a listed issuer of a WVR structure post-listing.
112. Only new applicants will be able to list with a WVR structure (see Appendix I, Rule 8A.05). The note to this Rule contains a general anti-avoidance provision to prevent companies attempting to use artificial means to circumvent this and other restrictions. Any circumvention of or non-compliance with a requirement under the regime for WVR structures may also amount to a contravention of the SMLR and, in these circumstances, the SFC may exercise its powers under the SMLR in relation to the listing applicant or listed issuer (as the case may be).
113. After listing, issuers with WVR structures will be prohibited from increasing the proportion of WVR in issue or from issuing any further WVR shares (see Appendix I, Rule 8A.15). WVR beneficiaries will have a limited right of pre-emption in the case of a pro rata offering to all shareholders (i.e. a rights issue or open offer) or a pro rata issue of securities by way of scrip dividends, or a stock split (or similar transaction), provided that the proportion of WVRs in issue afterwards is not higher than that in issue immediately before the corporate action (see Appendix I, Rule 8A.16). If a WVR beneficiary chooses not to take up any part of a pro rata offer (or rights to shares in that offer) those untaken shares (or rights) cannot be offered or transferred to any other person.
114. Issuers with WVR structures will also be prohibited from changing the rights attached to WVR shares to increase the WVRs attached to those shares. However, if an issuer

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<sup>28</sup> Rule 2.04 states that new applicants are encouraged to seek informal and confidential guidance from the Exchange at all times.

wishes to change such terms to reduce the WVRs attached to its shares it may do so but must first obtain the prior approval of the Exchange and, if approval is granted, must announce the change (see Appendix I, note to Rule 8A.18).

115. If a listed issuer with a WVR structure plans to reduce the number of its shares in issue (e.g. through a purchase of its own shares) the WVR beneficiaries must reduce their weighted voting rights in the issuer proportionately (for example through conversion of a proportion of their shareholding with those rights into shares without those rights), if the reduction in the number of shares in issue would otherwise result in an increase in the proportion of the listed issuer's shares that carry weighted voting rights (see Appendix I, Rule 8A.17).

#### **Minimum and Maximum Economic Interest at Listing**

116. The Exchange will require all the beneficiaries of a company's WVR structure to collectively beneficially 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 (see Appendix I, Rule 8A.14). This will help ensure that, at the time of its initial listing, the economic interest in the company held by all WVR beneficiaries, as a group, is large enough, in dollar terms, to align their combined interests to some extent with those of other shareholders. The Exchange does not propose to impose this requirement on an ongoing basis after listing.
117. The Exchange may be prepared to accept a lower minimum shareholding percentage on a case by case basis if the lower percentage shareholding still represents a very large amount in absolute dollar terms (for example if the company has a market capitalisation of over HK\$80 billion at the time of its initial listing) taking into account such other factors about the company as the Exchange may in its discretion consider appropriate.

#### **WVR Beneficiaries**

118. Beneficiaries of WVR will be restricted to those individuals who are directors of the issuer at listing and remain directors afterwards. The WVRs attached to a beneficiary's shares will lapse permanently if a WVR beneficiary: (a) dies; (b) ceases to be a director; (c) is deemed by the Exchange to be incapacitated; or (d) is deemed by the Exchange to no longer meet the requirements of a director set out in the Rules (see Appendix I, Rule 8A.19).
119. The Exchange would deem a beneficiary of WVRs to no longer meet the requirements of a director if, for the following reasons, the Exchange believed the person no longer to have the character and integrity commensurate with the position, namely:
- (a) the beneficiary is or has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly;
  - (b) a disqualification order is made by a court or tribunal of competent jurisdiction against the beneficiary; or
  - (c) the beneficiary is found by the Exchange to have failed to comply with the requirement that certain corporate actions are conducted on a one share one vote basis (see paragraph 128).
120. The WVRs attached to a WVR beneficiary's shares will also lapse permanently if a

WVR beneficiary transfers his beneficial interest or economic interest in those shares, or the voting rights attached to them, to another person (see Appendix I, Rule 8A.20). When administering this Rule, the Exchange:

- (a) would not consider a pledge of shares carrying WVR to be a transfer that would result in the mandated conversion of WVR shares on the condition that the pledge does not result in the transfer of control in the voting rights attached to those shares; and
  - (b) would consider this circumstance to have arisen if a WVR beneficiary and a Non-WVR Shareholder or shareholders enters into any arrangement or understanding (written or otherwise) to the extent that this resulted in a transfer of weighted voting rights from the WVR beneficiary to the Non-WVR Shareholder.
121. Some WVR beneficiaries may choose to hold WVR shares through a limited partnership, trust, private company or other vehicle (for example, for estate and/or tax planning purposes). The Exchange considers such an arrangement is acceptable and will not cause the WVRs attached to the beneficiary's shares to lapse provided that it is satisfied that such an arrangement does not result in a circumvention of the restriction against the transfer of WVRs to another person (see Appendix I, Rule 8A.12). A beneficiary is permitted to put in place, or make amendments to, such a holding arrangement post-listing as long as the amended arrangements also comply with this requirement.
122. The above measures ensure that only persons that have ongoing responsibility for the issuer's performance after listing can benefit from WVR. Requiring them to remain as directors also ensures that WVR beneficiaries meet the competence and character requirements of the Rules and have fiduciary duties to the issuer under the Rules and common law.

#### **Limits on WVR Powers**

123. In other jurisdictions, notably the US, WVR structures can take many different forms and confer a variety of rights and powers on beneficiaries.<sup>29</sup> The Exchange proposes to place limits on the form of WVR structures to help ensure that the structures and the powers they grant to beneficiaries are plain to Hong Kong investors and easily understood.
124. The Exchange will require a WVR structure to be attached to a specific class (or classes) of shares. This class must be unlisted (see Appendix I, Rule 8A.08) and the WVRs attached to them must confer to a beneficiary only enhanced voting power on resolutions tabled at the issuer's general meetings (other than matters required to be decided on a one-share, one-vote basis (see paragraph 128)). The rights attached to WVR shares must be the same in all other respects to those attached to the issuer's ordinary shares other than with regards to voting rights (see Appendix I, Rule 8A.07).
125. To mitigate expropriation and entrenchment risks, the Exchange will require the voting power attached to WVR shares to be capped to not more than ten times of the voting power of ordinary shares (see Appendix I, Rule 8A.10). This voting ratio is by far the

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<sup>29</sup> See WVR Concept Paper, Chapter 5.

most commonly used by companies with WVR structures listed in the US.

### **Protecting Non-WVR Shareholders Rights to Vote**

126. The following measures ensure that Non-WVR Shareholders continue to have an important voice and material voting power on certain matters presented at general meetings.
127. The Exchange will require that a listed issuer's WVR structure must enable Non-WVR Shareholders to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings. (see Appendix I, Rule 8A.09). The Exchange will also require that Non-WVR Shareholders holding at least 10% of the voting rights on a one-share one-vote basis (or such lower threshold as required under the laws of incorporation of the issuer) must be able to convene a general meeting and to add resolutions to the meeting agenda (see Appendix I, Rule 8A.24).
128. The Exchange will require the following key matters to be decided on a one-share one-vote basis and WVR beneficiaries will not be able to exercise WVRs on these matters (see Appendix I, Rule 8A.25):
  - (a) changes to the issuer's constitutional documents, however framed;
  - (b) variation of rights attached to any class of shares;
  - (c) the appointment or removal of an independent non-executive director;
  - (d) the appointment or removal of auditors; and
  - (e) the voluntary winding-up of the issuer.
129. In the New Board Concept Paper Conclusions, the Exchange had initially suggested that only a material change of the issuer's constitutional documents would need to be decided on a one-share one-vote basis. Following further consideration and discussions, the Exchange proposes to subject any change of the issuer's constitutional documents to this requirement to be consistent with company law requirements and to avoid ambiguities concerning compliance with, and enforcement of, this requirement. The Exchange proposes to make the same amendment to Chapter 19C in relation to the Key Shareholder Protection Standards (see Appendix I, Rule 19C.07(1)(b)).

### **Conversion of WVR shares into Ordinary Shares**

130. A beneficiary of WVR shares would be able to convert his shares into ordinary shares on a voluntary basis or as mandated by the Rules (e.g. on transfer to another person). The Exchange will require such conversions to occur on a one-to-one ratio (see Appendix I, Rule 8A.22).
131. The Exchange proposes that, as part of their initial listing application and whenever new WVR shares are to be issued (e.g. as part of a pro rata offer to prevent the dilution of a WVR beneficiary's holdings), issuers with WVR structures must seek from the Exchange:
  - (a) approval of the issue of WVR shares (see Appendix I, Rule 8A.16); and
  - (b) prior approval of the listing of shares that are issuable upon conversion of the WVR shares (see Appendix I, Note to Rule 8A.22).

132. In the event that a pledge over shares carrying WVR is enforced, the pledgee (e.g. a lending bank) would convert the WVR shares to ordinary shares via the share registrar (which is normally expected to take place on the same day). Once converted, the ordinary shares issued upon conversion (which will have already received prior listing approval) could be deposited into the Hong Kong Central Clearing and Settlement System and such shares will normally be immediately credited to the Exchange Participants' accounts for use, subject to security control and risk management vetting measures.
133. An issuer with a WVR structure must also disclose any dilution impact of a potential conversion of WVR shares into ordinary shares in its Listing Documents and in its interim and annual reports (see Appendix I, Rule 8A.41).

#### **Enhanced Disclosure**

134. The Exchange will require issuers with WVR structures to be prominently identified through a unique stock marker "W" at the end of their stock name (see Appendix I, Rule 8A.42). This will help investors to differentiate companies with WVR structures from those that do not.
135. The Exchange will also require an issuer with a WVR structure to include the warning "*a company controlled through weighted voting rights*" and describe the WVR structure, the issuer's rationale for having it and the associated risks for shareholders prominently on the front page of all its Listing Documents, periodic financial reports, circulars, notifications and announcements required by the Rules (see Appendix I, Rule 8A.38). This warning "*a company controlled through weighted voting rights*" must also be prominently disclosed on the documents of title for the listed equity securities of an issuer with a WVR structure (see Appendix I, Rule 8A.39).
136. An issuer with a WVR structure must also identify the beneficiaries of its WVR structure in its Listing Documents and its interim and annual reports (Appendix I, Rule 8A.40).

