

# Hong Kong Stock Exchange Fleshes Out Game Plan for Dual Class and Biotech Listings

February 27, 2018

## Introduction

Two months ago in December 2017, the market greeted with great interest the [Consultation Conclusions to the Hong Kong Stock Exchange's New Board Concept Paper](#) (“Concept Paper Conclusions”) containing a blueprint for opening up the Main Board of the Hong Kong Stock Exchange as a listing venue to “new economy” enterprises, in particular companies with a dual-class share structure and pre-revenue biotech companies. Prior to the proposed reforms, both types of companies remain barred from applying for a listing in Hong Kong.

The Stock Exchange has with much dispatch followed up the Concept Paper Conclusions by issuing on 23 February 2018 the [Consultation Paper on A Listing Regime for Companies from Emerging and Innovative Sectors](#) (“Consultation Paper”), which fleshes out for public consultation the detailed regulatory approach to such listings. The reforms will be by way of amendments to the Main Board Listing Rules (“Listing Rules”) and issue of relevant guidance.

In this memorandum we shall take a closer look at the draft new rules, noting in particular how each of the key themes previously identified in the Concept Paper Conclusions is being materialised in the rules, as well as some practical issues arising from the proposed regime.

## Dual class shares / weighted voting rights (WVR) companies

A new Chapter 8A is proposed to be inserted in the Listing Rules, setting out the requirements and safeguards applicable to listing of WVR companies.

Notably, the Stock Exchange re-emphasises that even if a company meets all the written bright-line requirements, the Stock Exchange may still exercise a discretion to reject a listing application, to ensure that only “bona fide” cases will be accepted.

Theme	Summary of draft rules and guidance	Points to note
<b>Entry requirements</b>	<ul style="list-style-type: none"> <li>▪ minimum expected market capitalisation of HK\$10b</li> <li>▪ if below HK\$40b of market capitalisation, meets higher revenue test of HK\$1b in the most recent audited financial year</li> <li>▪ qualifies as an innovative company, namely having one or more of the following features:               <ul style="list-style-type: none"> <li>▪ has been successful due to the application of new technologies, innovations and/or business models in the core business</li> <li>▪ has research and development (“R&amp;D”) as a significant contributor to value and cause of expense</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ The qualifications for an “innovative company” are spelt out in the Consultation Paper but are not stated in the draft Listing Rules. Para. 16 of the Consultation Paper suggests that these will be relegated to non-rule guidance. Pending the issue of such guidance (or a draft thereof), the market continues to be uncertain as to the precise parameters of the concept. In particular, para. 56 of the Consultation Paper states that before the consultation conclusions are published, the Stock Exchange will only respond to enquiries on an informal basis. The market will benefit from more certainty if an exposure draft or more detailed indication of the relevant guidance can be provided</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ has had its success demonstrably attributable to unique features or intellectual property</li> <li>▪ has an outsized market cap or intangible asset value relative to the tangible asset value</li> <li>▪ has track record of measurable high business growth in terms, for example, of users, customers, unit sales, revenue, profits, market value, etc. with an expected high growth trajectory</li> <li>▪ meets the following requirements in relation to the WVR structure               <ul style="list-style-type: none"> <li>▪ the WVR holders must have been materially responsible for the company's growth by way of skills, knowledge or strategic directions</li> <li>▪ the WVR holders must have an active executive role and assume the role of directors at the time of listing</li> <li>▪ has suitable shareholder's protection mechanisms (discussed below)</li> </ul> </li> <li>▪ has received meaningful third party funding from a sophisticated investor (including financial institutions), retaining at least 50% of investment at time of listing, with a minimum six-month lockup (but this does not apply in a spin-off or other exceptional circumstances), and the investor must remain in place at the time of listing</li> </ul>	<p>before the roll-out of the final rules.</p> <ul style="list-style-type: none"> <li>▪ The Stock Exchange recognises that "innovative" is a fluid concept and is prepared to review the facts and circumstances of each case. It stresses, however, that the "superficial application of new technology to an otherwise conventional business" (e.g. a retail business with an online sale platform) in and of itself may not be sufficient to justify a listing under the new WVR regime.</li> <li>▪ The requirement for third party investment is expected to limit new listing applications to high profile companies that have already received substantial investment.</li> <li>▪ "Sophisticated investor" is stated in the Consultation Paper as to be determined with reference to factors such as net assets or assets under management, relevant investment experience, and investors' knowledge and expertise in the relevant field. As this is not set out in the draft rules, one would expect these points to be governed by non-rule guidance.</li> </ul>
<p><b>Ring-fencing</b></p>	<ul style="list-style-type: none"> <li>▪ only new applicants can have WVR structure</li> <li>▪ after listing, a company is prohibited from increasing the proportion of WVR in issue, or issuing any further WVR shares               <ul style="list-style-type: none"> <li>▪ a WVR beneficiary is under an express duty to use best endeavours to procure the company's compliance with this rule</li> <li>▪ there are only limited exceptions for WVR beneficiary's pre-emption rights to prevent dilution in a rights issue, open offer, pro rata scrip dividend issue, stock split, etc., and subject to the Stock Exchange's prior approval</li> </ul> </li> <li>▪ where the company reduces its issued shares through a buyback, the WVR beneficiaries must reduce their WVR proportionately (e.g. through conversion</li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ The Stock Exchange stresses that circumvention or non-compliance with the new requirements may amount to a contravention both of the Listing Rules and of subsidiary legislation under the Securities Ordinance, which may trigger enforcement action by the Securities and Futures Commission (SFC).</li> <li>▪ The requirement (in the draft Rule 8A.20) for the WVR structure to cease upon transfer of the beneficial ownership of or economic interest in such shares means that enforcement will likely be targeted not only at the company (which may be alerted to such changes either by specific notification or via disclosures of interests under Part XV of the Securities and Futures Ordinance) but also at the WVR beneficiary. This is because there may be circumstances where the company is not aware of a transfer, as economic interest</li> </ul>

