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Consultation Conclusions
on WVR Listings and
Concessionary Route to Secondary Listing

INTRODUCTION

- ▶ New Listing Rules allow high growth and innovative companies with weighted voting rights (WVR) structures to list in Hong Kong and create a new concessionary route for secondary listing.
- ▶ New Listing Rules and new guidance letters came into effect on 30 April 2018.
- ▶ [Consultation Conclusions on a Listing Regime for Companies from Emerging and Innovative Sectors](#) (the **Consultation Conclusions**) were published by the Hong Kong Stock Exchange (the **Exchange**) on 24 April 2018. The Consultation Conclusions follow [Consultation Paper](#) released in February 2018.
- ▶ New Listing Rules include three new chapters:
 - Chapter 8A provides for the listing of new economy issuers with WVR structures;
 - Chapter 19C provides a new secondary listing route for companies primary listed on certain Qualifying Exchanges; and
 - Chapter 18A provides for the listing of pre-revenue Biotech companies which meet a new HK\$1.5 million market capitalisation requirement and other additional biotech company specific listing criteria (*please see separate podcast on Biotech listings*).

LISTING OF COMPANIES WITH **WEIGHTED VOTING RIGHTS** – BACKGROUND

- ▶ Companies with WVR structures have been prevented from listing in Hong Kong by the Listing Rules “one share one vote” principle.
- ▶ As a result, many Chinese tech companies, which typically adopt WVR structures, have listed instead on the New York Stock Exchange or Nasdaq, which allow the listing of WVR companies. The loss of Alibaba Group’s IPO to New York in 2014 triggered a long and contentious debate on WVR listings and several consultations.
- ▶ Under the new Listing Rules, WVR structures are allowed but only for new listing applicants in high growth and innovative sectors.
- ▶ Since 30 April 2018, issuers have been able to submit a formal listing application.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – WVR DEFINITION

- ▶ Weighted voting rights are the voting power attached to:
 - (i) a share of a particular class that is greater or superior to the voting power attached to an ordinary share; or
 - (ii) another governance right or arrangement, which is disproportionate to the beneficiary's economic interest in the equity securities of the issuer.

- ▶ Under the new Listing Rules, only a company with a share-based WVR structure (i.e. falling within paragraph (i)) are allowed to list on the Exchange.

- ▶ A company which has a board-based WVR structure, which gives certain persons control of the board which is disproportionate to their equity stake in the company, are not able to list in Hong Kong.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – SUITABILITY

- ▶ A listing applicant with a WVR structure must demonstrate to the Hong Kong Stock Exchange that it is eligible and suitable for listing.

- ▶ According to the new [Guidance Letter HKEx-GL93-18 on Suitability for Listing with a WVR Structure](#) (the **WVR Guidance Letter**), a WVR-structured company must have the following characteristics in order to be considered suitable for listing with a WVR structure:
 1. Innovative company: the applicant must be an “innovative” company, that is a company that would normally possess more than one of the following characteristics:
 - I. its success is attributable to the application of new technologies, innovations, and/or a new business model to its core business, which differentiates the applicant from existing players;
 - II. research and development (R&D) significantly contributes to its expected value and comprises a major activity and expense;
 - III. its success is attributable to its unique features or intellectual property; and/or
 - IV. it has an outsized market capitalisation/intangible asset value relative to its tangible asset value.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – SUITABILITY (CONT.)

- The Stock Exchange acknowledges that what is considered “innovative” depends on the state of the relevant industry(ies) and market(s), which may change as technology, industries and markets develop and change.
 - A WVR-structured company may qualify for listing where it has a new and “innovative” business model; but such business model may cease to be “innovative” when adopted by numerous industry players over time, so that WVR-structured companies adopting the same business model in the future may not necessarily qualify for listing.

- The superficial application of new technology to an otherwise conventional business does not satisfy the suitability criteria.
 - For example, where a retail business merely develops an online sales platform, this would not be suitable for listing with a WVR structure unless it demonstrates other distinctive features.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – SUITABILITY (CONT.)

2. Success of the company: the applicant is required to have a track record of high business growth, as can be objectively measured by operational metrics, for example business operations, users, customers, unit sales, revenue, profits and/or market value (as appropriate) and it is expected that its high growth trajectory will continue.
3. Contribution of WVR holders: each WVR beneficiary must have been materially responsible for the business' growth, through his/her skills, knowledge and/or strategic direction in circumstances where the company's value is largely attributable or attached to intangible human capital.
4. Role of WVR holders: each WVR beneficiary should be
 - be an individual;
 - be a director at listing;
 - have an active executive role within the business; and
 - have materially contributed to the business' ongoing growth.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – SUITABILITY (CONT.)

