WEBINAR SERIES:

LISTING WEIGHTED VOTING RIGHTS, PRE-REVENUE BIOTECH AND MINERAL COMPANIES ON THE HKEX

PART II - HKEX: SECONDARY LISTING OF "INNOVATIVE" COMPANIES AND LISTING BIOTECH COMPANIES (1ST SECTION)

14 DECEMBER 2020

CHARLTONS
易周律师行

SECONDARY LISTING UNDER CH.19C

- Ch.19C - allows innovative companies primary listed on a qualifying exchange (NYSE, Nasdaq or LSE main market's premium segment) to secondary list on the HKEx

Alibaba.com

網易 NetEase

JD.京东.COM

百胜 YumChina

ZTO 中通快递 ZTO EXPRESS

zai Lab

GRANDFATHERED AND GREATER CHINA ISSUERS

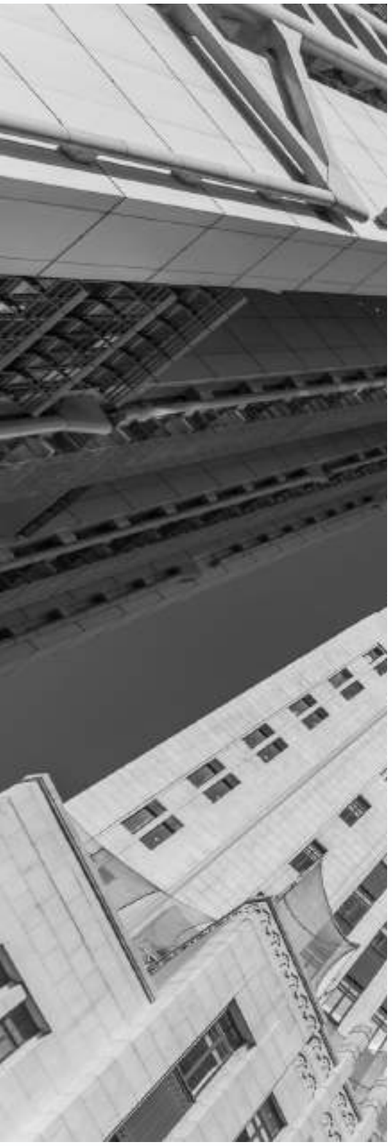
- Grandfathered Greater China Issuers - Chinese companies primary listed on a Qualifying Exchange on or before 15 December 2017

QUALIFICATIONS FOR LISTING

must be an innovative company under HKEx-GL94-18

market cap. of at least HK$40 bn at time of secondary listing or market cap. of at least HK$10 bn at listing and revenue of at least HK$1 bn for the most recent audited financial year

track record of good regulatory compliance for at least 2 full financial years on a Qualifying Exchange



EQUIVALENT STANDARDS OF SHAREHOLDER PROTECTION

- companies primary listed on a Qualifying Exchange after 15 Dec 2017 must comply with Appendix 3 of the Listing Rules and Appendix 13 if incorporated in China, Bermuda or Cayman

- Grandfathered Greater China Issuers and Non-Greater China Issuers must demonstrate to the satisfaction of HKEx how applicable domestic laws, rules and regulations and constitutional documents satisfy key shareholder protection standards set out in Ch.19C

- must prominently disclose in listing documents any governance provisions in constitutional documents that are unusual compared to normal Hong Kong practices and are specific to the company

VIE STRUCTURES

- Guidance Letter HKEx-GL94-18: Grandfathered Greater China Issuers and non-Greater China Issuers can secondary list on HKEx with existing VIE structure subject to PRC legal opinion
- Non-Grandfathered Greater China Issuers applying to list under Ch.19C must comply with Listing Decision HKEx-LD43-3 (requiring contractual arrangements to be narrowly tailored to achieve company's business purpose and minimise potential for conflict with PRC laws/regulations)

WVR COMPANIES

- must satisfy Ch.19C eligibility and suitability criteria
- non-Grandfathered Greater China issuers must ensure WVR structure complies with primary listing requirements under Ch.8A

