

3 April 2018

LEGISLATIVE COUNCIL
PANEL ON FINANCIAL AFFAIRS

**ENHANCING HONG KONG'S
LISTING FRAMEWORK**

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

HKEX
香港交易所

Charles Li
David Graham
Grace Hui

New Listing Regime - What Did We Set Out to Achieve?

OUR GOAL:

-  Enhance Hong Kong's competitiveness as a global financial centre
-  Attract high growth companies from emerging and innovative sectors
-  Diversify Hong Kong's market

Issues Identified



No regime for pre-revenue emerging & innovative companies



No regime for companies with non-standard governance features



Restrictions on secondary listings

Three New Chapters to Attract Emerging & Innovative Companies

Proposed Changes to *Main Board Rules*:

Target
Implementation:
**LATE APRIL
2018**

1 **BIOTECH** Chapter

Attract R&D focused Biotech companies

- At least one Core Product beyond concept stage (e.g. completed FDA Phase I)
- Market cap \geq HK\$1.5bn
- Primarily engaged in R&D to develop Core Product(s)
- Meaningful third party investment from sophisticated investors

2 **WVR** Chapter

Attract innovative and high growth companies

- Must be an innovative company with high growth
- WVR shares for individuals only - must be directors and been responsible for growth of business
- Market cap \geq HK\$10bn and \geq HK\$1bn of revenue⁽¹⁾
- Meaningful third party investment from sophisticated investors
- Need to meet additional disclosure requirements and safeguards

3 **SECONDARY LISTING** Chapter

Attract innovative and high growth companies

- Allow Greater China companies to secondary list in Hong Kong
- Market cap \geq HK\$10bn and \geq HK\$1bn of revenue⁽²⁾
- Primary listed on NYSE / NASDAQ / LSE⁽³⁾ for at least 2FYs with good compliance



(1) Revenue requirement applies if market cap is less than HK\$40bn
(2) Revenue requirement applies if market cap is less than HK\$40bn and the issuer has WVR or has a "centre of gravity" in the Greater China region
(3) Main Market of the LSE (and belonging to the UK FCA's "Premium Listing" segment)

SUITABILITY FOR LISTING**PRODUCT**

At least one Core Product⁽¹⁾ beyond concept stage

RESEARCH AND DEVELOPMENT

Primarily engaged in R&D of its Core Product(s) for a minimum of 12 months

IPO

Primary reason for listing is to raise capital for R&D to bring its Core Product(s) to commercialisation

PATENTS

Patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s)

SOPHISTICATED INVESTOR⁽²⁾

Meaningful investment⁽³⁾ for at least 6 months before IPO (which must remain at IPO)

Specific guidance for Biotech Issuers**Pharmaceutical (small molecule drugs)**

- completed Phase I or, for previously approved products (e.g. FDA's 505(b)(2)) – at least one trial on human subjects; and
- no objection to commence Phase II

**Biologics**

- completed Phase I, or for biosimilar – at least one trial on human subjects; and
- no objection to commence Phase II (or later)

**Medical Devices (including diagnostics)**

- Class II medical device (or equivalent) or above;
- at least one trial on human subjects;
- endorsed or no objection to proceed to further clinical trials or commence sales of the device

**Other Biotech Products**

- will be considered on a case-by-case basis;
- need to demonstrate it is beyond concept stage;
- appropriate framework or objective indicator for investors to make an informed investment decision

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Biotech Chapter

Additional Listing Requirements and Shareholder Protections

Market Cap

- **≥HK\$1.5billion**

Track Record

- **In its current line of business for at least 2 financial years**
- **Substantially the same management**

Working Capital

- **125% of the group's costs for at least next 12 months (after taking into account the proceeds of the IPO)**
- **Must substantially consist of (a) general, administrative and operating costs; and (b) R&D costs**

Restriction on Cornerstones

- **Cornerstones will not count towards minimum initial public float requirement at listing or during 6 months lock-up**
- **Existing pre-IPO investors can participate in IPO – shares subscribed in the IPO will not count towards minimum initial public float requirement**