5. External validation: the applicant must have previously received meaningful third party investment (more than a token investment) from one or more sophisticated investors.
- There are no bright line tests as to the meaning of sophisticated investor or meaningful investment.
 - Sophisticated investor: 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 (WVR Guidance Letter).
 - In determining whether an investment is “meaningful”, the Exchange examines the nature and timing of the investment, the amount invested, and the size of the stake taken up (the Consultation Conclusions)
 - The sophisticated investor(s) must retain an aggregate 50% of their investment at listing for at least six months after listing (there are exceptions for de minimis investments by specific investors where the main investors are in compliance).
 - An applicant that is a spin-off from a parent company would not normally be required to demonstrate that it has received third party investment.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – SUITABILITY (CONT.)

- ▶ The Stock Exchange exercises its discretion to determine a WVR-structured listing applicant as being suitable to list sparingly.
- ▶ All relevant circumstances are considered in making the suitability determination. The factors on slides 4-7 are neither exhaustive nor binding; and even where an applicant demonstrates these characteristics, this does not necessarily mean that the applicant meets the suitability criteria.
- ▶ The Exchange retains the discretion to reject a listing application, including the right to reject an applicant where its WVR structure is an extreme case of non-conformance with governance norms, for example if ordinary shares carry no voting rights.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – MARKET CAPITALISATION

- ▶ Listing applicants with WVR structures must have either:
 - a market capitalisation of at least HK\$40 billion at listing; or
 - a market capitalisation of at least HK\$10 billion at listing and at least HK\$1 billion of revenue in the most recent audited financial year.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – RING-FENCING AND ANTI-AVOIDANCE

- ▶ Only new applicants with a WVR structure are considered for listing.
 - The Exchange maintains the discretion to reject a listing application where it believes that the issuer has acted intentionally to avoid this rule or in a manner which has the effect of avoiding it.

- ▶ Listed issuers are restricted from increasing the proportion of WVR shares to above the proportion in issue at listing.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – RING-FENCING AND ANTI-AVOIDANCE (CONT.)

- ▶ WVR beneficiaries may allot, issue or grant shares carrying WVRs with the Exchange's approval only in certain circumstances (a pro rata offering to all shareholders or a pro rata issue of securities to all shareholders by way of scrip dividends or a stock split or other capital reorganisation) and where such corporate action does not result in an increase in the proportion of shares holding WVRs.
 - Where a WVR beneficiary does not take up any part of a pro rata offer, the shares or rights not taken up can be transferred to another person provided that such transferred rights will only entitle the transferee to an equivalent number of ordinary shares.

- ▶ Where a listed issuer reduces the number of shares in issue, the WVR beneficiaries should reduce their WVRs proportionately, if the reduction in issued shares would otherwise result in an increase in the proportion of shares carrying WVRs.

- ▶ Issuers are not permitted to change the terms of a class of shares carrying WVRs to increase the WVRs carried by that class.
 - However, issuers may reduce WVRs with the Exchange's approval, in addition to complying with any requirements under law.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – WVR BENEFICIARIES

- ▶ WVR beneficiaries are required to be natural persons and directors at listing.
 - Subject to fiduciary duties to the issuer.

- ▶ The suitability requirements in relation to WVR beneficiaries are set out in the WVR Guidance Letter (please see slide 6).

- ▶ A beneficiary's WVRs cease in certain circumstances:
 - where the WVR beneficiary dies or ceases to be a director; or
 - where the Stock Exchange deems the WVR beneficiary to be incapacitated for the purpose of performing his/her duties as a director or to no longer satisfy the Listing Rules' requirements of a director.

- ▶ This “event-based sunset” provision means that WVRs will not continue for an unlimited period of time.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – WVR BENEFICIARIES (CONT.)

- ▶ All beneficiaries of WVRs must collectively beneficially own at least 10% of the underlying economic interest in the applicant's total issued share capital at listing.
 - This requirement does not continue after listing.
 - A shareholding below 10% may be accepted by the Stock Exchange on a case by case basis, if such interest represents a very high amount in absolute dollars terms, for example where the applicant's expected market capitalisation is above HK\$80 billion.