#### **Enhanced Corporate Governance**

137. The Exchange will require issuers with WVR structures to establish a Corporate Governance Committee comprised of a majority of INEDs and chaired by an INED to ensure that the issuer is operated and managed for the benefit of all shareholders and to help ensure the issuer's compliance with the Rules (including the safeguards described in this Chapter) (see Appendix I, Rules 8A.31 and 8A.32).
138. The terms of reference of the Corporate Governance Committee must include the following terms:
- (a) to review and monitor whether the listed issuer is operated and managed for the benefit of all its shareholders;
  - (b) to confirm, on an annual basis, that the beneficiaries of WVRs have been members of the listed issuer's board of directors throughout the year;
  - (c) to confirm, on an annual basis, that the beneficiaries of WVRs have complied with their obligations under the Rules throughout the year;
  - (d) to review and monitor the management of conflicts of interests;

- (e) to review and monitor all risks related to the issuer's WVR structure, including the issuer's compliance with requirements on connected transactions;
  - (f) to seek to ensure effective and on-going communication between the issuer and its shareholders, particularly with regards to requirements related to the issuer's shareholder communication policy which will be mandatory for issuers with a WVR structure; and
  - (g) to report on the work of the Corporate Governance Committee on at least a half-yearly and annual basis covering all areas of its terms of reference (see Appendix I, Rule 8A.31).
139. The Exchange will require an issuer with a WVR structure to include a summary of the work of its Corporate Governance Committee in the Corporate Governance Report that it discloses in its half-yearly and annual report in compliance with the Rules (see Appendix I, Rule 8A.33).
140. To enhance the corporate governance obligations of issuers with WVR structures generally, the Exchange also proposes to mandate certain provisions of the CG Code regarding the role of an INED, the establishment of a nomination committee comprised of a majority of INEDs and chaired by an INED and the retirement of INEDs by rotation at least once every three years. The nomination committee will be solely responsible for making recommendations to the board of directors regarding the nomination of INEDs (see Appendix I, Rules 8A.27 to 8A.30).
141. The Exchange will also require that the issuer engage a compliance adviser on a permanent basis and consult with this adviser on any matters related to its WVR structure, transactions in which the beneficiaries of WVRs in the issuer have an interest and where there is a potential conflict of interest between Non-WVR Shareholders and beneficiaries of WVRs in the issuer (see Appendix I, Rules 8A.34 and 8A.35).
142. Directors and senior management of an issuer with a WVR structure will also be required by the Rules to undergo appropriate training on WVR and its associated risks (Appendix I, Rule 8A.37).

## **Enforcement**

### **Enforcement by the Exchange**

143. The Exchange has built the WVR safeguards described in this Chapter into the Rules using compulsive language to facilitate enforcement actions.
144. A breach of the Rules by a company listed on the Exchange with a WVR structure will be enforced in the same way as a breach of Rules by any other company listed on the Exchange. As with any breach of the Listing Rules by any issuer, the Exchange will take a breach of the Rules by an issuer with a WVR structure or by a WVR beneficiary very seriously. Where the conduct justifies it, the Exchange will take appropriate action against the relevant parties, including those responsible for the conduct, and will refer the matter to other regulatory authorities as appropriate. A failure by a listed issuer to comply with the Rules in a manner which the Exchange considers material is grounds for suspension or cancellation of listing under Rule 6.01. A breach of the Rules by a WVR beneficiary may also result in disciplinary proceedings under Chapter



2A of the Rules.

145. In the event of a possible breach of the relevant WVR safeguards or the triggering of a circumstance in which WVR may be lost, the Exchange's proceedings will comply with the same due process requirements as those applicable to a proceeding for a possible breach by any other listed company, with the delivery of show cause letters requiring rectification of the breach within a specific period failing which, for example, suspension may be directed as a protective measure. Ultimately a hearing before the Listing Committee as decision maker would normally be required for which the relevant established procedures would be followed. The Exchange has developed processes to conduct such proceedings in a fair and efficient manner.
146. The Exchange recognises that there may be circumstances where a WVR beneficiary acts in a manner that is contrary to the Rules and as in the case of any listed issuer in the case of a breach of the Rules by a shareholder, it may not be appropriate to penalise or sanction the listed issuer, its other directors or other shareholders for the action(s) of the WVR beneficiary. Accordingly, the Exchange is proposing measures to supplement its powers to impose or issue a sanction under Rule 2A.09 against the parties set out in Rule 2A.10.
147. Depending on the circumstances, the Listing Committee would be asked to make appropriate directions for remedial action or a direction for a WVR beneficiary to give up the WVRs carried by his or her shares, to be carried out within a specific timeframe. The Exchange may constrain access to the market by the company or an individual director through an order denying the facilities of the market<sup>30</sup>; suspend or ultimately cancel the relevant company's listing unless the direction is complied with.
148. Further, if the Listing Committee had decided that a WVR issuer or a WVR beneficiary has breached any Rule set out in Chapter 8A, the Exchange may direct a trading halt or suspend dealings of the WVR issuer's shares; impose disciplinary sanctions, or withhold its listing approval (in the case of an issuance of listed securities) or its approval for the issuance of a shareholders' circular (in the case of a material transaction requiring a circular) (see Appendix I, Rule 8A.03).
149. The Exchange has also specified in the draft Rules that where prescribed majorities are set for shareholders' resolutions (e.g. special or ordinary thresholds), in the event that a WVR beneficiary casts his/her votes whilst in contravention of the Rules, such resolutions shall not, for the purposes of the Rules and in calculating the requisite majorities, be counted (see Appendix I, Rule 8A.26). It will remain the issuer's obligation to ensure that only persons vote in the manner in which they are entitled to vote.

#### **Constitutional Backing and Legal Remedies**

150. The Exchange will require the safeguards described in this Chapter to be incorporated in the issuer's constitutional documents (see Appendix I, Rule 8A.44). As these documents function as a contract between a company and its shareholders, this is intended to allow a shareholder to take civil actions to enforce provisions in the constitutional documents (including WVR safeguards) against the issuer.

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<sup>30</sup> Rule 2A.09(9).

151. The Exchange also proposes to require WVR beneficiaries to provide in addition an undertaking to the issuer that they will comply with the relevant WVR safeguards. The undertaking will expressly confer benefit on the issuer and all existing and future shareholders of the company with the intention that such third parties have a legal basis on which to seek to enforce the terms of the undertaking against the WVR beneficiary (see Appendix I, Rule 8A.43).
152. The above Exchange requirements are in addition to existing legal remedies available to shareholders. Any circumvention of or non-compliance with a requirement under Chapter 8A may also amount to a contravention of the SMLR and/or the SFO and, in these circumstances, the SFC may exercise its powers under the SMLR and/or the SFO in relation to the listing applicant or listed issuer (as the case may be).

## **Sunset**

153. The Exchange has taken into consideration the feedback from a number of respondents to the New Board Concept Paper suggesting that WVRs should not be allowed to exist indefinitely.
154. The Exchange agrees and is accordingly proposing (a) a restriction on the WVR beneficiary's ability to transfer the weighted voting rights attached to their shares; and (b) a requirement that a beneficiary's WVRs fall away if he/she ceases to be a director, no longer meet the requirements of a director, dies or becomes incapacitated (see paragraphs 118 and 119 and Appendix I, Rule 8A.19). The effect of these requirements is that their WVRs will only continue whilst original WVR beneficiaries at listing benefit from them and continue to be responsible for the business of the issuer. This means that WVRs held by beneficiaries who are natural persons should naturally fall away over time.

## **Grandfathering**

155. An existing Hong Kong listed issuer, such as Swire Pacific Limited, with a WVR structure as at the date of the publication of this paper would not be required to meet the Rules proposed by this paper and their WVR structures will be accordingly grandfathered (see Appendix I, Rule 8.11(2)).

## **Corporate WVR Beneficiaries**

156. In the New Board Concept Paper Conclusions, the Exchange proposed to limit WVR beneficiaries to individuals who have been materially responsible for the growth of an innovative issuer's business and who are (and remain as) directors of the issuer<sup>31</sup>.
157. Since the publication of the New Board Concept Paper Conclusions, the Exchange has engaged in discussions with stakeholders and received feedback from a number of parties that the Exchange should permit corporates to hold WVRs as well.
158. Feedback from stakeholders suggests a corporate shareholder that controls and consolidates the listing applicant as a subsidiary prior to listing may have a legitimate justification to seek WVRs. The feedback also suggests that not allowing corporates to

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<sup>31</sup> Paragraphs 259 and 265 of the New Board Concept Paper Conclusions.

benefit from WVRs in order to control and/or consolidate the applicant may significantly limit the competitiveness of the proposed regime versus the US regime.

159. The Exchange recognises that allowing corporate entities to benefit from WVRs would be a significant new development from the proposed way forward in the New Board Concept Paper Conclusions. For this reason, if the Rules in Chapter 8A are implemented (in their existing or a modified form) following this consultation, the Exchange will launch a separate consultation within three months of the implementation of those Rules to explore the option of allowing corporate entities to benefit from WVRs. This further consultation paper will propose requirements and safeguards applicable to corporate WVR beneficiaries that aim to balance legitimate commercial and competitive concerns with investor protection. The consultation paper will ask for feedback on whether, on this basis, corporate entities should be able to benefit from WVRs.

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## CHAPTER 4: SECONDARY LISTINGS OF QUALIFYING ISSUERS

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### Current Requirements

#### Types of Listing

160. An Overseas Issuer is defined as an issuer that is incorporated (or otherwise established) outside of Hong Kong. An Overseas Issuer can apply for a primary or secondary listing on the SEHK.
161. A primary listing is one that results in the company becoming fully subject to the Rules. If an Overseas Issuer is already listed on another exchange, it can apply for a secondary listing here.<sup>32</sup> 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 market in the company's securities to be on that overseas exchange. On this basis, the Exchange exempts or waives certain requirements of the Rules for Overseas Issuers with, or seeking, a secondary listing. The Rules that the Exchange automatically waives for secondary listed companies that meet various conditions<sup>33</sup> are set out in the Appendix to the 2013 JPS.
162. An Overseas Issuer can, alternatively, opt for a dual-primary listing where it is subject to both full requirements here (with limited exceptions) and those of another jurisdiction.