Special Measures to Manage Risks

- **Fundamental change of principal business will require consent from the Exchange**
- **Accelerated de-listing process for failing the sufficiency of operations/assets requirement (12 months to re-comply with requirement)**
- **Stock marker “B” at the end of its stock name**



**COMPANIES****NEW APPLICANTS ONLY****HIGH MARKET CAP.**

- ≥HK\$10bn with ≥HK\$1bn in revenue if <HK\$40bn

INNOVATIVE

- as defined by guidance

SUCCESSFUL

- track record of high business growth

EXTERNAL VALIDATION

- meaningful third party investment

**WVR BENEFICIARIES****INDIVIDUALS ONLY**

- materially responsible for growth of the business
- separate consultation on corporate beneficiaries

DIRECTORS ONLY

- at listing and afterwards

SHAREHOLDING

- ≥10% and ≤50% at listing (collectively)

TRANSFERS PROHIBITED

- natural sunset
- allow trusts and legitimate tax planning

**SAFEGUARDS**

- **No increase in proportion of WVRs after listing**
- **Share-based WVR only with maximum 10x voting power vs. ordinary shares**
- **Non-WVR shareholders must have 10% of voting power**
- **Fundamental matters voted on a “one-share, one-vote” basis**
 - changes to constitutional documents;
 - INED appointment & removal;
 - auditor appointment & removal;
 - variation of rights attached to any class of shares; and
 - voluntary winding-up of the listed issuer
- **Enhanced disclosure**
 - Warnings on listing documents and communications
 - Disclosure of details of the WVR structure, rationale for WVR and associated risks
 - “W” stock marker
- **Enhanced corporate governance**
 - Corporate governance committee to review, monitor and report on compliance with WVR safeguards
 - Ongoing compliance adviser to provide advice to issuers on compliance with WVR safeguards and rules
- **Constitutional backing and legal remedies**
 - WVR safeguards must be incorporated into constitutional documents
 - WVR beneficiaries must give undertaking to the issuer, which confers benefit to shareholders, to comply with WVR safeguards

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Secondary Listing Chapter

Qualifying Criteria for New Secondary Listing Regime



QUALIFYING ISSUERS

LISTED ON QUALIFYING EXCHANGE

- NYSE, NASDAQ & LSE's Main Market ("premium" only)

GOOD COMPLIANCE RECORD

- at least 2 financial years on Qualifying Exchange

HIGH MARKET CAP

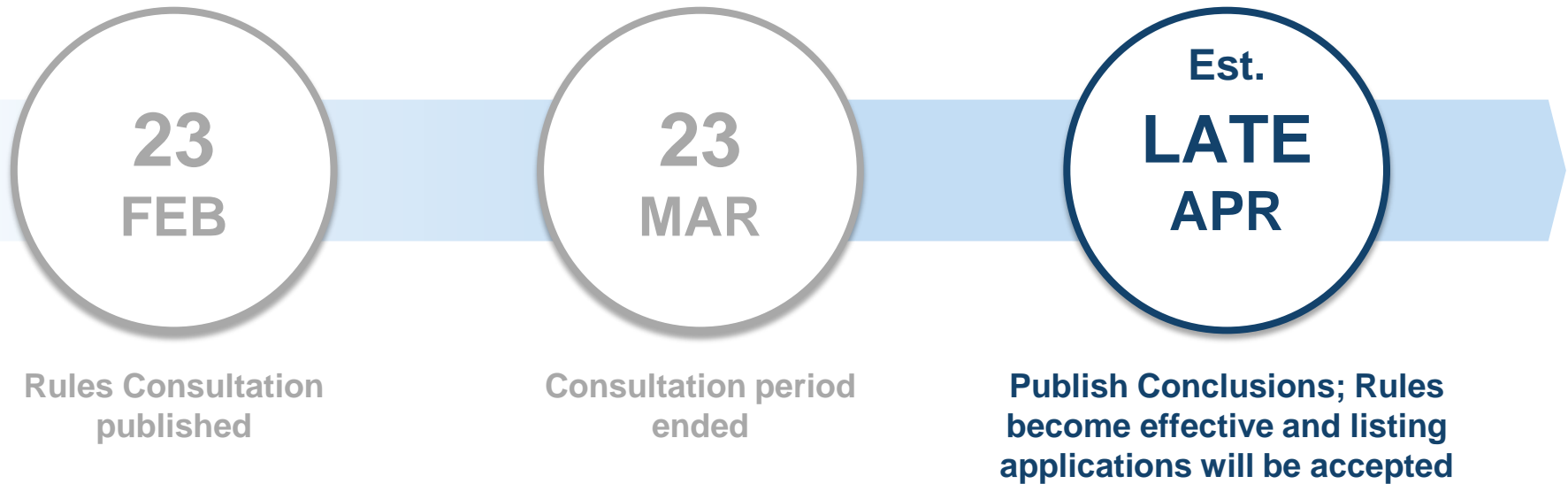
- \geq HK\$10bn with \geq HK\$1bn in revenue if less than HK\$40bn⁽¹⁾