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	<p>into one-share-one-vote shares)</p> <ul style="list-style-type: none"> <li>▪ after listing, a company may not change the terms of a WVR class of shares to increase the WVR carried by that class</li> <li>▪ any conversion from WVR shares to ordinary shares must be on a one to one ratio; and any listing of the converted shares shall require Stock Exchange approval</li> <li>▪ the WVR attached to a beneficiary's shares must cease upon transfer to another person of the beneficial ownership of / economic interest in / voting rights attached to such shares</li> <li>▪ the WVR structure must cease if the original WVR beneficiaries at time of listing no longer hold WVR</li> </ul>	<p>in shares may have changed in a way sufficient to trigger the Listing Rules (which as market regulation are policy-based) but not the Securities and Futures Ordinance (which as legislation have a stricter mode of application).</p>
<p><b>Permitted WVR holders</b></p>	<ul style="list-style-type: none"> <li>▪ must be directors – the WVR will cease upon cessation of directorship, death or incapacity, or transfer of the share (subject to limited exceptions where there is no circumvention of the general transfer restriction, for example with respect to trust structures or estate or tax planning)</li> <li>▪ WVR beneficiaries must meet equity thresholds, being at least 10% and maximum 50% of the underlying economic interest in total issued share capital at the time of listing               <ul style="list-style-type: none"> <li>▪ this will not be an ongoing requirement post-listing</li> <li>▪ the Stock Exchange may accept a lower minimum shareholding percentage on a case by case basis, if the lower percentage still represents a very large amount in absolute dollar terms</li> </ul> </li> <li>▪ time-defined sunset clause is not required</li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ Notably, the concept of “WVR beneficiary” is used liberally throughout, but remains an undefined concept. This may be intentional, to give the Stock Exchange more flexibility of interpretation.</li> <li>▪ The draft rules expressly provide for holding of WVR by non-individuals such as limited partners, trusts, private companies and other vehicles, provided that there is no circumvention against the general prohibition against transfer of WVR. This is worded in fairly broad terms but read in the light of paras. 24 and 121 of the Consultation Paper, they may be targeted first and foremost at estate and/or tax planning. This leaves considerable uncertainty for cases where third parties (apart from the WVR-holding director) are involved – e.g. a family member being named as a beneficiary under a family trust, or the presence of a silent partner in a partnership, or a minority / passive member in a corporate vehicle. This is particularly important as market practitioners are familiar with established practice in other leading IPO markets where a “permitted transfer” concept is used for transfers to clearly defined affiliates. By contrast, under the proposed rules, where there are grey areas Hong Kong companies may be left with little choice other than trying to convince the Stock Exchange on a case-by-case basis that there is no “circumvention” of the transfer restriction.</li> <li>▪ In terms of “sunset” of the WVR, the Stock</li> </ul>