- ▶ The proposed 50% ceiling on WVR beneficiaries' total interest was removed in the Consultation Conclusions given concerns that WVR beneficiaries may lose control where the issuer expects that it will require significant post-listing funding and/or a significant proportion of shares must be set aside for employee incentivisation. These concerns meant that the 50% cap might have limited Hong Kong's competitiveness for WVR listings.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CONNECTED PERSON AND CORE CONNECTED PERSON

- ▶ A WVR beneficiary and any vehicle through which such beneficiary holds shares carrying WVRs are deemed to be:
 - connected to the listed issuer, and
 - core connected persons of the issuer(if not already otherwise connected persons or core connected persons, respectively).

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – OWNERSHIP CONTINUITY AND CONTROL

- ▶ The Exchange stated in the Consultation Conclusions that an applicant may be able to rebut a presumption that there has been a change in ownership continuity and control, by demonstrating that there was no material change in influence on management notwithstanding the technical change in controlling shareholder(s) resulting from an increase in voting power conferred by the WVR structure.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – LIMITS ON WVR POWER

- ▶ WVRs must be attached only to a class of equity securities, and such class cannot list.
- ▶ In the Consultation Conclusions, the Stock Exchange clarified that it normally expects that only one share class will carry WVRs.
 - However, applications by companies with more than one class holding WVRs will be considered on an individual case basis where there is sufficient justification based on individual circumstances for having such multiple classes and the WVR structure is not an extreme case of non-conformance with governance norms.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – LIMITS ON WVR POWER (CONT.)

- ▶ A WVR structure may confer on a beneficiary only enhanced voting power on resolutions tabled at general meetings (apart from the matters that the Listing Rules require to be decided on a one vote per share basis).
 - The rights attached to WVR shares are required to be the same in all other respects to the rights attached to the company's ordinary shares.

- ▶ WVR beneficiaries must not be entitled to more than ten times the voting power of ordinary shares.

- ▶ Non-WVR shareholders must be permitted to cast 10% or more of the votes that are eligible to be cast on resolutions at general meetings.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – NON-WVR SHAREHOLDERS' RIGHTS

- ▶ Non-WVR shareholders holding 10% or more of voting rights on a one vote per share basis must be able to:
 - convene an extraordinary general meeting (EGM); and
 - add resolutions to the EGM agenda.

- ▶ Resolutions on the following matters may only be made on a one vote per share basis and WVR beneficiaries may not be able to exercise their WVRs:
 - changes to the issuer's constitutional documents, however framed;
 - variation of rights attached to any class of shares;
 - the appointment or removal of an independent non-executive director;
 - the appointment or removal of auditors; and
 - the voluntary winding-up of the issuer.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – WVR SHAREHOLDERS' RIGHTS

- ▶ In response to consultation feedback, a new provision has been included to prevent non-WVR holders from being able to remove or modify WVR structures:
 - The WVRs attached to a share class may be varied only where the holders of that class consent as specified in the regulations and/or laws of the issuer's jurisdiction of incorporation. Where such approval is not included in the regulations and/or laws, the Exchange will require the issuer to include such approval in its constitutional documents (to the extent not prohibited under the laws of its jurisdiction of incorporation).

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – RESTRICTION ON TRANSFER OF WVR SHARES

- ▶ The WVRs attached to a WVR beneficiary's shares cease if the WVR beneficiary transfers to another person his/her beneficial ownership of, or economic interest in, the WVR shares, or the control over the voting rights attached to such shares.

- ▶ A limited partnership, trust, private company or other vehicle is permitted to hold the WVR shares on behalf of the beneficial owner, provided that such arrangement does not result in a circumvention of the restriction on transfer of WVR shares.
 - Where a vehicle holding WVR shares no longer complies with this rule, the beneficiary's WVRs must cease.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – RESTRICTION ON TRANSFER OF WVR SHARES (CONT.)

- ▶ In the Consultation Conclusions, the Exchange clarified that the following arrangements do not result in WVRs ceasing:
 - partnership – where the terms of the partnership expressly stipulate that the voting rights attached to the shares are solely dictated by the WVR beneficiary;
 - trust – where (i) the purpose of the trust is for estate planning and/or tax planning purposes, and (ii) the WVR beneficiary in substance retains an element of control of the trust and any immediate holding companies or, if not permitted in the relevant tax jurisdiction, retains a beneficial interest in the WVR shares; and
 - private company or other vehicle – where at all relevant times the WVR beneficiary wholly owns and controls the vehicle.