#### Equivalence Requirement

163. The current Rules<sup>34</sup> state that the Exchange reserves the right, at its absolute discretion, to refuse a secondary listing of the securities of an Overseas Issuer if it is not satisfied that the Overseas Issuer's primary listing is or is to be on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong. Where the Exchange believes that the jurisdiction in which the Overseas Issuer is incorporated is unable to meet this equivalence requirement, Overseas Issuers can achieve equivalent standards by varying their constitutional documents to provide them.
164. Overseas Issuers incorporated in the PRC, the Cayman Islands and Bermuda must meet this equivalence requirement by amending their constitutional documents in accordance with the requirements set out in Appendices 3 and 13 of the Rules.
165. For Overseas Issuers incorporated elsewhere, the 2013 JPS identifies the Key Shareholder Protection Standards that they must provide. It states that an Overseas Issuer listing applicant must explain how its domestic laws, rules and regulations and its constitutional documents, in combination, meet these standards and that, for this purpose, the Exchange may require an overseas applicant to amend its constitutional

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<sup>32</sup> Alternatively, an Overseas Issuer can apply simultaneously for a primary listing on an overseas exchange and a secondary listing in Hong Kong.

<sup>33</sup> See 2013 JPS, Section 5.

<sup>34</sup> Primary listings: Rule 19.05(1)(b) and note. Secondary listings: Rule 19.30(1)(b) and note.

documents to provide key shareholder protections.<sup>35</sup>

### **Centre of Gravity Restriction**

166. The 2013 JPS states that an application for secondary listing from an Overseas Issuer that has its “centre of gravity” in the Greater China region will not be approved. The following are some of the factors that the Exchange considers in determining whether an Overseas Issuer has its “centre of gravity” in Greater China:
- (a) whether the company has a listing in Greater China;
  - (b) where the company is incorporated;
  - (c) the company’s history;
  - (d) where the company is headquartered;
  - (e) the location of the company’s central management and control;
  - (f) the location of the company’s main business operations and assets;
  - (g) the location of its corporate and tax registration; and
  - (h) the nationality of its management and Controlling Shareholders or their country of residence.
167. These factors are not exhaustive. The Exchange may take other factors into consideration in determining whether a listing applicant has its “centre of gravity” in Greater China.
168. 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 secondary listing in Hong Kong.

### **VIE Structures**

169. If VIE Structures are used, the issuer and its subsidiaries do not have direct ownership of the company owning the operating licenses and rely on the VIE Structures to control it. In light of the legal issues and potential risks associated with these arrangements, the Exchange’s VIE Guidance states that issuers should take necessary actions to ensure the legality and validity of the VIE Structure and disclose all material and relevant information about the arrangements.

## **Issues**

### **Target Companies**

170. As noted in both the 2014 WVR Concept Paper and the New Board Concept Paper, a number of large Mainland and non-Mainland companies from emerging and innovative companies have primary listed in the US and on other major international exchanges. Those from the Mainland sought these listings whilst the “centre of gravity” restriction (see paragraph 166 above) was in force and therefore did so for reasons other than “regulatory arbitrage”. The application of the “centre of gravity” prohibition now

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<sup>35</sup> 2013 JPS, Section 1.

prevents these Mainland companies from accessing Hong Kong investors via a secondary listing.

### **Constitutional Documents**

171. The Exchange indicated in the New Board Concept Paper Conclusions that the practical requirements for a secondary listing applicant to vary its constitutional documents to meet Hong Kong requirements can be arduous, and it will consider further and discuss with the SFC the circumstances in which it is necessary for a company to change its constitutional documents to ensure that the rights of its shareholders are adequately protected<sup>36</sup>.

### **VIE Structures**

172. The requirements of Qualifying Exchanges regarding VIE Structures are not as extensive as the Exchange's requirements. This means that many of the Mainland companies listed on Qualifying Exchanges have done so with VIE Structures that do not meet our VIE Guidance in all respects. As with changes to constitutional documents, Overseas Issuers may find it undesirable or impractical to vary their corporate structures to incorporate all aspects of our VIE requirements, in particular our requirement for VIE Structures to be "narrowly tailored",<sup>37</sup> for the sake of a secondary listing on the Exchange's markets and so applying the VIE Guidance to these companies in full may deter them from seeking as secondary listing.

### **Foreign Private Issuers**

173. Some of the respondents to the New Board Concept Paper pointed out that many of the Mainland companies listed in the US are classified under US laws as Foreign Private Issuers. This means that these companies are exempted from most of the corporate governance requirements that apply to US incorporated issuers. Respondents urged the Exchange to be mindful of this when setting the listing requirements for these companies in Hong Kong.

## **Proposals**

### **Structure of Proposals**

174. The Exchange proposes to add a new Chapter 19C of the Rules and make consequential changes to the 2013 JPS to create a new concessionary route to secondary listing for companies from emerging and innovative sectors that are primary listed on a Qualifying Exchange, referred to as "Qualifying Issuers", whilst preserving the most important protections for Hong Kong investors.
175. The new chapter would apply to both Overseas Issuers and Hong Kong incorporated issuers primary listed on a Qualifying Exchange.

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<sup>36</sup> New Board Concept Paper Conclusions, paragraph 279

<sup>37</sup> For example, we would only permit those parts of the business in which foreign ownership is restricted to be held through a VIE Structure but not any other business while other jurisdictions (e.g. the US) is less prescriptive and would accept the structure as long as it is lawful

## **Qualifications for Listing**

176. A Qualifying Issuer seeking a secondary listing under the new concessionary route must demonstrate to the Exchange that it is both eligible and suitable for listing (see Appendix I, Rule 19C.02). The Exchange would normally consider a Qualifying Issuer to be suitable for secondary listing under this route if it is an innovative company by reference to the characteristics set out in paragraph 106(a).
177. As discussed elsewhere in this consultation paper, the main objective behind these proposals to expand the listing regime is to attract good quality and high growth companies from innovative sectors, including those already listed elsewhere, to list in Hong Kong. Consequently, the Exchange will retain the discretion to find a Qualifying Issuer not suitable for listing under the new concessionary route even if it satisfied these characteristics. In particular, the Exchange will exercise its discretion to find an applicant suitable to list with a WVR structure only in appropriate cases where the applicant fits the targeted profile of companies which the Exchange is seeking to attract with these proposals. The issuer must, in any case, satisfy the general suitability requirement of the Rules.<sup>38</sup>
178. A Qualifying Issuer must also:
- (a) have a good record of compliance for at least two full financial years on a Qualifying Exchange (NYSE, NASDAQ or the “premium listing” segment of the LSE’s Main Market) (see Appendix I, Rule 19C.04); and
  - (b) have an expected market capitalisation at the time of secondary listing in Hong Kong of at least HK\$10 billion.
- A secondary listing applicant (i) with a WVR structure; and/or (ii) which is a Greater China Issuer will also be required to have at least HK\$1 billion of revenue in its most recent audited financial year if it has an expected market capitalisation at the time of secondary listing in Hong Kong of less than HK\$40 billion (see Appendix I, Rule 19C.05).
179. Applicants with the characteristics set out in paragraphs 176 and 178 would be established innovative companies regulated under a robust regulatory regime with a legal framework similar to Hong Kong. The requirement for a good record of compliance for at least two years should also reduce the risk of regulatory arbitrage by potential applicants.

## **Centre of Gravity**

180. The Exchange proposes that Greater China Issuers with the characteristics listed in paragraph 176 above will not be subject to the “centre of gravity” restriction and will be allowed to seek a secondary listing in Hong Kong.

## **Automatic Waivers**

181. The Exchange proposes to codify the waivers in the Rules that are currently automatically granted to eligible companies (for example, requirements regarding

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<sup>38</sup> Rule 8.04

connected transactions, notifiable transactions and the Corporate Governance Code<sup>39</sup>) with, or seeking, a secondary listing under the 2013 JPS (see Appendix I, Rule 19C.11)<sup>40</sup>. Qualifying Issuers seeking a secondary listing under the new concessionary route would have the benefit of these codified waivers.

### **Equivalence Requirement**

182. After further consideration and discussions with the SFC, with regard to the equivalence requirement, the Exchange proposes that Non-Greater China Issuers and Grandfathered Greater China Issuers would be subject to the requirement currently set out in section 1 of the 2013 JPS codified in the Rules. Accordingly, a Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange's satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the Key Shareholder Protection Standards. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them. An issuer can refer to the methods used to provide these standards specified in the Country Guides published on the Exchange's website (see Appendix I, Rules 19C.06 to 19C.08).
183. A Qualifying Issuer must also prominently disclose in its Listing Documents any provisions in its constitutional documents concerning the issuer's governance that are unusual compared with normal practices in Hong Kong and specific to the issuer (rather than a consequence of the laws and regulations to which the issuer subject) and how such provisions affect its members' rights. Examples of such provisions include, but are not limited to, "poison pill" arrangements and provisions setting restrictions on the quorum for board meetings (see Appendix I, Rule 19C.10).

### **VIE Structures**

184. We propose Grandfathered Greater China Issuers be able to secondary list with their existing VIE Structures in place.<sup>41</sup> These issuers would be required to provide the Exchange with a PRC legal opinion that their VIE Structure complies with PRC laws, rules and regulations. These issuers will also be required to meet VIE Guidance disclosure requirements.

### **Foreign Private Issuers**

185. The Exchange proposes that an applicant applying to list under the new secondary listing route that is classified in the US as a Foreign Private Issuer must clearly disclose in the Listing Document that it produces for the purpose of its secondary listing in Hong Kong the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer (see Appendix I, Rule 19C.14).
186. Qualifying Issuers, including Foreign Private Issuers applying to secondary list under

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<sup>39</sup> Appendix 14 – Corporate Governance Code and Corporate Governance Report of the Rules

<sup>40</sup> Qualifying Issuers should continue to refer to the 2013 JPS for guidance on waivers from the Rules that are commonly but not automatically granted to issuers with, or seeking, a secondary listing and for guidance on modifications to the rules for such issuers.