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<p><b><i>WVR structural limits</i></b></p>	<ul style="list-style-type: none"> <li>▪ WVR to be attached to specific class(es) of shares                             <ul style="list-style-type: none"> <li>▪ the class must be unlisted</li> <li>▪ the WVR attached to this class of shares must confer only enhanced voting powers on resolutions tabled at general meetings</li> </ul> </li> <li>▪ WVR to be capped at not more than 10 times the voting power of ordinary shares</li> <li>▪ non-WVR shareholders must be able to cast at least 10% of the votes eligible to be cast at general meeting; a WVR beneficiary is expressly prohibited to take any frustrating action against this rule</li> <li>▪ shareholder holding 10% (or such lower percentage as is prescribed under applicable company law) on a one-share-one-vote basis must be able to convene a general meeting and to propose resolutions in the meeting agenda</li> </ul>	<p>Exchange will have certain deeming powers in relation to a person's lack of capacity or his no longer meeting the requirement of a director (e.g. where the beneficiary is convicted of an offence or is the recipient of a court disqualification order).</p> <ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ The proposed new Rule 8A.08 expressly prohibits a listing of shares carrying WVR. This appears to preserve to some extent the integrity of the existing Rule 8.11, which suggests that the new WVR regime operates by way of a single exception to Rule 8.11 which is not proposed to be removed.</li> </ul>
<p><b><i>Reserved matters</i></b></p>	<p>A number of matters must be decided on a one-share one-vote basis:</p> <ul style="list-style-type: none"> <li>▪ changes to the constitutional documents</li> <li>▪ variation of class rights</li> <li>▪ appointment or removal of independent non-executive director (INED)</li> <li>▪ appointment or removal of auditors</li> <li>▪ voluntary winding-up</li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions. However, the restriction was originally proposed to apply only to "material" changes to constitutions documents. This has now been expanded to any change to avoid uncertainty.</li> <li>▪ The inclusion as a reserved matter of any changes to the constitutional documents may at first glance give rise to the concern that a WVR structure could be abolished by a non-WVR shareholders' vote. Technically this proposition is not true, as removing the WVR structure will involve a change of class rights which under a combination of applicable laws and regulations should require a super-majority vote in a separate class meeting. It may, however, be advisable for the Stock Exchange to insert a note to put this beyond doubt.</li> </ul>
<p><b><i>Enhanced disclosure and</i></b></p>	<ul style="list-style-type: none"> <li>▪ enhanced disclosure:                             <ul style="list-style-type: none"> <li>▪ summary of work of corporate</li> </ul> </li> </ul>	<p>These draft rules do not deviate in principle from the Concept Paper Conclusions.</p>