- ▶ According the Consultation Conclusions, in exceptional circumstances, the Exchange may consider granting a waiver where an issuer justifies the need for stock borrowing using WVR shares.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CONVERSION OF WVR SHARES INTO ORDINARY SHARES

- ▶ Where there is a conversion of WVR shares into ordinary shares, the conversion must take place on a one-to-one ratio.
- ▶ Issuers must obtain approval from the Exchange for the listing of shares that are issuable upon conversion of its shares carrying WVRs.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – ENHANCED DISCLOSURE

- ▶ A WVR-structured issuer must have a stock marker “W” at the end of its stock name.

- ▶ An issuer must also:
 - prominently disclose a warning (“A company controlled through weighted voting rights”) on the front page of its corporate documents (its listing document, periodic financial reports, circulars, notifications and announcements); and
 - describe prominently in its listing document and periodic financial reports the WVR structure, its rationale and risks for shareholders.

- ▶ An issuer must disclose in its listing documents and interim and annual reports:
 - the WVR beneficiaries;
 - the impact of a potential conversion of WVR shares into ordinary shares on its share capital; and
 - all circumstances in which the WVRs will cease.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CORPORATE GOVERNANCE COMMITTEE

- ▶ WVR-structured issuers are required to establish a Corporate Governance Committee (CGC) comprising only of independent non-executive directors (INEDs) and chaired by an INED.

- ▶ The CGC must perform the corporate governance duties set out in the terms of reference of Code Provision D.3.1 of the Corporate Governance Code and Corporate Governance Report (Appendix 14 to the Listing Rules) and on 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 annually that the WVR beneficiaries have been directors throughout the year and that no matters have occurred that would result in cessation of any WVRs (please see “WVR beneficiaries” on slide 12);
 - c) to confirm annually whether or not the WVR beneficiaries have complied with certain Chapter 8A restrictions throughout the year, including on reduction of shares, transfer of WVR shares and resolutions requiring one vote per share;
 - d) to review and monitor the management of conflicts of interests, and make a recommendation to the board where there is a potential conflict of interest between (i) any WVR beneficiary and (ii) the issuer and/or subsidiary of the issuer and/or shareholders of the issuer (as a group);

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CORPORATE GOVERNANCE COMMITTEE (CONT.)

- e) to review and monitor all risks related to the issuer's WVR structure, including connected transactions between (i) any WVR beneficiary and (ii) the issuer and/or subsidiary of the issuer, and to make a recommendation to the board in relation to any such connected transaction;
 - f) to make a recommendation to the board in relation to the appointment or removal of the compliance adviser;
 - g) to seek to ensure effective and on-going communication between the issuer and its shareholders, especially in relation to the requirements concerning the issuer's shareholder communication policy (such policy is mandatory for WVR-structured issuers); and
 - h) to report on the work of the CGC on at least a half-yearly and annual basis covering all areas of its terms of reference, including disclosure of its recommendations specified in points (d)-(g) above, on a comply to explain basis.
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- ▶ The CGC may invite members of management to attend CGC meetings, as required.
 - ▶ The Corporate Governance Report must include a summary of the CGC's work and disclosure of any significant events, to the extent possible.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – ENHANCED CORPORATE GOVERNANCE

- ▶ Chapter 8A mandates certain provisions of the Corporate Governance Code and Corporate Governance Report governing the role of INEDs.
- ▶ WVR-structured issuers must establish a nomination committee responsible for making recommendations to the board on the nomination of directors.
 - The committee must comprise a majority of INEDs and be chaired by an INED.
- ▶ Chapter 8A mandates retirement of INEDs by rotation at least once every three years.
 - INEDs are eligible for re-appointment at the end of the three year term.
- ▶ An issuer is required to engage a compliance adviser permanently from the date of listing.
 - The issuer should consult with, and where necessary, seek advice from its adviser in the usual circumstances set out in Listing Rule 3A.23, as well as on any matters related to the WVR structure, transactions in which any WVR beneficiary has an interest, and where there is a potential conflict of interest between (i) the issuer, a subsidiary of the issuer and/or shareholders of the issuer (as a group) and (ii) the WVR beneficiaries.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – ENHANCED CORPORATE GOVERNANCE (CONT.)