<sup>41</sup> Non-Greater China Issuers would also be able to secondary list with their existing VIE Structures, if they have them.



the new concessionary route would also be required by the existing 2013 JPS to disclose a summary of the provisions in the laws and regulations in its home jurisdiction and primary market that are different to those required by Hong Kong law.<sup>42</sup>

### **WVR Companies**

187. Qualifying Issuers seeking a secondary listing under the new concessionary route with a WVR structure will be required to meet the eligibility and suitability criteria applicable to WVR companies set out in paragraphs 106(a) (i.e. being an innovative company) and the market capitalisation requirement set out in paragraph 110 above (see Appendix I, Chapter 19C.05). As discussed elsewhere, the Exchange will exercise its discretion to find a Qualifying Issuer suitable to list with a WVR structure only in appropriate cases where the applicant fits the targeted profile (see paragraph 107).
188. The Exchange reserves the right to reject an applicant for secondary listing on suitability grounds if its WVR structure is an extreme case of non-conformance with governance norms (for example, if the ordinary shares carry no voting rights at all).
189. Non-Greater China Issuers and Grandfathered Greater China Issuers will be eligible to secondary list with their existing WVR structures and will not have to comply with the proposed ongoing WVR safeguards except for those that are disclosure requirements (see Appendix I, Rule 19C.12). This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 113; nor will they be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis (see paragraph 128).

### **Non-Grandfathered Greater China Issuers**

190. To deter Greater China Issuers from listing on a Qualifying Exchange and then seek a secondary listing in Hong Kong to avoid Hong Kong's primary listing requirements, Greater China Issuers that are primary listed on a Qualifying Exchange after 15 December 2017 (the date of the New Board Concept Paper Conclusions) will not be granted the concessions set out in paragraphs 182, 184 and 189 above with regards to the equivalence requirement, VIE Structures and WVR structures.
191. At the point of secondary listing, Non-Grandfathered Greater China Issuers must vary their constitutional documents in accordance with the requirements set out in the existing Rules<sup>43</sup> (see Appendix I, Rule 19C.06) and their WVR structure and VIE Structures, if they have them, must conform to all primary listing requirements, including all ongoing WVR safeguards and the Exchange's VIE Guidance.
192. The following table set out a high level summary of the proposals for the new concessionary secondary listing route with respect to automatic waivers, shareholder protection standards and WVR safeguards.

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<sup>42</sup> 2013 JPS, paragraph 63

<sup>43</sup> For companies incorporated in the PRC, the Cayman Islands and Bermuda the requirements set out in Appendices 3 and 13 of the Rules will apply.

**Table 2: Summary of the Application of Requirements for Qualifying Issuers Seeking a Secondary Listing**

	<b>Grandfathered Greater China Issuers</b>	<b>Non-Grandfathered Greater China Issuers</b>	<b>Non-Greater China Issuers</b>
<b>Automatic waivers</b> (see paragraph 181)	Apply		
<b>Equivalent Shareholder Protection Requirements</b> (see paragraph 182)	Required to demonstrate compliance with the Key Shareholder Protection Standards	Required to change constitutional documents (as necessary) in accordance with existing Rules	Required to demonstrate compliance with the Key Shareholder Protection Standards
<b>WVR Safeguards (if applicable)</b> (see paragraph 189)	<u>No</u> need to meet WVR safeguards (except on disclosure) nor change WVR structure to meet primary listing requirements	Must meet WVR safeguards and WVR structure must conform with primary listing requirements	<u>No</u> need to meet WVR safeguards (except on disclosure) nor change WVR structure to meet primary listing requirements

*This table is a high-level summary only and should not be used as a substitute for the detailed requirements set out in this Chapter.*

## **Migration of the Bulk of Trading to Hong Kong**

193. The new concessionary route to secondary listing set out above will allow Greater China Issuers to secondary list in Hong Kong. There is a possibility that the bulk of trading in the shares of these companies will, at some point, migrate from the company's exchange of primary listing to Hong Kong. The Exchange believes it would not be appropriate to place full reliance upon the regulatory regime in operation in an overseas jurisdiction of primary listing for a company whose securities were mostly traded in Hong Kong.

### **Automatic Waivers**

194. Where the bulk of trading in the shares of an issuer migrates to Hong Kong on a permanent basis<sup>44</sup>, the Exchange proposes that the codified waivers granted to Greater China Issuers (both Grandfathered Greater China Issuers and Non-Grandfathered Greater China Issuers) under the new concessionary route (see paragraph 181) will no longer apply. These companies would be treated as having a dual-primary listing in Hong Kong and would, on a case by case basis, be granted only

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<sup>44</sup> If 55% or more of the total trading volume of those shares over the issuer's most recent fiscal year takes place on the Exchange's markets (see Appendix I, Note 1 to Rule 19C.13).

waivers that are commonly granted to dual-primary listed issuers (see Appendix I, Rule 19C.13). These common waivers include waivers from aspects of requirements relating to reporting accountants' independence / qualifications and company secretary qualifications / experience.<sup>45</sup>

195. The main Rules requirements that these companies will need to comply with after a migration of the bulk of trading to Hong Kong are those relating to (i) Model Code for Securities Transactions by Directors of Listed Issuer (Appendix 10 of the Rules); (ii) full corporate governance requirements including in relation to audit committees and remuneration committees; (iii) ongoing minimum public float; (iv) restriction on purchase of own shares; (v) notifiable transactions; and (vi) connected transactions.
196. Greater China Issuers may have continuing transactions in place with third parties that they entered into as a secondary listed issuer on the basis that the Exchange's Rules on notifiable and/or connected transactions did not apply. To prevent undue disruption to the ongoing business activities of such companies, we propose that any such existing transactions carried on by the issuer, at the time the automatic waivers fall away, be exempted from having to comply with Rules for a period of three years from the date on which the issuer is treated as having a dual-primary listing and therefore subject to the Rules (see Appendix I, Note 3 to Rule 19C.13). However if such transaction is subsequently amended or renewed before the expiry of the three year period, the Greater China Issuer must comply with the relevant requirements under the Rules at such time.
197. In the event that the bulk of trading in their shares moved permanently to Hong Kong Non-Greater China Issuers would be able to continue to enjoy automatic waivers granted under the new concessionary secondary listing route. This is consistent with the Exchange's existing practice for Non-Greater China Issuers.

#### **WVR Safeguards**

198. Following a migration of the bulk of trading to Hong Kong, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure will not need to comply with the Hong Kong WVR safeguards applicable to primary listings other than WVR safeguards that are disclosure requirements. This would mean that, under these circumstances, a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure may not be subject to Hong Kong WVR safeguards such as the restriction not to increase the number or proportion of WVR shares after the date of listing as set out in paragraph 113; nor will they be required to comply with the requirement for certain resolutions to be subject to voting on a one vote per share basis (see paragraph 128).

#### **VIE Structures**

199. Grandfathered Greater China Issuers would not be required to amend their VIE Structures if the bulk of trading in their securities moved to the Exchange.<sup>46</sup>

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<sup>45</sup> The common waivers granted to dual-primary listed companies are set out in the Appendix to the 2013 JPS.

<sup>46</sup> This exemption would also apply to Non-Greater China Issuers if they have VIE Structures.

### **Grace Period for Compliance**

200. All issuers affected by a permanent migration of the bulk of trading in their securities would be given a 12 month grace period to comply with the applicable requirements (see Appendix I, Note 2 to Rule 19C.13). The Exchange may apply all disciplinary measures at its disposal, including a de-listing of the issuer's listed shares, if a Greater China Issuer fails to comply with the requirements within the grace period allowed (see Appendix I, Note 3 to Rule 19C.13).

### **Takeovers Code**

201. As discussed in paragraph 58 of this consultation paper, market feedback to the New Board Concept Paper indicated clear support for attracting more issuers from emerging and innovative sectors to enhance Hong Kong's overall competitiveness as a global financial centre. The introduction of listings of WVR structures in Hong Kong is seen primarily as a means to make Hong Kong the listing venue of choice for innovative issuers based in the Mainland. The Exchange concluded that the existing listing regime should be expanded by accommodating these issuers through changes in the Rules.
202. If the proposals are adopted, the SFC proposes that the Takeovers Code would not apply to secondary listings of Grandfathered Greater China Issuers within the proposed Chapter 19C of the Rules in so far as they might be regarded as "public companies in Hong Kong" for the purposes of the Takeovers Code; but that if the bulk of trading moves to Hong Kong and therefore a company is treated as having a dual primary listing in Hong Kong, the Takeovers Code would apply at that point.

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## **CHAPTER 5: REQUEST FOR COMMENT**

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203. This consultation paper is based upon the Exchange's conclusions and proposed way forward set out in the New Board Concept Paper Conclusions on attracting companies from emerging and innovative sectors. The Exchange invites public comments on (a) the substance of the proposals, as well as (b) the draft Rule changes that would give effect to the proposals (assuming that the proposals are to be implemented as proposed in this consultation paper).
204. To the extent the proposals are modified (after the Exchange has considered the public comments received in response to this consultation paper), those modifications will be incorporated in the final Rule amendments. Any final Rule amendments and details regarding implementation would be published in a conclusions paper after the Exchange has considered the public's views.
205. When providing your comments please give reasons for your views. To assist our collation of information, please submit your written comments using the following headings as applicable:
- Biotech Companies
  - Issuers with WVR Structures
  - Secondary Listings of Qualifying Issuers
  - Draft Amendments to the Rules

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# APPENDIX I: DRAFT AMENDMENTS TO THE RULES

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## Chapter 8

### EQUITY SECURITIES

...

8.11 The share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid ("B Shares"). The Exchange will not be prepared to list any new B Shares issued by a listed issuer nor to allow any new B Shares to be issued by a listed issuer (whether or not listing for such shares is to be sought on the Exchange or any other stock exchange) except:—

- (1) in exceptional circumstances agreed with the Exchange; or
- (2) in the case of those listed companies which already have B Shares in issue, in respect of further issues of B Shares identical in all respects with those B Shares by way of scrip dividend or capitalisation issue, provided that the total number of B Shares in issue remains substantially in the same proportion to the total number of other voting shares in issue as before such further issue; or
- (3) as permitted by Chapter 8A of these rules.