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<p><b>corporate governance</b></p>	<p>governance committee to be included in interim and annual reports</p> <ul style="list-style-type: none"> <li>▪ WVR companies listed under the new regime will have a marker “W” for the stock name</li> <li>▪ additional warnings, reasons for having WVR and associated risks to be disclosed in listing documents, periodical financial reports, circulars and announcements</li> <li>▪ disclosure of WVR beneficiaries’ identities and dilution impact of conversion in listing document and interim and annual reports</li> <li>▪ enhanced corporate governance:               <ul style="list-style-type: none"> <li>▪ mandatory corporate governance committee comprising INEDs, with mandatory terms of reference</li> <li>▪ establishment of nomination committee comprising INEDs</li> <li>▪ rotation of INEDs every three years</li> <li>▪ mandatory engagement of compliance advisers on permanent basis, whose advice must be sought in relation to prescribed matters involving WVR or conflict of interest</li> <li>▪ training requirements for directors and senior management</li> </ul> </li> </ul>	
<p><b>Enforcement and other matters</b></p>	<ul style="list-style-type: none"> <li>▪ supplemental powers for the Stock Exchange to mete out sanctions against a non-compliant WVR beneficiary</li> <li>▪ in a case of breach by the company or a WVR beneficiary, the Stock Exchange may direct a trading halt, suspend dealing, impose disciplinary sanctions, or withhold approval for further securities issues or of a shareholders’ circular</li> <li>▪ where a WVR beneficiary casts its votes in contravention of the rules, the resolution will be taken as not to have been passed / the votes shall not be counted for the purpose of the Listing Rules</li> <li>▪ the WVR safeguards must be incorporated in the constitutional documents</li> <li>▪ a WVR beneficiary must also provide an undertaking to the company to comply with the WVR safeguards</li> </ul>	<ul style="list-style-type: none"> <li>▪ As in some circumstances it may not be appropriate to penalise the listed company or its directors for breaches by a WVR beneficiary, the Stock Exchange proposes to have supplemental powers to take action against a non-compliant WVR beneficiary. This was not mentioned in the Concept Paper Conclusions and appears to be an innovation against the traditional enforcement approach of the Listing Rules. However, the technical and legal basis for such powers are not spelt out (presumably to be based on the directors’ undertakings given to the Stock Exchange), and their practical exercise may require further consideration.</li> <li>▪ The incorporation of WVR safeguards in the constitutional documents is intended to give public shareholders a civil cause of action against the company in case of breach. This, however, does not address the practical aspects of private enforcement in the current Hong Kong market framework.</li> </ul>

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	<ul style="list-style-type: none"> <li>a WVR beneficiary and any vehicle through which it holds such WVR will be deemed to be a core connected person of the company</li> </ul>	

### Biotech companies

A new chapter 18A will be added to the Listing Rules, to be supplemented with guidance on the factors that the Stock Exchange will take into account to determining the listing suitability of biotech companies that do not meet the pre-existing financial eligibility criteria under Chapter 8 of the Listing Rules. The Stock Exchange will also impose post-listing requirements to prevent abuse of the regime.

Theme	Summary of draft rules and guidance	Points to note
<b>Entry requirements</b>	<ul style="list-style-type: none"> <li>minimum expected market capitalisation of HK\$1.5b</li> <li>meets enhanced working capital requirements (125% of requirement for 12 months following date of prospectus)</li> <li>has two years' record of operations in the current business under substantially the same management</li> <li>has at least one core product beyond the concept stage (measured against development milestones specified by the Stock Exchange)</li> <li>primarily engaged in R&amp;D for the core product(s) for at least 12 months</li> <li>has as primary reason for listing the raising of funds for R&amp;D for the core product(s)</li> <li>has a portfolio of durable patents, registered patents, etc. demonstrating rights in relation to the core product(s)</li> <li>has previously received meaningful third party investment from at least one sophisticated investor (including financial institutions) at least six months before listing and the investor must remain in place at the time of listing</li> </ul>	<ul style="list-style-type: none"> <li>The first 3 items in the column on the left are proposed to be Listing Rule requirements, while the remaining items will be relegated to non-rule guidance, as stated in para. 6 of the Consultation Paper. Pending the issue of such guidance (or an exposure draft), the market continues to be uncertain as to the precise eligibility parameters. In particular, para. 56 of the Consultation Paper states that before the conclusions to the Consultation Paper are published, the Stock Exchange will only respond to enquiries on an informal basis. The market will benefit from more certainty if an exposure draft or more detailed indication of the relevant guidance can be provided before the roll-out of the final rules.</li> <li>The concept of a "core product" refers to a biotech product required by laws and regulations to be evaluated and approved by the specified industry authority in the US, China or Europe, and which forms the basis of the listing application.</li> <li>The new regime being a concession from the financial eligibility requirements only, the listing applicant must comply with all the requirements of Chapter 8 of the Listing Rules (e.g. as to management and ownership continuity, free transferability of shares, public float, etc.)</li> <li>The "costs" items covered by working capital as required must be general, administrative and operating costs as well as R&amp;D costs.</li> <li>The requirement for third party investment is expected to limit new listing applications to companies that have achieved a higher degree of pre-IPO investment on the basis of confidence that the company has achieved for their R&amp;D activities. This third party investment requirement may be relaxed in a spin-off listing, if the listing applicant is able to demonstrate in other ways a reasonable</li> </ul>