- ▶ An applicant's directors, senior management and company secretary must undergo training on WVR Listing Rules and WVR associated risks.
 - The requirement that advisers should undertake such training was removed in the Consultation Conclusions.
- ▶ WVR beneficiaries are required to give an undertaking to the issuer that they will comply with the relevant WVR safeguards.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CONSTITUTIONAL BACKING

- ▶ Companies must give effect to the safeguards under Chapter 8A by including them in their articles of association or equivalent document.
 - This allows shareholders to take civil action against the company in order to enforce the WVR safeguards.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – PRC FOREIGN INVESTMENT LAW

- ▶ Draft PRC Foreign Investment Law (issued in January 2015) – companies in control, or de facto control, by a Chinese citizen would not be subject to foreign investment restrictions.
- ▶ WVR Guidance Letter: if the draft Foreign Investment Law were to be implemented, a WVR-structured issuer with WVR beneficiaries who are PRC citizens may potentially use WVRs to demonstrate compliance with the draft PRC Foreign Investment Law in that the WVR beneficiaries have de facto control of an issuer that is in an industry subject to foreign ownership restrictions.
 - The applicant should disclose the risk that its WVRs may decrease and consequently that it may not be able to comply with the PRC Foreign Investment Law.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – CORPORATE WVR BENEFICIARIES

- ▶ WVR beneficiaries must be natural persons.

- ▶ The Hong Kong Stock Exchange will launch a new consultation by 31 July 2018 to explore the option of allowing corporate entities to hold WVRs.
 - The consultation paper will seek comments as to whether, and if so, on what basis corporate entities should be allowed to benefit from WVRs.

LISTING OF COMPANIES WITH WEIGHTED VOTING RIGHTS – ENFORCEMENT

- ▶ Where there is any breach of the requirements of Chapter 8A, the Stock Exchange may, in its absolute discretion:
 - direct a trading halt, suspend dealings or cancel the listing of the issuer;
 - impose disciplinary sanctions; or
 - withhold approval for a listing application or the issuance of a circular.

SECONDARY LISTING OF QUALIFYING ISSUERS – BACKGROUND

- ▶ Overseas Issuer: an issuer incorporated or otherwise established in a jurisdiction outside Hong Kong.
- ▶ An Overseas Issuer which is already listed on another stock exchange, may secondary list on the Main Board under Chapter 19 of the Listing Rules.
 - The Exchange/SFC Joint Statement on the Listing of Overseas Issuers however prevents a secondary listing on the Exchange of issuers whose “centre of gravity” is in China.
- ▶ The Consultation Paper proposed creating a new concessionary route to secondary listing for Chinese issuers under a new Chapter 19C.
- ▶ Chapter 19C came into effect on 30 April 2018 and allows a company primary listed on a Qualifying Exchange to secondary list on the Exchange (**Qualifying Issuers**).
 - A **Qualifying Exchange** includes NYSE, NASDAQ or the “premium listing” segment of LSE’s Main Market.
 - Chapter 19C is not restricted to issuers incorporated or established overseas, and applies to both Overseas Issuers and Hong Kong incorporated issuers.

SECONDARY LISTING OF QUALIFYING ISSUERS – GREATER CHINA ISSUER DEFINITION

- ▶ Greater China Issuer: a Qualifying Issuer with its centre of gravity in Greater China.

- ▶ Non-Greater China Issuer: a Qualifying Issuer that does not have its centre of gravity in Greater China.

- ▶ The Exchange considers the following non-exhaustive factors when determining whether a Qualifying Issuer has its centre of gravity in Greater China:
 - whether the issuer is listed in Greater China;
 - the issuer's jurisdiction of incorporation;
 - the issuer's history;
 - where the issuer is headquartered;
 - the issuer's place of central management and control;
 - where the issuer's main business operations and assets are located;
 - the location of the issuer's corporate and tax registration; and
 - the nationality or country of residence of the issuer's management and controlling shareholder.

SECONDARY LISTING OF QUALIFYING ISSUERS – GRANDFATHERED GREATER CHINA ISSUER DEFINITION

- ▶ Chapter 19C differentiates between companies which have primary listed (i) on or before 15 December 2017 and (ii) after 15 December 2017 (the date the New Board Concept Paper Conclusions were published).
 - Deter issuers from listing on a Qualifying Exchange and then seeking a secondary listing in Hong Kong in order to circumvent Hong Kong's primary listing requirements.