FOREIGN PRIVATE ISSUERS

- must prominently disclose in its HK listing document the exemptions from US obligations as a result of its status as a Foreign Private Issuer

CONFIDENTIAL FILING

- new applicant may make a confidential filing (PN22)

WAIVERS FROM CONTINUING OBLIGATIONS (LR 19C.11)

- automatic waivers under 2013 Joint Policy Statement apply to Qualifying Issuers
- where a majority of trading in a Greater China Issuer's shares migrates to HKEx's markets on a permanent basis, the company will no longer enjoy the benefits of the Listing Rule waivers granted by LR 19C.11
- where a majority of trading in a non-Greater China Issuer's shares migrates to HKEx's markets on permanent basis, the company will continue to enjoy the benefits of the Listing Rule waivers granted by LR 19C.11

HANG SENG TECH INDEX

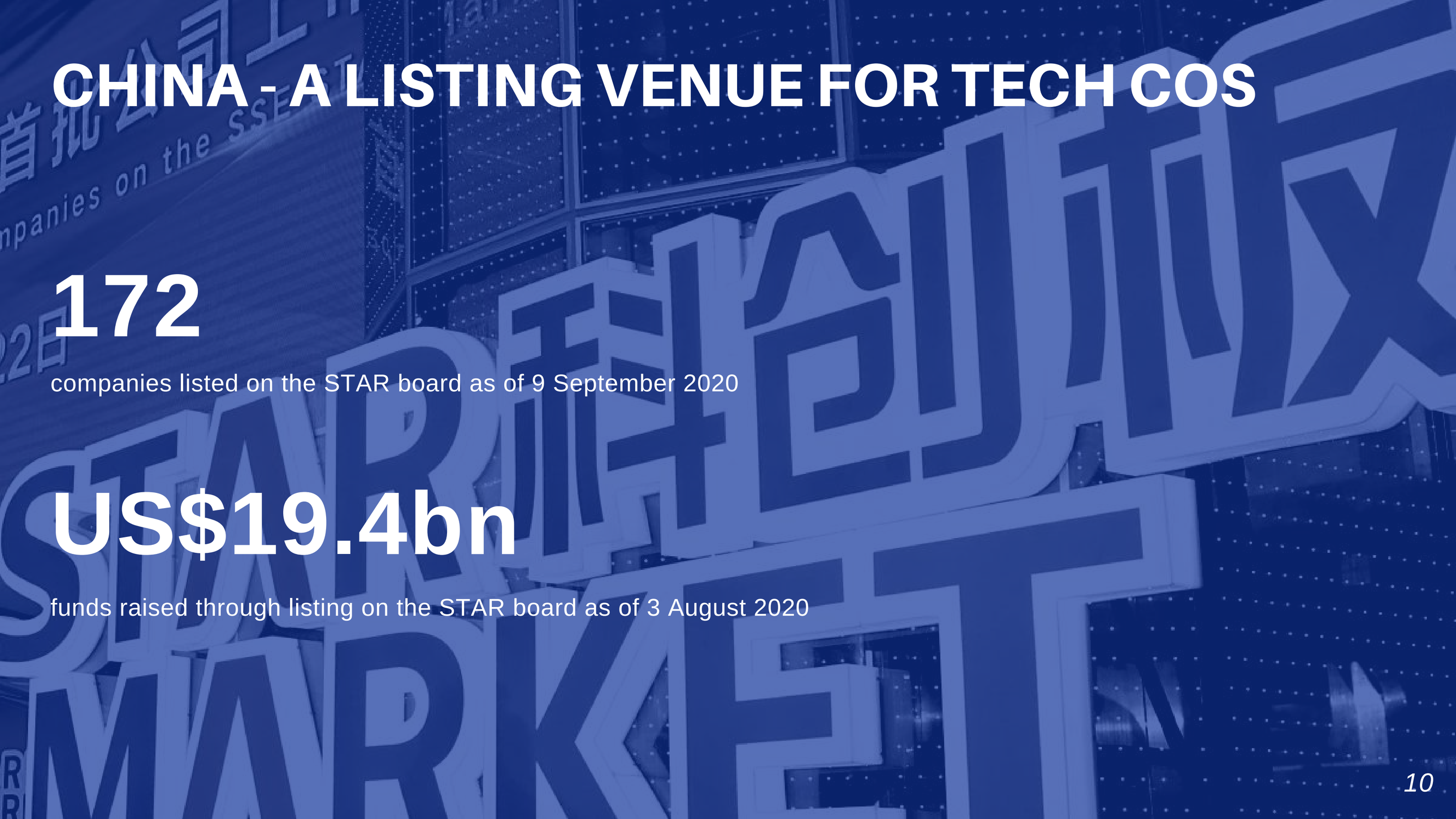
27 JUL 2020

Hang Seng TECH Index launched - tracks the 30 largest HKEx-listed tech companies

7 SEP 2020

Alibaba and Xiomi officially included in the HSI

CHINA - A LISTING VENUE FOR TECH COS



172

companies listed on the STAR board as of 9 September 2020

US$19.4bn

funds raised through listing on the STAR board as of 3 August 2020

SZSE'S ChiNext

24 Aug 2020 - first batch of 21 companies debuted

天阳科技
TANSUN

JAME
TECHNOLOGY

LISTING PRE-REVENUE BIOTECH COMPANIES

28 biotech companies listed on the Main Board of HKEx from Apr 2018 - Apr 2020 raising HK$82.5 bn

16 of which were pre-revenue biotech companies listed under Ch.18A raising HK$39.7 bn

CHAPTER 18A BIOTECH COS LISTED IN HONG KONG

BIOTECH COS LISTING IN HONG KONG

Source: HKEX, public disclosure, data as of 30 April 2020

REQUIREMENTS FOR LISTING

01 must meet the definition of a "biotech company" - primary engagement in R&D, application and commercialisation of biotech products

02 must demonstrate that it meets the suitability criteria set out in HKEx Guidance Letter GL92-18

SUITABILITY - FACTORS

01 developed at least one core product beyond the concept stage

Pharmaceuticals

- new pharmaceutical products - must have completed Phase 1 clinical trials