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		<p>degree of market acceptance.</p> <ul style="list-style-type: none"> <li>▪ “Sophisticated investor” is stated in the Consultation Paper as to be determined with reference to factors such as net assets or assets under management, relevant investment experience, and investors’ knowledge and expertise in the relevant field. As this is not set out in the draft rules, one would expect these points to be governed by non-rule guidance.</li> </ul>
<b>Enhanced disclosure</b>	<p>The company will be required to make enhanced disclosures in its prospectus, covering a number of specific items including but not limited to:</p> <ul style="list-style-type: none"> <li>▪ the company’s strategic objectives</li> <li>▪ details of each core product including regulatory approvals required or obtained, communications with regulators, stage of research, safety data, market opportunities, patents, rights with respect to in-licensing arrangements, etc.</li> <li>▪ details of the company’s R&amp;D experience</li> <li>▪ details of relevant experience of the directors and senior management</li> <li>▪ risks, claims and compliance status</li> <li>▪ estimate of operating costs, capital expenditure, working capital, etc.</li> </ul>	<p>These draft rules do not deviate in principle from the Concept Paper Conclusions. Note, however, the elaborated and itemized disclosure requirements. There was no mention in the Concept Paper Conclusions of in-licensing, a very common practice in the pharmaceuticals and biotech industry. Notably, this has now been fleshed out as a matter for disclosure, covering the company’s rights and obligations in respect of any in-licensed core products.</p>
<b>Cornerstone investment and Public float</b>	<p>To ensure liquidity in these companies, cornerstone investments will be allowed but will not count towards the public float prior to the expiry of the lock-up period imposed by the Stock Exchange</p>	<ul style="list-style-type: none"> <li>▪ This public float point does not deviate from the Concept Paper Conclusions. However, this would be the first time that the Stock Exchange indicates in the Listing Rules that it may impose a mandatory lock-up on cornerstone investors.</li> <li>▪ The Stock Exchange proposes in the Consultation Paper that where an existing shareholder (who is allowed to subscribe for shares in the IPO to avoid being diluted) does not meet the conditions imposed by the relevant existing guidance, it will be allowed to participate in the IPO as a cornerstone investor.</li> </ul>
<b>Additional requirements</b>	<ul style="list-style-type: none"> <li>▪ a number of post-listing periodic disclosures will be required in the interim and annual reports regarding R&amp;D activities</li> <li>▪ companies that do not have sufficient</li> </ul>	<p>These are additional requirements not covered in the Concept Paper Conclusions. The regulatory objective of the requirements as to sufficient operations and change of business is to prevent companies becoming “listed shells” if they do not achieve their business plans or attempt to list other assets in circumvention of the Listing Rules.</p>

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	<p>operations to justify a listing may be suspended or de-listed, subject to the Stock Exchange’s discretion to grant a 12-month grace period for re-compliance</p> <ul style="list-style-type: none"> <li>▪ there will be restrictions on fundamental changes to the business post-listing (including through acquisitions, disposals or other transactions)</li> <li>▪ biotech companies listed under the new regime will have a marker “B” for the stock name</li> <li>▪ the post-listing requirements may be waived upon application, if the listed biotech company is able to comply with the Listing Rule 8.05 financial eligibility requirement</li> </ul>	

**Concessional route to secondary listing**

As part and parcel of the reforms, the Stock Exchanges has also promised a new regime, in Chapter 19C of the Listing Rules, for secondary listings. Listing candidates meeting certain qualifications can enjoy a number of regulatory concessions by way of codified automatic waivers.