# Chapter 8A

## EQUITY SECURITIES

### WEIGHTED VOTING RIGHTS

#### INTRODUCTION

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 as 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 greatest equity interest in an issuer.

Although 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, the Exchange will consider listing applications of companies seeking to deviate from this principle, under the conditions and safeguards set out in this Chapter. Applicants are expected to demonstrate the necessary characteristics of innovation and growth and demonstrate the contribution of their proposed beneficiaries of weighted voting rights to be eligible and suitable for listing with a WVR structure as set out in guidance published on the Exchange website and amended from time-to-time.

#### Scope

The Exchange Listing Rules (including Chapter 8) apply as much to issuers with or seeking a listing with a WVR structure, as other issuers of equity securities. This Chapter sets out rules and modifications to existing rules applicable to issuers with, or seeking, a listing with a WVR structure. For Qualifying Issuers with, or seeking, a secondary listing, the rules in this Chapter are subject to modification by rule 19C.12.

Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

#### General Principles

8A.01 The general principle of rule 2.03(4) for issuers with, or seeking, a listing with a WVR structure under this Chapter is modified as follows:

The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:-

...

- (4) all holders of listed securities are treated fairly and all holders of listed securities of the same class are treated equally; ...

## DEFINITIONS

8A.02 In this Chapter, the following definitions apply:

- “non-WVR shareholder”** a shareholder of a class of listed shares of an issuer with a WVR structure who is not also a beneficiary of weighted voting rights;
- “weighted voting right”** the voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share, or other governance right or arrangement disproportionate to the beneficiary’s economic interest in the equity securities of the issuer; and
- “WVR structure”** a structure of an issuer that results in weighted voting rights

## GENERAL

8A.03 In the event of any failure to adhere to the requirements of this Chapter as determined by the Exchange, the Exchange may, as it considers necessary for the protection of the investors or the maintenance of an orderly market and in addition to any other action that the Exchange considers appropriate under the rules, exercise absolute discretion to:

- (1) direct a trading halt or suspend dealings of any securities of the issuer or cancel the listing of any securities of the issuer as set out in rule 6.01;
- (2) impose the disciplinary sanctions set out in rule 2A.09 against the parties set out in rule 2A.10;
- (3) withhold approval for:
  - (a) an application for the listing of securities; and/or
  - (b) the issuance of a circular to the issuer’s shareholders

unless and until all necessary steps have been taken to address the non-compliance as directed by and to the satisfaction of the Exchange.

## QUALIFICATIONS FOR LISTING

### Basic Conditions

8A.04 A new applicant seeking a listing with a WVR structure must demonstrate to the Exchange that it is both eligible and suitable for listing with a WVR structure.

8A.05 The Exchange will consider applications for listing with a WVR structure from new applicants only.



*Note: The Exchange retains the discretion to reject an application for listing if it believes an issuer has acted intentionally to avoid rule 8A.05 or in a manner which has the effect of avoiding rule 8A.05.*

### **Qualifications for Listing with a WVR Structure**

- 8A.06 A new applicant seeking a listing with a WVR structure must satisfy one of the following:
- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
  - (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

### **Permissible WVR Structures**

#### ***Restriction to share class based WVR structures***

- 8A.07 Subject to the requirement of rule 8A.25, a WVR structure must attach weighted voting rights only to a class of an issuer's equity securities and confer on a beneficiary enhanced voting power on resolutions tabled at the issuer's general meetings only. In all other respects, the rights attached to a class of equity securities conferring weighted voting rights must otherwise be the same as the rights attached to the issuer's listed ordinary shares.

#### ***A class of shares with weighted voting rights is ineligible for listing***

- 8A.08 An issuer must not seek a listing of a class of shares carrying weighted voting rights.

#### ***Voting power of non-WVR shareholders***

- 8A.09 Non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the listed issuer's general meetings.

*Note 1: Compliance with this rule means, for example, that an issuer cannot list with a WVR structure that attaches 100% of the right to vote at general meetings to the beneficiaries of weighted voting rights.*

*Note 2: A beneficiary of weighted voting rights must not take any action that would result in a non-compliance with this rule.*

#### ***Restriction on voting power***

- 8A.10 A class of shares conferring weighted voting rights in a listed issuer must not entitle the beneficiary to more than ten times the voting power of ordinary shares, on any resolution tabled at the issuer's general meetings.

## **Beneficiaries of Weighted Voting Rights**

- 8A.11 At listing, any beneficiaries of weighted voting rights must be members of the applicant's board of directors.

### ***Holding Weighted Voting Rights through Limited Partnerships, Trusts, Private Companies and Other Vehicles***

- 8A.12 A limited partnership, trust, private company or other vehicle may hold shares carrying weighted voting rights on behalf of a beneficial owner of those shares provided that such an arrangement does not result in a circumvention of the restriction against transfer of weighted voting rights under rule 8A.20.

*Note: The Exchange would normally not consider a transfer of shares carrying weighted voting rights between vehicles that comply with this rule 8A.12 to be a transfer restricted under rule 8A.20.*

- 8A.13 If a vehicle holding shares carrying weighted voting rights in a listed issuer on behalf of a beneficiary no longer complies with rule 8A.12, the beneficiary's weighted voting rights in the listed issuer must cease. The issuer and beneficiary must notify the Exchange as soon as practicable with details of the non-compliance.

### ***Minimum and Maximum Economic Interest at Listing***

- 8A.14 The beneficiaries of weighted voting rights must beneficially own collectively at least 10% and not more than 50% of the underlying economic interest in the applicant's total issued share capital at the time of its initial listing.

*Note: The Exchange may be prepared to accept a lower minimum shareholding percentage, on a case by case basis, if the lower underlying economic interest still represents a very large amount in absolute dollar terms (for example if the applicant has an expected market capitalisation of over HK\$80 billion at the time of its initial listing) taking into account such other factors about the applicant as the Exchange may in its discretion, consider appropriate.*

## **RESTRICTIONS ON PURCHASE AND SUBSCRIPTION**

### **Issues of Shares Carrying Weighted Voting Rights**

- 8A.15 A listed issuer must not increase the proportion of shares which carry weighted voting rights above the proportion in issue at the time of listing.

*Note: If the proportion of shares carrying weighted voting rights is reduced below the proportion in issue at the time of listing, this rule 8A.15 shall apply to the reduced proportion of shares carrying weighted voting rights.*

- 8A.16 A listed issuer with a WVR structure may only allot, issue or grant shares carrying weighted voting rights with the prior approval of the Exchange and pursuant to (1) an offer made to the issuer's shareholders pro rata (apart from fractional

entitlements) to their existing holdings; (2) a pro rata issue of securities by way of scrip dividends; or (3) pursuant to a stock split or other capital reorganisation provided that the Exchange is satisfied that the proposed allotment or issuance will not result in an increase in the proportion of shares carrying weighted voting rights.

*Note 1: If, under a pro rata offer, beneficiaries of weighted voting rights do not take up any part of the shares carrying weighted voting rights (or rights to those shares) offered to them, those untaken shares (or rights) must not be offered or transferred to any other person.*

*Note 2: To the extent that rights in a listed issuer's shares not carrying weighted voting rights in a pro rata offer are not taken up in their entirety (e.g. in the case where the pro rata offering is not fully underwritten), the number of the listed issuer's shares carrying weighted voting rights that can be allotted, issued or granted must be reduced proportionately.*

*Note 3: Where necessary, beneficiaries of weighted voting rights must use their best endeavours to enable the issuer to comply with this rule.*

### **Purchases of Own Shares**

8A.17 If a listed issuer with a WVR structure reduces the number of its shares in issue (e.g. through a purchase of its own shares) the beneficiaries of weighted voting rights must reduce their weighted voting rights in the issuer proportionately (for example through conversion of a proportion of their shareholding with those rights into shares without those rights), if the reduction in the number of shares in issue would otherwise result in an increase in the proportion of the listed issuer's shares that carry weighted voting rights.

### **Prohibition on Changing Terms of Shares Carrying Weighted Voting Rights**

8A.18 After listing, a listed issuer with a WVR structure must not change the terms of a class of its shares carrying weighted voting rights to increase the weighted voting rights carried by that class.

*Note: If a listed issuer wishes to change the terms of a class of its shares carrying weighted voting rights to reduce those rights it may do so but must first obtain the prior approval of the Exchange and, if approval is granted, must announce the change.*

## **CONTINUING OBLIGATIONS**

### **Ongoing Requirements for Beneficiaries of Weighted Voting Rights**

8A.19 The beneficiary's weighted voting rights in a listed issuer must cease if, at any time after listing, the beneficiary is:

- (1) deceased;
- (2) no longer a member of the issuer's board of directors;

- (3) deemed by the Exchange to be incapacitated; or
- (4) deemed by the Exchange to no longer meet the requirements of a director set out in these rules.

*Note: The Exchange would deem a beneficiary of weighted voting rights to no longer meet the requirements of a director if, for the following reasons, the Exchange believed the person to no longer have the character and integrity commensurate with the position:*

- (a) the beneficiary is or has been convicted of an offence involving a finding that the beneficiary acted fraudulently or dishonestly;*
- (b) a disqualification order is made by a court or tribunal of competent jurisdiction against the beneficiary; or*
- (c) the beneficiary is found by the Exchange to have failed to comply with the requirement of rules 8A.13, 8A.17, 8A.20 and 8A.25.*

### **Restriction on Transfer of Shares with Weighted Voting Rights**

8A.20 The weighted voting rights attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of, or economic interest in, those shares or the control over the voting rights attached to them (through voting proxies or otherwise).