GREATER CHINA COMPANIES PERMITTED TO SECONDARY LIST

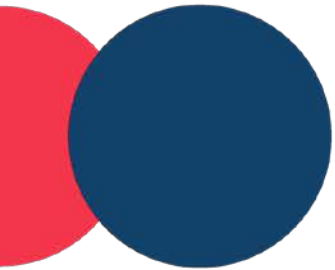


(1) Non-Greater China Issuers can list with \geq HK\$10bn only

Consultation Process



*The one month Rules consultation ended on 23 Mar 2018 and HKEX is in the process of reviewing market feedback
Target to publish conclusions and make rules effective in late April*



APPENDICES

**GRANDFATHERED
GREATER CHINA COMPANIES**

NON-GRANDFATHERED
GREATER CHINA COMPANIES

NON-GREATER CHINA
COMPANIES

GRANDFATHERED GREATER CHINA COMPANIES:

- Greater China companies that primary listed on a Qualifying Exchange on or before 15 Dec 2017
- Must demonstrate how they are subject to Key Shareholder Protections⁽¹⁾ (changes to constitutional documents may be required, as necessary)
- No need to comply with ongoing primary Listing Rule requirements (e.g. notifiable transaction and connected transaction rules)
- Can secondary list with their existing WVR structures and VIE structures intact (if they have them)
- No need for them to comply with WVR safeguards (other than those requiring disclosure)
- If “bulk of trading” moves permanently to Hong Kong then primary Listing Rule requirements would apply but not WVR safeguards (other than disclosure requirements)

(1) For example:

- 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
- 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)
- appointment, removal and the remuneration of auditors require the approval of a majority of shareholders or other body independent of the board of directors

GRANDFATHERED
GREATER CHINA COMPANIES

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NON-GREATER CHINA
COMPANIES

NON-GRANDFATHERED GREATER CHINA COMPANIES:

- Greater China companies that primary listed on a Qualifying Exchange after 15 Dec 2017
- Must vary constitutional documents as required by existing Rules to meet “equivalence” requirements
- No need to comply with ongoing primary Listing Rule requirements (e.g. notifiable transaction and connected transaction rules)
- WVR structures and VIE structures (if they have them) must conform to all primary Listing Rule requirements
- If “bulk of trading” moves permanently to Hong Kong then primary Listing Rule requirements would apply
- Approach designed to deter “regulatory arbitrage”

GRANDFATHERED
GREATER CHINA COMPANIES

NON-GRANDFATHERED
GREATER CHINA COMPANIES

**NON-GREATER CHINA
COMPANIES**

NON-GREATER CHINA COMPANIES:

- Any company from outside of Greater China primary listed on a Qualifying Exchange
- Must demonstrate how they are subject to Key Shareholder Protections⁽¹⁾ (changes to constitutional documents may be required, as necessary)
- No need to comply with ongoing primary Listing Rule requirements (e.g. notifiable transaction and connected transaction rules)
- Can secondary list with their existing WVR structures and VIE structures intact (if they have them)
- No need for them to comply with WVR safeguards (other than those requiring disclosure)
- No change if “bulk of trading” moves permanently to Hong Kong

(1) For example:

- 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
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