- pharmaceutical products based on previously approved products - must have successfully completed at least one clinical trial conducted on human subjects and relevant competent authority has not objected to it commencing Phase 2 clinical trials
- in-licensed or acquired core products - must have completed at least one clinical trial regulated by the relevant competent authority on human subjects since the in-licensing or acquisition

Biologics

- new biologic products – must have completed Phase 1 clinical trials and relevant competent authority has not objected to it commencing Phase 2 clinical trials
- core products that are biosimilar – must have completed at least one clinical trial conducted on human subjects and relevant competent authority has no objection to it commencing Phase 2 clinical trials to demonstrate bio-equivalency
- in-licensed or acquired core products - must have completed at least one clinical trial regulated by the relevant competent authority on human subjects since the in-licensing or acquisition

Medical Devices (including diagnostics)

- must demonstrate product is categorised as a Class II medical device or above and that it has completed at least one clinical trial on human subjects
- must show that the competent authority or authorised institution has endorsed or not objected to the listing applicant proceeding to further clinical trials or that the competent authority does not object to the listing applicant commencing sales of the device

Other Biotech Products

- considered on a case-by-case basis

SUITABILITY - FACTORS (cont.)

02 must be primarily engaged in R&D for development of core products and have been engaged in the R&D for at least 12 months prior to listing

03 primary reason for listing must be to raise finance for R&D to bring core products to commercialisation

04 must have registered patent(s) / patent applications and/or IP in relation to its core products

05 a listing applicant engaged in R&D of pharmaceutical products or biological products must have a pipeline of those potential products

SUITABILITY - FACTORS (cont.)