*Note 1: Rule 8A.20 applies equally to transfers effected through the vehicles described by rule 8A.12.*

*Note 2: The Exchange would not consider an encumbrance, lien, pledge or mortgage of shares carrying weighted voting rights to be a transfer for the purpose of rule 8A.20 on condition that this does not result in the transfer of legal title to or beneficial ownership of those shares or the voting rights attached to them (through voting proxies or otherwise).*

*Note 3: The Exchange would consider a transfer to have occurred under rule 8A.20 if a beneficiary of weighted voting rights and a non-WVR shareholder or shareholders enters into any arrangement or understanding to the extent that this resulted in a transfer of weighted voting rights from the beneficiary of those weighted voting rights to the non-WVR shareholder.*

### **Definition of a Connected Person and Core Connected Person**

8A.21 A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights who does not otherwise meet the rule 14A.07 definition of a "connected person" is a person deemed to be connected to the listed issuer by the Exchange under rule 14A.07(6). A beneficiary of weighted voting rights and any vehicle through which such beneficiary holds shares carrying weighted voting rights who does not otherwise meet the rule 1.01

definition of a “core connected person” is deemed to be a core connected person of the listed issuer by the Exchange.

### **Conditions for Conversion of Shares Carrying Weighted Voting Rights**

8A.22 Any conversion of shares with weighted voting rights into ordinary shares must occur on a one to one ratio.

*Note: An issuer with a WVR structure shall seek the Exchange’s prior approval of the listing of any shares that are issuable upon conversion of its shares carrying weighted voting rights.*

### **Conditions for End of WVR Structure**

8A.23 A listed issuer’s WVR structure must cease when none of the beneficiaries of weighted voting rights at the time of the issuer’s initial listing have beneficial ownership of shares carrying weighted voting rights.

## **CORPORATE GOVERNANCE**

### **Right of Non-WVR Shareholders to Convene an Extraordinary General Meeting**

8A.24 Non-WVR shareholders must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights on a one-share one-vote basis in the share capital of the listed issuer.

### **Resolutions Requiring Voting on a One-share One-vote Basis**

8A.25 Any weighted voting rights carried by any class of shares in a listed issuer must be disregarded and must not entitle the beneficiary to more than one vote per share on any resolution to approve the following matters:

- (1) changes to the listed issuer’s constitutional documents, however framed;
- (2) variation of rights attached to any class of shares;
- (3) the appointment or removal of an independent non-executive director;
- (4) the appointment or removal of auditors; and
- (5) the voluntary winding-up of the listed issuer.

8A.26 Without limiting the issuer’s obligation to comply with rule 8A.25, where a beneficiary of weighted voting rights casts their votes in a manner contradictory to the requirements of rule 8A.25, the Exchange will not accept that such resolutions have been passed in accordance with the requirements of these rules nor for determining the requisite majority of votes required for matters specified in these rules.

*Note: This action by the Exchange is without prejudice to other actions that the Exchange may take in these circumstances.*

## **Independent Non-Executive Directors**

### ***Role of an independent non-executive director***

- 8A.27 The role of an independent non-executive director of a listed issuer with a WVR structure must include but is not limited to the functions described in Code Provisions A.6.2, A.6.7 and A.6.8 of Appendix 14 to these rules.

### ***Nomination committee***

- 8A.28 Issuers with a WVR structure must establish a nomination committee that complies with Section A5 of Appendix 14 of these rules.

*Note: The appointment or re-appointment of directors, including independent non-executive directors must be subject to the recommendation of the nomination committee, in accordance with A.5.2(b) and (d) of Appendix 14 of these rules.*

- 8A.29 The nomination committee established under rule 8A.28 must be chaired by an independent non-executive director.

### ***Retirement by rotation***

- 8A.30 The independent non-executive directors of an issuer with a WVR structure must be subject to retirement by rotation at least once every three years. Independent non-executive directors are eligible for re-appointment at the end of the three year term.

## **Corporate Governance Committee**

### ***Terms of reference***

- 8A.31 An issuer with a WVR structure must establish a Corporate Governance Committee with at least the terms of reference set out in Code Provision D.3.1 of Appendix 14 to these rules, and the following additional terms:
- (1) to review and monitor whether the listed issuer is operated and managed for the benefit of all its shareholders;
  - (2) to confirm, on an annual basis, that the beneficiaries of weighted voting rights have been members of the listed issuer's board of directors throughout the year;
  - (3) to confirm, on an annual basis, that the beneficiaries of weighted voting rights have complied with rules 8A.13, 8A.17, 8A.20 and 8A.25 throughout the year;
  - (4) to review and monitor the management of conflicts of interests;
  - (5) to review and monitor all risks related to the issuer's WVR structure, including the issuer's compliance with requirements on connected transactions (Chapter 14A of these rules);

- (6) to seek to ensure effective and on-going communication between the issuer and its shareholders, particularly with regards to the requirements of rule 8A.36; and
- (7) to report on the work of the Corporate Governance Committee on at least a half-yearly and annual basis covering all areas of its terms of reference.

### **Composition**

8A.32 The Corporate Governance Committee must be comprised of a majority of independent non-executive directors and must be chaired by an independent non-executive director.

### **Reporting requirements**

8A.33 The Corporate Governance Report produced by a listed issuer with a WVR structure to comply with Appendix 14 of these rules must include a summary of the work of the Corporate Governance Committee, with regards to its terms of reference, for the accounting period covered by both the half-yearly and annual report and disclose any significant subsequent events for the period up to the date of publication of the half-yearly and annual report, to the extent possible.

### **Compliance Adviser**

8A.34 An issuer with a WVR structure must appoint a Compliance Adviser on a permanent basis commencing on the date of the issuer's initial listing.

8A.35 An issuer must consult with and, if necessary, seek advice from its Compliance Adviser, on a timely and ongoing basis in the circumstances set out in rule 3A.23 and also on any matters related to:

- (1) the WVR structure;
- (2) transactions in which the beneficiaries of weighted voting rights in the issuer have an interest; and
- (3) where there is a potential conflict of interest between public shareholders and the beneficiaries of weighted voting rights in the issuer.

### **Communication with Shareholders**

8A.36 An issuer with a WVR structure must comply with Section E "Communication with Shareholders" of Appendix 14 these rules.

### **Training**

8A.37 A new applicant and its directors must confirm to the Exchange, as part of its listing application, that its directors (including those that are beneficiaries of weighted voting rights and independent non-executive directors) and senior management, company secretary and advisers have undertaken training on these rules and the risks associated with a WVR structure.

## DISCLOSURE

### Warnings

- 8A.38 An issuer with a WVR structure must include the warning “*A company controlled through weighted voting rights*” and describe the WVR structure, the issuer’s rationale for having it and the associated risks for shareholders prominently on the front page of all its listing documents, periodic financial reports, circulars, notifications and announcements required by these rules. This warning statement must inform prospective investors of the potential risks of investing in an issuer with a WVR structure and that they should make the decision to invest only after due and careful consideration.
- 8A.39 The documents of or evidencing title for the listed equity securities of an issuer with a WVR structure must prominently include the warning “*A company controlled through weighted voting rights*”.

### Disclosure in Interim and Annual Reports

- 8A.40 An issuer with a WVR structure must identify the beneficiaries of weighted voting rights in its listing documents and in its interim and annual reports.
- 8A.41 An issuer with a WVR structure must disclose any dilution impact of a potential conversion of WVR shares into ordinary shares in its listing documents and in its interim and annual reports.

### Stock Marker

- 8A.42 The listed equity securities of an issuer with a WVR structure must have a stock name that ends with the marker “W”.

## UNDERTAKING

- 8A.43 At listing, a beneficiary of weighted voting rights must give the issuer an undertaking in a form acceptable to the Exchange that they will comply with rules 8A.09, 8A.13, 8A.16, 8A.17, 8A.19, 8A.20 and 8A.25.

## CONSTITUTIONAL DOCUMENTS

- 8A.44 Issuers with WVR structures must give force to the requirements of rules, 8A.07, 8A.09, 8A.10, 8A.12, 8A.13, 8A.15, 8A.16, 8A.17, 8A.18, 8A.19, 8A.20, 8A.22, 8A.23, 8A.24, 8A.25, 8A.27, 8A.28, 8A.29, 8A.30, 8A.31, 8A.32, 8A.33, 8A.34, 8A.35, 8A.36, 8A.38, 8A.39, 8A.40 and 8A.41 by incorporating them into their articles of association or equivalent document.



# Chapter 18A

## EQUITY SECURITIES

### BIOTECH COMPANIES

#### Scope

This Chapter sets out additional listing conditions, disclosure requirements and continuing obligations for Biotech Companies that seek to list on the basis that they are unable to satisfy either the profit test in rule 8.05(1), the market capitalisation/revenue/cash flow test in rule 8.05(2), or the market capitalization/revenue test in rules 8.05(3).

The main headings are:

18A.01	Definitions and interpretation
18A.02-18A.03	Conditions for listing of Biotech Companies
18A.04-18A.05	Contents of listing documents for Biotech Companies
18A.06	Cornerstone investors
18A.07-18A.11	Continuing obligations

Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

#### DEFINITIONS AND INTERPRETATION

18A.01 For the purposes of this Chapter unless otherwise stated or the context otherwise requires:—

- (1) terms signifying the singular include the plural and vice versa;
- (2) the following terms have the meanings set out below:—

<b>“Approved Product”</b>	a Biotech Product which has been approved for commercialisation by a Competent Authority.
<b>“Biotech”</b>	the application of science and technology to produce commercial products with a medical or other biological application.
<b>“Biotech Company”</b>	A company primarily engaged in the research and development, application and commercialisation of Biotech Products.
<b>“Biotech Product”</b>	Biotech products, processes or technologies
<b>“Competent Authority”</b>	the US Food and Drug Administration, the China Food and Drug Administration, the European Medicines Agency.

The Exchange may, at its discretion, recognise another national or supranational authority as a Competent Authority for the purposes of this Chapter in individual cases (depending on the nature of the Biotech Product).

- “Core Product”** A Regulated Product that (alone or together with other Regulated Products) forms the basis of a Biotech Company’s listing application under this chapter.
- “Cornerstone Investor”** Investors in the initial public offering of a new applicant’s shares to whom offer shares are preferentially placed with a guaranteed allocation irrespective of the final offer price, usually for the purpose of signifying that the investor has confidence in the financial condition and future prospects of the new applicant.
- “Regulated Product”** 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.