- ▶ Grandfathered Greater China Issuer: a Greater China Issuer primary listed on a Qualifying Exchange on or before 15 December 2017.

- ▶ Non-Grandfathered Greater China Issuer: a Greater China Issuer that was primary listed on a Qualifying Exchange after 15 December 2017.

SECONDARY LISTING OF QUALIFYING ISSUERS – QUALIFICATIONS FOR LISTING

- ▶ A Qualifying Issuer is required to be eligible and suitable for listing. The Exchange would normally regard a Qualifying Issuer as suitable for secondary listing where it is an innovative company. The “innovative company” requirements are the same as those for issuers with a WVR structure (please see slides 4-5).
- ▶ A Qualifying Issuer is required to have a record of good regulatory compliance of at least two full financial years on a Qualifying Exchange.
- ▶ A Qualifying Issuer (excluding a Non-Greater China Issuer without a WVR structure) must have:
 - a market capitalisation of at least HK\$40 billion at listing; or
 - a market capitalisation of at least HK\$10 billion at listing and at least HK\$1 billion of revenue in its most recent audited financial year.
- ▶ A Non-Greater China Issuer which does not have a WVR structure must have an expected market capitalisation of at least HK\$10 billion at the time of secondary listing in Hong Kong.

SECONDARY LISTING OF QUALIFYING ISSUERS – CENTRE OF GRAVITY

- ▶ 2013 SFC and Exchange Joint Policy Statement regarding the Listing of Overseas Companies (2013 JPS): an application for secondary listing from an overseas company with its “centre of gravity” in the Greater China region would not be approved.
- ▶ New concessionary route of Chapter 19C: Greater China Issuers may apply for secondary listing in Hong Kong.

SECONDARY LISTING OF QUALIFYING ISSUERS – AUTOMATIC WAIVERS

- ▶ Under Chapter 19C, waivers from the Listing Rules which are already automatically granted to eligible listed companies seeking secondary listing under the 2013 JPS are codified.
 - Includes requirements regarding connected transactions, notifiable transactions and the Corporate Governance Code.
- ▶ All Qualifying Issuers may enjoy such waivers.

SECONDARY LISTING OF QUALIFYING ISSUERS – EQUIVALENCE REQUIREMENT

- ▶ Non-Greater China and Grandfathered Greater China Issuers are required to demonstrate, to the Exchange’s satisfaction, how applicable domestic laws, rules and regulations and their constitutional documents, in combination, satisfy key shareholder protection standards set out in Chapter 19C. An issuer may be required to amend its constitutional documents.
- ▶ Any provisions in a Qualifying Issuer’s constitutional documents relating to its 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 it is subject), and how such provisions affect its members’ rights, must be prominently disclosed in listing documents.
 - Examples of provisions include, without limitation, “poison pill” arrangements and provisions imposing restrictions on quorums for board meetings.

SECONDARY LISTING OF QUALIFYING ISSUERS – VIE STRUCTURES CONTRACTUAL ARRANGEMENTS

- ▶ Companies often use Contractual Arrangements (i.e. VIE structures) to indirectly own and control businesses operating in an industry sector that is subject to foreign investment restrictions under PRC law.
- ▶ Listing Decision HKEx-LD43-3 sets out the Stock Exchange's approach to Contractual Arrangements, including that such arrangements should be narrowly tailored to achieve the issuer's business purpose and minimise the potential for conflict with applicable PRC laws and regulations. An issuer may also be required, on an individual case basis, to demonstrate that it is able to comply with the draft PRC Foreign Investment Law (if the law is implemented).
- ▶ Issuers listed on Qualifying Exchanges which have Contractual Arrangements may not satisfy the Exchange's current guidance in all respects.

SECONDARY LISTING OF QUALIFYING ISSUERS – VIE STRUCTURES CONTRACTUAL ARRANGEMENTS (CONT.)

- ▶ Under the new [Guidance Letter HKEx-GL94-18 on Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C \(Secondary Listing Guidance Letter\)](#), Grandfathered Greater China Issuers and Non-Greater China Issuers may secondary list with their existing Contractual Arrangements in place and are not required to demonstrate that they are able to comply with the draft PRC Foreign Investment Law. Issuers are required to:
 - comply with the disclosure requirements specified in the listing decision; and
 - provide the Exchange with a PRC legal opinion that their Contractual Arrangements comply with PRC laws, rules and regulations.
- ▶ Where a WVR-structured issuer applying for Chapter 19C listing uses WVRs to demonstrate compliance with the draft PRC Foreign Investment Law, and such WVRs do not exist indefinitely, the applicant should disclose the risk that its WVRs may decrease, and that it may not be able to comply with the PRC Foreign Investment Law as a result.