Theme	Summary of draft rules and guidance	Points to note
<p><b>Business sector</b></p>	<p>Qualifies as an innovative company, namely:</p> <ul style="list-style-type: none"> <li>▪ has been successful due to the application of new technologies, innovations, business models, etc. in the core business</li> <li>▪ has research and development (R&amp;D) as a significant contributor to value and cause of expense</li> <li>▪ has had its success demonstrably attributable to unique features or intellectual property</li> <li>▪ has an outsized market cap or intangible asset value relative to the tangible asset value</li> </ul>	<p>These draft rules do not deviate in principle from the Concept Paper Conclusions. Again, the qualifications for an “innovative company” are spelt out in the Consultation Paper but are not stated in the draft Listing Rules, which suggests that they will be relegated to non-rule guidance. The observations above in relation to the uncertainties pending the issue of such guidance are repeated here.</p>

Theme	Summary of draft rules and guidance	Points to note
<p><b>Overseas listing</b></p>	<p>Primary-listed on NYSE, Nasdaq, or LSE Main Market Premium Listing segment</p> <ul style="list-style-type: none"> <li>▪ “grandfathered” companies (i.e. those that were already listed on those exchanges as of 15 December 2017) and non-Greater-China companies must demonstrate compliance with key shareholder protection standards (KSPS) <ul style="list-style-type: none"> <li>▪ these companies are not subject to Appendices 3 and 13 of the existing Listing Rules (embodying mandatory changes to the constitutional documents), but they must demonstrate compliance with the KSPS and the Stock Exchange may require them to amend their constitutional documents for this purpose; in contrast, a non-grandfathered Greater China company must comply with Appendix 3 and where applicable, Appendix 13</li> <li>▪ the KSPS are written into the new Rule 19C.07 comprising eight principles, including super-majority vote for change of class rights or constitutional documents, requirement to hold a general meeting every year, etc.</li> <li>▪ compliance with these eight principles will generally be taken as fulfilling the KSPS requirement</li> <li>▪ for grandfathered Greater China companies and non-Greater-China companies, Rule 19C.07 must be complied with on an on-going basis after listing</li> </ul> </li> <li>▪ to prevent companies listing overseas first and coming back to HK to circumvent HK’s primary listing requirement, Greater China companies listed overseas after 15 Dec 2017 cannot take the concessional secondary listing route but must comply with the new requirements for WVR / biotech primary listings if they want or need to take advantage of the revised framework – i.e. these companies must change their constitutional documents to meet the KSPS and ensure their WVR structure, if any, meet primary listing standards</li> <li>▪ grandfathered Greater China companies already listed overseas with a variable interest entity (VIE) structure may list in Hong Kong with their existing VIE</li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions. However, in the Concept Paper Conclusions the Stock Exchange had originally proposed not to require grandfathered and non-Greater-China companies to amend their constitutional documents to meet the “equivalence requirement” in shareholders’ protection standards. This has now been reversed, presumably in light of SFC comments.</li> <li>▪ For grandfathered companies with WVR, the WVR safeguards will not apply, so that these companies will not be subject to the requirements as to one-share-one-vote reserved matters, or the restrictions on post-listing creation of further WVR shares.</li> <li>▪ The Stock Exchange has noted that the Hong Kong requirements on VIE listings are more stringent than the relevant overseas markets. It is expected that the relaxation from the requirement to amend their articles may be an important incentive for grandfathered VIE companies to consider Hong Kong as a secondary listing venue.</li> </ul>