### **CONDITIONS FOR LISTING OF BIOTECH COMPANIES**

- 18A.02 An applicant that has applied for listing under this Chapter must, in addition to satisfying the requirements of this Chapter, also satisfy the requirements of Chapter 8 (other than rule 8.05).
- 18A.03 An applicant that has applied for listing under this Chapter must:—
- (1) demonstrate to the Exchange’s satisfaction that it is both eligible and suitable for listing as a Biotech Company;
  - (2) have an initial market capitalisation at the time of listing of at least HK\$1,500,000,000;
  - (3) have been in operation in its current line of business for at least two financial years prior to listing under substantially the same management; and
  - (4) ensure that it has available sufficient working capital to cover at least 125% of the group’s costs for at least 12 months from the date of publication of its listing document (after taking into account the proceeds of the new applicant’s initial listing). These costs must substantially consist of the following:—
    - (a) general, administrative and operating costs (including any production costs); and

- (b) research and development costs.

*Note 1: The Exchange would expect that the issuer would use a substantive portion of the proceeds from its initial listing to cover these costs.*

*Note 2: Capital expenditures do not need to be included in the calculation of working capital requirements for the purpose of this rule. However, where capital expenditures are financed out of borrowings, relevant interest and loan repayments must be included in the calculation.*

## **CONTENTS OF LISTING DOCUMENTS FOR BIOTECH COMPANIES**

18A.04 In addition to the information set out in Appendix 1A, a Biotech Company must disclose in its listing document:—

- (1) its strategic objectives;
- (2) the details of each Core Product, including:
  - (a) a description of the Core Product;
  - (b) details of any relevant regulatory approval required and/or obtained for each Core Product;
  - (c) summary of material communications with the relevant Competent Authority in relation to the its Core Product(s) (unless such disclosure is not permitted under applicable laws or regulations, or the directions of the Competent Authority);
  - (d) the stage of research and development for each Core Product;
  - (e) development details by key stages and its requirements for each Core Product to reach commercialisation, and a general indication of the likely timeframe, if the development is successful, for the product to reach commercialisation;
  - (f) all material safety data relating to its Core Product(s), including any serious adverse events;
  - (g) a description of the immediate market opportunity of each Core Product if it proceeds to commercialisation and any potential increased market opportunity in the future (including a general description of the competition in the potential market);
  - (h) details of any patent(s) granted and applied for in relation to the Core Product(s) (unless the applicant is able to demonstrate to the satisfaction of the Exchange that such disclosure would require the applicant to disclose highly sensitive commercial information), or an appropriate negative statement; and
  - (i) to the extent that any Core Product is in-licensed, a clear statement of the issuer's material rights and obligations under the applicable licensing agreement;

- (3) a statement that no material unexpected or adverse changes have occurred since the date of issue of the relevant regulatory approval for a Core Product (if any). Where there are material changes, these must be prominently disclosed;
- (4) a description of Approved Products (if any) owned by the applicant and the length of unexpired patent protection period and details of current and expected market competitors;
- (5) details of the Biotech Company's research and development experience, including:
  - (a) details of its operations in laboratory research and development;
  - (b) the collective expertise and experience of key management and technical staff; and
  - (c) its collaborative development and research agreements;
- (6) details of the relevant experience of the Biotech Company's directors and senior management in the research and development, manufacturing and commercialisation of Biotech Products;
- (7) the salient terms of any service agreements between the applicant and its key management and technical staff;
- (8) the safeguards and arrangements that the applicant has in place, in the event of the departure of any of its key management or technical staff;
- (9) a statement of any legal claims or proceedings that may have an influence on its research and development for any Core Product;
- (10) disclosure of specific risks, general risks and dependencies, including:
  - (a) potential risks in clinical trials;
  - (b) risks associated with the approval process for its Core Product(s); and
  - (c) the extent to which its business is dependent on key individuals and the impact of the departure of key management or technical staff on the applicant's business and operations;
- (11) if relevant and material to the Biotech Company's business operations, information on the following:—
  - (a) project risks arising from environmental, social, and health and safety issues;
  - (b) compliance with host country laws, regulations and permits, and payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis;
  - (c) its historical experience of dealing with host country laws and practices, including management of differences between national and local practice; and

- (d) its historical experience of dealing with the concerns of local governments and communities on the sites of its research and trials, and relevant management arrangements;
- (12) an estimate of cash operating costs, including costs relating to research and development and clinical trials incurred in the development of the Core Product and costs associated with:—
- (a) workforce employment;
  - (b) direct production costs, including materials (if it has commenced production);
  - (c) research and development;
  - (d) product marketing (if any);
  - (e) non-income taxes, royalties and other governmental charges (if any);
  - (f) contingency allowances; and
  - (g) any other significant costs; and

*Note: A Biotech Company must:*

- *set out the components of cash operating costs separately by category;*
- *explain the reason for any departure from the list of items to be included under cash operating costs; and*
- *discuss any material cost items that should be highlighted to investors.*

- (13) if the applicant has obtained an expert technical assessment and where relevant and appropriate, include such assessment in its listing document.

18A.05 A Biotech Company must, in respect of each Core Product, prominently disclose to investors a warning that the relevant Product may not ultimately be successfully developed and marketed.

### **CORNERSTONE INVESTORS**

18A.06 The Exchange will not consider shares allocated to a Cornerstone Investor in the initial public offering of a new applicant that is a Biotech Company, as securities of the issuer held by the public for the purpose of the Biotech Company's compliance with Rule 8.08(1) at its initial listing, and during any period immediately following its initial listing that a Cornerstone Investor is subject to a restriction, imposed by the Exchange, on the disposal of the Cornerstone Investor's shareholding in the new applicant.

## **CONTINUING OBLIGATIONS**

### **Disclosure in Reports**

- 18A.07 A Biotech Company must include in its interim (half-yearly) and annual reports details of its research and development activities during the period under review, including:
- (1) details of the key stages for each of its Core Products under development to reach commercialisation, and a general indication of the likely timeframe, if the development is successful, for the Core Product to reach commercialisation;
  - (2) a summary of expenditure incurred on its research and development activities; and
  - (3) a prominently disclosed warning that a Core Product may not ultimately be successfully developed and marketed.

### **Sufficient Operations**

- 18A.08 Where the Exchange considers that a Biotech Company listed under this chapter fails to comply with rule 13.24, the Exchange may suspend dealings or cancel the listing of its securities under rule 6.01. The Exchange may also under rule 6.10 give the relevant issuer a period of not more than 12 months to re-comply with rule 13.24. If the relevant issuer fails to re-comply with rule 13.24 within such period, the Exchange will cancel the listing.

### **Material Changes**

- 18A.09 Without the prior consent of the Exchange, a Biotech Company listed under this chapter shall 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 the listing document issued at the time of its application for listing.

### **Stock Marker**

- 18A.10 The listed equity securities of a Biotech Company listed under this chapter must have a stock name that ends with the marker "B".

### **Dis-application of rules 18A.08 to 18A.10**

- 18A.11 Upon application by the listed Biotech Company and demonstration to the Exchange's satisfaction that it is able to meet the requirements of rule 8.05, rules 18A.07 to 18A.10 do not apply to a Biotech Company listed under this chapter.

# Chapter 19C

## EQUITY SECURITIES

### SECONDARY LISTINGS OF QUALIFYING ISSUERS

#### Scope

This Chapter sets out the additional requirements, modifications or exceptions to the Exchange Listing Rules for Qualifying Issuers that have, or are seeking, a secondary listing on the Exchange.

Qualifying Issuers that are overseas issuers must also comply with Chapter 19, subject to the additional requirements, modifications and exceptions set out in this Chapter.

Qualifying Issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the applicable requirements.

#### Definitions

19C.01 In this Chapter, the following definitions apply:

**“Foreign Private Issuer”** as defined under Rule 405 of Regulation C of the U.S. Securities Act of 1933, as amended from time-to-time, and Rule 3b-4 of the U.S. Securities Exchange Act of 1934, as amended from time-to-time

**“Grandfathered Greater China Issuer”** a Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017

**“Greater China Issuer”** a Qualifying Issuer with its centre of gravity in Greater China

*Note: The following are some of the factors that the Exchange will consider in determining whether a Qualifying Issuer has its centre of gravity in Greater China:*

- (a) *whether the issuer has a listing in Greater China;*
- (b) *where the issuer is incorporated;*
- (c) *the issuer’s history;*

- (d) where the issuer is headquartered;
- (e) the issuer's place of central management and control;
- (f) the location of the issuer's main business operations and assets;
- (g) the location of the issuer's corporate and tax registration; and
- (h) the nationality or country of residence of the issuer's management and controlling shareholder.

*These factors are not exhaustive. The Exchange may take other factors into consideration in determining whether a Qualifying Issuer has its centre of gravity in Greater China.*

<b>“Non-Grandfathered Issuer”</b>	<b>Greater China</b>	a Greater China Issuer that was primary listed on a Qualifying Exchange after 15 December 2017
<b>“Non-Greater China Issuer”</b>		a Qualifying Issuer that is not a Greater China Issuer
<b>“place of central management and control”</b>		<p>the Exchange will consider the following factors to determine a Qualifying Issuer's place of central management and control:</p> <ul style="list-style-type: none"> <li>(a) the location from where the issuer's senior management direct, control, and coordinate the issuer's activities;</li> <li>(b) the location of the issuer's principal books and records; and</li> <li>(c) the location of the issuer's business operations or assets</li> </ul>
<b>“Qualifying Exchange”</b>		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
<b>“Qualifying Issuer”</b>		an issuer primary listed on a Qualifying Exchange
<b>“WVR structure”</b>		has the meaning given to it in rule 8A.02



## Basic Conditions

- 19C.02 A Qualifying Issuer seeking a secondary listing under this chapter must demonstrate to the Exchange that it is both eligible and suitable for listing.
- 19C.03 Rules 8A.04 to 8A.06 do not apply to a Qualifying Issuer seeking a secondary listing under this chapter.

