

## Client Alert

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## Innovative companies with weighted voting rights (WVR) structures can apply for listing in Hong Kong with effect from 30 April 2018

### Current position

On 24 April 2018, The Stock Exchange of Hong Kong Limited (HKEx) published its [Consultation Conclusions to HKEx's proposals to expand Hong Kong's listing regime to facilitate the listing of emerging and innovative companies](#) (the "**Conclusion**"). On 30 April 2018, the new listing rules and the three relevant guidance letters will take effect and HKEx will start to accept listing applications filed under the following three new chapters in the Main Board Listing Rules:

- Chapter 8A - permits listings of innovative companies with weighted voting rights (WVR) structures;
- Chapter 18A - permits listings of pre-revenue biotech companies that do not satisfy any of the financial eligibility tests; and
- Chapter 19C - establishes a new concessionary secondary listing route for innovative companies that have their primary listings on the New York Stock Exchange, Nasdaq or the Main Market of the London Stock Exchange (Premium).

**This client alert will focus on the listings of innovative companies with WVR structures. For pre-revenue biotech companies, please refer to the [biotech company client alert](#).**

### Innovative Company

To attract more good quality and high growth companies to list in Hong Kong, innovative companies with a WVR structure can primary list in Hong Kong under Chapter 8A. Generally, eligible companies are required to demonstrate that they are genuinely innovative both internally and externally.

Internally, the nature of the innovation is expected to be demonstrated by the company's distinctive core business, significant proportion of research and development, unique intellectual property and outsized market capitalisation. Externally, an eligible company must show its success by:

- its objectively measured track record and projection of high business growth;
- the receipt of meaningful third party investments from at least one sophisticated investor; and
- recognition of the contribution of the WVR beneficiaries to the success of the company.



The expected market capitalisation of an innovative company is at least HK\$10 billion (approximately US\$1.28 billion) and at least HK\$1 billion of revenue for the most recent audited financial year if expected market capitalisation is less than HK\$40 billion.

## Weighted Voting Rights (WVR)

Traditionally, "one-share, one-vote" is the principal shareholding structure of companies listed in Hong Kong. Under the new listing rules, "weighted voting right" refers to a greater voting power (maximum of ten times) attached to a particular class of share. Nevertheless, certain fundamental matters must always be subject to voting on a "one-share, one-vote" basis, such as changes to constitutional documents, independent non-executive directors and auditors and variation of class rights.

## Investor Protection Measures

A company with WVR structure is required to incorporate a basket of safeguard measures into its constitutional documents to allow shareholders to take civil actions, if needed. WVR beneficiaries must be individual directors who are materially responsible for the growth of the business. At the time of listing, WVR beneficiaries must collectively hold at least 10% of the underlying economic interest in the company's total issued share capital. Under the "natural sunset" mechanism, WVR will fall away when the WVR beneficiary dies, is incapacitated, ceases to be a director or transfers away their WVR shares.

## Secondary Listing (of large Chinese Innovative Companies)

Chinese innovative companies that were previously prohibited from secondary listing in Hong Kong due to the centre of gravity restrictions are now permitted to have secondary listings in Hong Kong. For qualifying companies already listed on the New York Stock Exchange, the Nasdaq or the Main Market (Premium) of the London Stock Exchange before 15 December 2017 and have a good compliance record in the last two financial years, their secondary listing in Hong Kong may not require any changes to their existing WVR structures or variable interest entity structures (VIE structures). The minimum market capitalisation for Chinese companies at the time of secondary listing is HK\$10 billion (approximately US\$1.28 billion) and at least HK\$1 billion of revenue for the most recently audited financial year if the expected market capitalization is less than HK\$40 billion.

## What are the major differences between the Proposal and the Conclusion?

HKEx implements the new listing rules broadly as proposed. The major differences between the proposed amendments in the consultation paper released on 23 February 2018 ("**Proposal**") and the Conclusion are summarized below:



<b>Differences</b>	<b>Proposal</b>	<b>Conclusion</b>
Characteristics of emerging and innovative companies	See the above section titled "Innovative Company"	Criteria set out in guidance letters which are attached in Appendix II (Part II and III) of the Conclusion.
Minimum and maximum economic interests of all WVR beneficiaries at the time of listing (Rule 8A.12)	10%-50% of the underlying economic interest	Remove the 50% maximum underlying economic interest
Composition and responsibility of Corporate Governance Committee (Rule 8A.30 & Rule 8A.31)	Mostly of INED	Entirely of INED. Corporate Governance Committee should make recommendations on WVR beneficiaries' conflicts of interests / connected transactions.
Transferability of untaken shares (or rights) in a pro-rata offering (Rule 8A.14)	Not allowed	A WVR beneficiary can transfer its untaken shares (or rights) in a pro-rata issue to another person (in form of ordinary shares)
Disclosure of circumstances in which the WVRs attached to its shares will cease (Rule 8A.41)	Nil	Disclosure is required in listing documents, annual and interim reports
Confidential filing of secondary listing (Practice Note 22)	Nil	Enable applicants to make a confidential filing of its Application Proof.

In addition, HKEx has clarified the following issues:

- The arrangements that are acceptable regarding holding WVRs through limited partnerships, trusts, private companies and other vehicles.
- HKEx does not propose to deem a WVR beneficiary as a controlling shareholder or deem WVR beneficiaries as a group of controlling shareholders.
- HKEx will regard the majority of trading in a Greater China Issuer's listed shares to have moved to HKEx on a permanent basis if 55% or more of the total worldwide trading volume (by dollar value) of those shares (including depository receipts) takes place on HKEx.



## Spin-offs

In the context of spin-offs of innovative companies with WVR structures, HKEx will launch a separate consultation on whether corporate WVR beneficiaries would be accepted. Since allowing corporate entities to benefit from WVRs would be a significant development from the previous consultations and the time limit of corporate WVR is controversial, market participants are encouraged to express their views when HKEx releases its corporate WVR consultation paper.

## Read More

For our analysis on the competition for listing innovative companies, please see our [article](#) first published in the April 2018 edition of IFLR.

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