SECONDARY LISTING OF QUALIFYING ISSUERS – WVR COMPANIES

- ▶ Qualifying Issuers with a WVR structure seeking a Chapter 19C secondary listing must satisfy the Chapter 19C (rather than Chapter 8A) eligibility and suitability criteria, which are set out under “Qualifications for listing” on slide 35.
- ▶ There is no requirement on Non-Greater China Issuers and Grandfathered Greater China Issuers to comply with the ongoing WVR safeguards, excluding the disclosure requirements.
- ▶ The requirement that the Stock Exchange only considers listing with a WVR structure from new applicants does not apply to listing applicants which seek secondary listing under the new concessionary route.

SECONDARY LISTING OF QUALIFYING ISSUERS – NON-GRANDFATHERED GREATER CHINA ISSUERS

- ▶ Non-Grandfathered Greater China Issuers are not granted the concessions from the equivalence requirement, Contractual Arrangements or WVR companies.

- ▶ A Non-Grandfathered Greater China Issuer seeking secondary listing under Chapter 19C must:
 - vary its constitutional documents to satisfy the key shareholder protection standards (as applicable);
 - ensure that its WVR structure complies with the primary listing requirements under Chapter 8A, including ongoing WVR safeguards and disclosure requirements;
 - comply with Listing Decision HKEx-LD43-3 on Contractual Arrangements; and
 - if the PRC Foreign Investment Law comes into effect, it may be required, on a case by case basis, to demonstrate that it is able to comply with the legislation.

SECONDARY LISTING OF QUALIFYING ISSUERS – FOREIGN PRIVATE ISSUERS

- ▶ A Qualifying Issuer that is classified in the United States as a Foreign Private Issuer under the US Securities Act of 1933 and the US Securities Exchange Act of 1934 must prominently disclose in its Hong Kong listing document the exemptions from US obligations that it enjoys resulting from its status as a Foreign Private Issuer, and that, for this reason, investors should exercise care when investing in the issuer.

SECONDARY LISTING OF QUALIFYING ISSUERS – CONFIDENTIAL FILING

- ▶ Current Practice Note 22: a new applicant must submit its Application Proof to the Exchange for publication on the Exchange's website. However, a new applicant which has been listed on a recognised overseas exchange for at least five years and has a significantly large market capitalisation at the time of filing its listing application, may make a confidential filing of its Application Proof.
- ▶ Practice Note 22 has been amended so that a new applicant seeking listing under Chapter 19C may make a confidential filing.

SECONDARY LISTING OF QUALIFYING ISSUERS – MIGRATION OF THE BULK OF TRADING TO HONG KONG

- ▶ Where the majority of trading in a Greater China Issuer's shares migrates to the Exchange's markets on a permanent basis, the issuer will be regarded as having a dual-primary listing, and will no longer enjoy the benefit of automatic waivers (please see "Automatic Waivers" on slide 37).
 - A majority of trading moves to Hong Kong on a permanent basis if at least 55% of the total worldwide trading volume in dollars, of those shares over the issuer's most recent financial year, takes place on the Exchange's markets.

- ▶ Issuers will have a twelve month grace period to comply with the relevant Listing Rules.

- ▶ Continuing transactions will not have to comply with the Listing Rules for three years from the date of the Exchange's notice of its decision that the majority of trading has migrated permanently to Hong Kong.

SECONDARY LISTING OF QUALIFYING ISSUERS – MIGRATION OF THE BULK OF TRADING TO HONG KONG (CONT.)

- ▶ Where the majority of trading in a Non-Greater China Issuer's shares migrates to Hong Kong, such issuer will continue to benefit from the automatic waivers.
- ▶ If the majority of trading in the shares of a Non-Greater China Issuer with a WVR structure or a Grandfathered Greater China Issuer with a WVR structure migrates to Hong Kong, such issuer will not be required to comply with the ongoing WVR safeguards, except for the disclosure requirements.
- ▶ There is no requirement on Grandfathered Greater China Issuers and Non-Greater China Issuers to amend their Contractual Arrangements if the majority of trading in their shares moves to Hong Kong.

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