## Qualifications for Listing

- 19C.04 A Qualifying Issuer must have a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.
- 19C.05 A Non-Greater China Issuer without a WVR structure must have an expected market capitalisation at the time of its secondary listing of at least HK\$10,000,000,000. All other Qualifying Issuers must satisfy one of the following:
- (1) a market capitalisation of at least HK\$40,000,000,000 at the time of listing; or
  - (2) a market capitalisation of at least HK\$10,000,000,000 at the time of listing and revenue of at least HK\$1,000,000,000 for the most recent audited financial year.

## Equivalent Standards of Shareholder Protection

- 19C.06 Appendix 3 and Appendix 13 of these rules do not apply to an overseas issuer that is a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking to secondary list under this Chapter.

*Note 1: A Non-Grandfathered Greater China Issuer seeking a secondary listing under this Chapter must comply with Appendix 3 of these rules and must also comply with Appendix 13 if it is incorporated in a jurisdiction to which Appendix 13 applies.*

*Note 2: If an overseas issuer that is a Non-Grandfathered Greater China Issuer seeks a secondary listing under this Chapter and is not incorporated in a jurisdiction covered by Appendix 13 of these rules, the Exchange will require that these companies must vary their constitutional documents to meet the standards set out in rule 19C.07 (unless these standards are already provided for in their constitutional documents and/or the laws to which they are subject).*

- 19C.07 The Exchange will consider that a Non-Greater China Issuer or a Grandfathered Greater China Issuer seeking a secondary listing has met the requirements of rule 19.30(1)(b) if it has met the following shareholder protection standards:
- (1) a super-majority vote of the Qualifying Issuer's members in general meeting is required to approve:
    - (a) changes to the rights attached to any class of shares of the Qualifying Issuer;

*Note: A super-majority vote of the Qualifying Issuer's members of the class to which the rights are attached is required to approve a change to those rights.*

- (b) changes to the Qualifying Issuer's constitutional documents, however framed; and
- (c) a voluntary winding-up of the Qualifying Issuer;

*Note: For the purpose of rule 19C.07(1), a "super-majority vote" means at least a two-thirds majority of the members present and voting where the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer have a low quorum requirement (e.g. two members). If the constitutional documents or the laws of the jurisdiction of incorporation of the Qualifying Issuer requires only the approval of simple majority only (50% plus one vote) for deciding the matters set out in 19C.07(1) these matters must be decided by a significantly higher quorum.*

- (2) any alteration to the Qualifying Issuer's constitutional document to increase an existing member's liability to the company must be agreed by such a member in writing;
- (3) the appointment, removal and remuneration of auditors must be approved by a majority of the Qualifying Issuer's members or other body that is independent of the issuer's board of directors;

*Note: An example of such an independent body is the supervisory board in systems that have a two tier board structure.*

- (4) the Qualifying Issuer must hold a general meeting each year as its annual general meeting;

*Note: Generally not more than 15 months should elapse between the date of one annual general meeting of the Qualifying Issuer and the next.*

- (5) the Qualifying Issuer must give its members reasonable written notice of its general meetings;
- (6) members must have the right to speak and vote at a general meeting except where a member is required, by these rules, to abstain from voting to approve the matter under consideration;

*Note 1: An example of such a circumstance is where a member has a material interest in the transaction or arrangement being voted upon.*

*Note 2: If a Qualifying Issuer is subject to a foreign law or regulation that prevents the restriction of a members' right to speak and vote at general meetings, the company can enter into an undertaking with the Exchange to put in place measures that achieve the same outcome as the rule 19C.07(6) restriction (e.g. any votes cast by or on behalf of a member in contravention of the rule restriction must not be counted towards the resolution).*

- (7) members holding a minority stake in the Qualifying Issuer's total number of issued shares must be able to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum stake required to do so must not be higher than 10% of the voting rights, on a one vote per share basis, in the share capital of the of the Qualifying Issuer; and
- (8) HKSCC must be entitled to appoint proxies or corporate representatives to attend the Qualifying Issuer's general meetings and creditors meetings and those proxies/corporate representatives must enjoy rights comparable to the rights of other shareholders, including the right to speak and vote.

*Note: Where the laws of an overseas jurisdiction prohibits HKSCC from appointing proxies/corporate representatives enjoying the rights described by rule 19C.07(8), the Qualifying Issuer must make the necessary arrangements with HKSCC to ensure that Hong Kong investors holding shares through HKSCC enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.*

19C.08 A Non-Greater China Issuer or a Grandfathered Greater China Issuer must demonstrate, to the Exchange's satisfaction, how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in rule 19C.07. For this purpose, the Exchange may require the issuer to amend its constitutional documents to provide them.

*Note: An issuer that is subject to rule 19C.08 can refer to the methods used to show equivalent shareholder protection standards specified in jurisdictional guidance published on the Exchange's website and amended from time-to-time.*

19C.09 A Non-Greater China Issuer or a Grandfathered Greater China Issuer must comply with the requirements set out in rule 19C.07 as an ongoing condition of their listing.

19C.10 A Qualifying Issuer must prominently disclose in its listing documents any provisions in its constitutional documents concerning the issuer's governance that are unusual compared with normal practices in Hong Kong and are specific to the issuer rather than a consequence of the laws and regulations to which the issuer is subject. A Qualifying Issuer must also prominently disclose in its listing documents how such provisions affect its members' rights.

*Note: Examples of such provisions include, but are not limited to, “poison pill” arrangements and provisions setting restrictions on the quorum for board meetings.*

### **Exceptions to the Rules for All Qualifying Issuers**

- 19C.11 The following rules do not apply to a Qualifying Issuer that has, or is seeking, a secondary listing on the Exchange: 3.17; 3.21 to 3.23; 3.25 to 3.27; 3.28; 3.29; 4.06; 4.07; Chapter 7; 8.09(4) (exception limited to issues outside the Exchange’s markets); 8.18 (exception limited to issues outside the Exchange’s markets); 9.11(10)(b); 10.05; 10.06(2)(a) to (c); 10.06(2)(e); 10.06(4); 10.06(5); 10.07(1); 10.07(2) to (4); 10.08; 13.11 to 13.22; 13.23(1); 13.23(2); 13.25A; 13.27; 13.28; 13.29; 13.31(1); 13.37; 13.38; 13.39(1) to (5); 13.39(6) to (7) (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.40 to 13.42; 13.44 to 13.45; 13.47; 13.48(2); 13.49; 13.51(1); 13.51(2) (each new director or member of the Qualifying Issuer’s governing body must sign and lodge with the Exchange, as soon as practicable, a declaration and undertaking in the form set out in Form B of Appendix 5); 13.51B; 13.51C; 13.52(1)(b) to (d); 13.52(1)(e)(i) to (ii); 13.52(1)(e)(iv) (exception limited to issues outside the Exchange’s markets); 13.52(2); 13.67; 13.68; 13.74; 13.80 to 13.87 (exception limited to circumstances other than where a spin-off proposal requires approval by shareholders of the parent); 13.88; 13.89; 13.91; Chapter 14; Chapter 14A; Chapter 15 (exception limited to issues outside the Exchange’s markets); Chapter 16 (exception limited to issues outside the Exchange’s markets); Chapter 17; 19.57; Practice Note 4 (exception limited to issues outside the Exchange’s markets); Practice Note 15 paragraphs 1 to 3(b) and 3(d) to 5 (exception limited to circumstances where the spun-off assets or businesses are not to be listed on the Exchange’s markets and the approval of shareholders of the parent is not required); Appendix 3 paragraphs 1, 2(1), 3, 4(1), 4(2), 4(4), 4(5), 5, 6, 7(1), 7(3), 8, 9, 10, 11, 13(1); Appendix 10; Appendix 14; Appendix 15; Appendix 16; Appendix 21 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent); Appendix 22 (exception does not apply in circumstances where a spin-off proposal requires approval by shareholders of the parent) and Appendix 27.

### **Additional Exceptions to the Rules for Certain Qualifying Issuers with a WVR structure**

- 19C.12 Rules 8A.07 to 8A.37, 8A.43 and 8A.44 do not apply to a Non-Greater China Issuer or a Grandfathered Greater China Issuer that has, or is seeking, a secondary listing on the Exchange.

### **Migration of the Bulk of Trading to the Exchange’s Markets**

- 19C.13 If the majority of trading in a Greater China Issuer’s listed shares migrates to the Exchange’s markets on a permanent basis, the Exchange will regard the issuer as

having a dual-primary listing and consequently the exceptions set out in rules 19C.11 will no longer apply to the issuer.

*Note 1: The Exchange will regard the majority of trading in a Greater China Issuer's listed shares to have moved to the Exchange's markets on a permanent basis if 55% or more of the total trading volume of those shares over the issuer's most recent fiscal year takes place on the Exchange's markets.*

*Note 2: A Greater China Issuer to which rule 19C.13 applies will have a grace period of 12 months within which to comply with the applicable Exchange Listing Rules. This grace period will end at midnight on the anniversary of the date of the Exchange's written notice of its decision that the majority of trading in listed shares has migrated permanently to the Exchange's markets.*

*Note 3: Any continuing transaction of a Greater China Issuer in place as at the date of the Exchange notice referred to in Note 2 will continue to be exempted from the applicable rules set out in 19C.11 for a period of three years from the date of the Exchange notice referred to in Note 2. However if such transaction is subsequently amended or renewed before the expiry of the three year period, the Greater China Issuer must comply with the relevant requirements under the rules at such time.*

*Note 4: The Exchange may apply all disciplinary measures at its disposal, including a de-listing of the issuer's listed shares, if a Greater China Issuer fails to comply with the requirements of rule 19C.13 within the grace period allowed.*

### **Foreign Private Issuers**

19C.14 A Qualifying Issuer that is a Foreign Private Issuer must prominently disclose in its listing documents the exemptions from US obligations that it enjoys because of its status as a Foreign Private Issuer and that, for this reason, investors should exercise care when investing in the listed shares of the issuer.

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## **APPENDIX II: PRIVACY POLICY STATEMENT**

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### **Privacy Policy Statement**

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### **Purpose**

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;

2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

### **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

### **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

### **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

### **Other transfers of your personal data**

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

### **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

### **Compliance with laws and regulations**

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.



## **Corporate reorganization**

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link <https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

## **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

**Contact us**

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