(6) must demonstrate it has previously received meaningful third party investment which is more than just a token investment from at least 1 sophisticated investor at least 6 months before the proposed listing which must continue at the date of listing

OTHER REQUIREMENTS FOR LISTING

- minimum expected market cap. of HK$1.5 bn at listing (LR18A.03(2))
- track record of operating in their current line of business for at least 2 YRs prior to listing under substantially the same management (LR18A.03(3))
- HKEx will take into account any change in applicant's ownership in the 12 months before the date of listing application (para. 4.1 GL92-18)
- working capital available to cover at least 125% of the group's costs for at least 12 months from date of publication of the listing document (after taking into account IPO proceeds) (LR 18A.03(4))

SUBSCRIPTION BY EXISTING SHAREHOLDERS

- GL92-18 - existing shareholders are allowed to participate in a biotech company's IPO provided that the company complies with the public float requirements of LR8.08(1) and LR18A.07 (share with market cap. of HK$375m publicly held at listing)
- IPO shares subscribed by existing shareholders and cornerstones not publicly held under LR18A.07
- update to GL92-18 in Apr 2020 - an existing shareholder holding < 10% of a biotech company's shares can subscribe for IPO shares as placee or cornerstone
- existing shareholder holding > 10% of biotech company's shares can subscribe IPO shares only as cornerstone
- where IPO shares will be allocated to a biotech company's core connected persons, listing applicant should apply for a waiver from LR9.09

CLAWBACK MECHANISM

must present compelling reasons if they wish to change the minimum public subscription requirement under PN18 of the Listing Rules

ACCOUNTANTS' REPORT

listing documents must include an accountants' report covering two financial years

MCQs

QUESTION 1

Which of the following statements is correct?

A. Chapter 19C secondary listing applicants must have a record of good regulatory compliance of one financial year on a Qualifying Exchange.

B. Grandfathered Greater China Issuers and Non-Greater China Issuers must comply with Appendices 3 and 17 of the Listing Rules which set out certain shareholder protection standards.

C. Companies that secondary list under Chapter 19C are granted the same Listing Rule waivers as are automatically granted to eligible secondary listed companies under the HKEx/SFC Joint Policy Statement on Listing Overseas Companies.

D. A Greater China Issuer with a WVR structure which listed on a Qualifying Exchange before 15 December 2017 (i.e. a Grandfathered Greater China Issuer with a WVR structure) must comply with the continuing obligations for WVR companies under Chapter 8A.

QUESTION 2

Which of the following statements is incorrect?

A. Companies seeking to list under Ch.19C must be innovative companies.

B. Ch.19C listing applicants must have a minimum market capitalisation of HK$40 bln or of HK$10 bln if they have revenue of at least HK$1 bln for the most recent audited financial year.

C. Companies seeking to list under Ch.19C must be primary listed on a Qualifying Exchange.

D. Companies with "unusual" governance provisions in their constitutional documents are barred from listing under Ch.19C.

QUESTION 3

Which of the following is required for a pre-revenue biotech company to be considered "suitable for listing"?

A. Its primary reason for listing is to develop its Core Products beyond the concept stage.

B. It must have at least one registered patent in relation to its Core Products.

C. It must have been engaged in the R&D of its Core Product(s) for at least 6 months prior to listing.

D. It must have received meaningful third party investment from at least one sophisticated investor at least 6 months before the proposed listing.

QUESTION 4

Which of the following is incorrect?

A. Pre-revenue biotech companies must have developed at least one core product beyond the concept stage.

B. The listing of a pre-revenue biotech company must be primarily to raise finance for R&D to bring core products to commercialisation.

C. A Ch.18A listing applicant must have engaged in the R&D of its core products for at least 6 months prior to listing.

D. A Ch.18A applicant must have previously received meaningful third party investment, which continues at the date of listing.

QUESTION 5

With respect to meaningful third party investment in a Ch.18A applicant, which of the following is NOT likely to be a sophisticated investor?

A. A major pharmaceutical / healthcare company.

B. An investment fund with AUM of HK$200 m.

C. A healthcare or biotech fund.

D. An investment fund with AUM of HK$10 bn.

Q&A