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	<p>structure, but they must:</p> <ul style="list-style-type: none"> <li>▪ provide to the Stock Exchange a PRC legal opinion confirming compliance with PRC laws and regulations</li> <li>▪ comply with the disclosure requirements in the Stock Exchange's VIE guidance letter</li> </ul>	
<p><b><i>Additional entry requirements (besides any general listing eligibility and track record requirements that remain applicable)</i></b></p>	<ul style="list-style-type: none"> <li>▪ expected market cap of at least HK\$10b</li> <li>▪ two years' good compliance record</li> <li>▪ companies with WVR or centre of gravity in Greater China must have HK\$1b in revenue in most recent audited financial year if its market cap is below HK\$40b at time of secondary listing</li> <li>▪ Stock Exchange reserves the right to reject cases of "extreme" non-conformity with governance norms (e.g. ordinary shares carrying no voting rights at all)</li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ Under the draft rules, "centre of gravity" will be determined by reference to factors including the existence of a listing in China, country of incorporation and the company's history.</li> <li>▪ Additionally, as the Stock Exchange states in the Consultation Paper, under the 2013 Joint Policy Statement it may also look at other factors such as the location(s) of the company's headquarters, its central management and control, corporate and tax registration, the nationality of the controlling shareholders etc.</li> </ul>
<p><b><i>Effect of "migration" of trading volume to Hong Kong</i></b></p>	<ul style="list-style-type: none"> <li>▪ automatic waivers will be given in a concessionary listing, but the waivers will fall away after a 12-month grace period if the bulk (taken to be 55%) of the company's trading volume migrates to HK on a permanent basis</li> <li>▪ the Takeovers Code will not apply to secondary listings of Great China companies, but if the bulk of trading migrates to HK, the company will be treated as having a dual primary listing here and the Takeovers Code will apply to them</li> <li>▪ effect of migration to WVR and VIE companies: <ul style="list-style-type: none"> <li>▪ Non-Greater-China or Grandfathered Greater China WVR companies do not have to re-comply with WVR safeguards (except disclosure requirements)</li> <li>▪ Grandfathered Greater China VIE companies do not have to amend their VIE structures</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ These draft rules do not deviate in principle from the Concept Paper Conclusions.</li> <li>▪ The post-migration treatment of WVR and VIE companies is mentioned in the Consultation Paper. As this does not appear in the draft Listing Rules it may be a matter governed by non-rule guidance. The post-migration treatment of non-grandfathered Greater China VIE companies is not clearly spelt out.</li> </ul>

Theme	Summary of draft rules and guidance				Points to note
<b>Application of new regime</b>	Grandfathered Greater China Companies	Non-Grandfathered Greater China Companies	Non-Grandfathered Greater China Companies	Non-Greater-China Companies	<ul style="list-style-type: none"> <li>This summary in the Consultation Paper does not deviate in principle from the Concept Paper Conclusions. However, this table does not highlight the fact that even grandfathered companies and non-Greater-China companies may be required to change their constitutional documents to comply with the “equivalence requirement” in shareholders’ protection standards.</li> <li>Appendices 3 (article of association) and 13 (additional requirements in respect of certain jurisdictions) of the Listing Rules currently apply generally to all companies incorporated in the PRC, the Cayman Islands and Bermuda. They will be expressly disapplied for grandfathered Greater China companies and Non-Greater China companies. As mentioned above, however, these companies do have to comply with the KSPS which are set out in the new Chapter 19C.</li> </ul>
	Automatic waivers	Apply			
	HK equivalent shareholder protection requirements	Required to comply with KSPS	Required to change constitutional documents (as necessary) in accordance with existing rules	Required to comply with KSPS	
	WVR safeguards (if applicable)	No 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	No need to meet WVR safeguards (except on disclosure) nor change WVR structure to meet primary listing requirements	
<b>Disclosure requirements</b>	<ul style="list-style-type: none"> <li>prominent disclosure in listing document any corporate governance provisions in constitutional documents that are unusual for Hong Kong and are specific to the company (e.g. poison pill)</li> <li>prominent disclosure in the listing document by a company that is a Foreign Private Issuer (under the US Securities Act of 1933 and US Securities Exchange Act of 1934) of the exemptions of US obligations it enjoys because of its status as such, and a warning to Hong Kong investors accordingly</li> </ul>				<p>These are additional requirements not covered in the Concept Paper Conclusions, but do not deviate in principle from them.</p>

**Next steps**

An issue that was debated relates to the possibility of allowing corporations to be WVR beneficiaries. The Stock Exchange states that this would be a deviation from the Concept Paper Conclusions and proposes to consider it as a separate issue subject to further public consultation, which is planned to take place within three months after the roll-out of the regime. At that time there will be more opportunities for the market to explore the options and design suitable safeguards.

The Stock Exchange is also generally reviewing the Listing Rules and guidance to make them more friendly to innovative companies, and will publish further guidance in due course.

Consultation will close on 23 March 2018. Prospective listing applicants or sponsors may submit a formal pre-IPO enquiry after the consultation conclusions have been published. Before that, the Stock Exchange will only answer queries informally on the new regime. Listing applications can be submitted after the new Listing Rules have come into effect.

Market practitioners are encouraged to send in their feedback and share their practical knowledge, to ensure this important new chapter for the Hong Kong market will be a success.

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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