

# Hong Kong Stock Exchange Launches New Rules for Dual Class and Biotech Listings

25 April 2018

## Introduction

On 23 February 2018, The Stock Exchange of Hong Kong Limited (“Stock Exchange”) released the [Consultation Paper on A Listing Regime for Companies from Emerging and Innovative Sectors](#) (“Consultation Paper”), proposing for public comments important amendments to the Main Board Listing Rules (“Listing Rules”) to allow companies with dual class shares or weighted voting rights and pre-revenue biotech companies to list in Hong Kong. At the time, Davis Polk wrote a client memorandum [“Hong Kong Stock Exchange Fleshes Out Game Plan for Dual Class and Biotech Listings”](#), summarising the proposals and comparing them to the blueprint outlined in an earlier concept paper.

In the months that followed, the market was engaged in active debate on the merits of the regime, and many stakeholder groups contributed their thoughts and suggestions to the regulators.

On 24 April 2018, the Stock Exchange issued the [Conclusions to the Consultation Paper](#) (“Consultation Conclusions”) which includes the final listing rules amendments. The Stock Exchange mentioned the diversity of views expressed during the consultation process, highlighting the difficulty of drawing any meaningful market consensus on a number of important issues. As a result, it decided to proceed broadly as proposed, with some fine-tuning of the rules and guidance after taking into account market comments.

In this update, we will examine the new regime, noting in particular the key areas where the final rules and guidance deviate from the draft rules proposed in the Consultation Paper (“Consultation Draft”), and areas where there may be further developments or guidance as practical experience accumulates.

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

As envisaged, a new Chapter 8A will be inserted into the Listing Rules to govern the listing of WVR companies.

The introduction to this new chapter emphasises that “one share one vote” continues to be an important aspect of shareholders’ protection and will be the “optimum method of empowering shareholders and aligning their interests in a company”. Nevertheless, the Stock Exchange will consider deviations from this principle under the safeguards set out in Chapter 8A.

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<b>General</b>	<ul style="list-style-type: none"> <li>all shareholders of listed securities to be treated fairly and holders of listed securities of the same class to be treated equally</li> </ul>	There is no material deviation from the Consultation Draft. The Stock Exchange sets out specifically in the “Scope” section of Chapter 8A that the Listing Rules (including the existing Chapter 8 listing qualifications) apply generally to all equity-listed issuers, with or without WVR. Chapter 8A operates by way of modifications to the existing rules for companies that qualify under this chapter.

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<p><b>Entry requirements</b></p>	<ul style="list-style-type: none"> <li>▪ minimum expected market capitalisation (“market cap”) of HK\$10b</li> <li>▪ if below HK\$40b of market cap, 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 as to its core business 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> <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> </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> <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 post-IPO (but this does not apply in a spin-off); and the six-month lock-up for third party investors is subject to exceptions for de minimis investors provided that the main investors</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ As envisaged, the eligibility and suitability requirements are written as broad concepts into the rules (Rule 8A.04), whilst the detailed factors to be considered are set out in the relevant Guidance Letter “Suitability for Listing with a WVR Structure”.</li> <li>▪ The yardsticks for measuring “innovation” set out in the Guidance Letter do not deviate materially from those previously discussed by the Stock Exchange. The following are now set out expressly in the Guidance Letter:               <ul style="list-style-type: none"> <li>▪ What is considered to be “innovative” fluctuates over time. Therefore, the fact that one company has qualified for WVR listing does not guarantee similar treatment for another company with a similar technology, innovation or business model.</li> <li>▪ The “sophistication” of third party investment will be measured 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.</li> </ul> </li> <li>▪ Spun-off entities will be evaluated on a stand-alone basis, separate from the characteristics and track record of the parent (wherever listed).</li> <li>▪ The impact of the (consultation draft) PRC Foreign Investment Law is discussed. Whilst basically the Stock Exchange views WVR and foreign ownership restrictions as separate issues, if a listing applicant seeks to demonstrate compliance with the draft Foreign Investment Law through WVR holding, it must clearly disclose the risks associated with the non-permanent nature of the WVR under Hong Kong rules (which may ultimately cause non-compliance with the law).</li> <li>▪ The concept of “meaningful” third party investment is not elaborated upon in the WVR eligibility Guidance Letter. However, in the Consultation Conclusions, the Stock Exchange refers (in paragraph 175) to paragraph 84, which highlights the intentional omission of a brightline test, and includes among the relevant considerations the nature of the investment, amount invested, size of the stake taken up, timing of the investment,</li> </ul>

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	<p>are in compliance.</p>	<p>etc. in order to determine the “meaningfulness” of an investment.</p> <ul style="list-style-type: none"> <li>▪ The Stock Exchange reiterates that demonstration of any or all of the characteristics set out in the Consultation Paper may not in itself ensure the applicant’s suitability to list with a WVR structure. Only “bona fide” cases will be accepted and “extreme cases” of non-conformity with corporate governance norms (e.g. ordinary shares carrying no voting rights at all) may be rejected.</li> </ul>
<p><b><i>Ring-fencing</i></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 into one-share-one-vote shares)</li> <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 1:1 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 when none of the original WVR beneficiaries at the time of listing has beneficial ownership of shares with WVR</li> </ul>	<p>There is no material deviation from the Consultation Draft.</p>

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<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, e.g. with respect to trust structure or estate or tax planning)</li> <li>▪ WVR beneficiaries must beneficially own collectively at least 10% 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>	<p>There is no change from the Consultation Draft except as to the following:</p> <ul style="list-style-type: none"> <li>▪ The proposed 50% cap on holding by WVR beneficiaries of economic interest in the issuer has been removed.</li> <li>▪ The original draft Rules 8A.12-13 allowing flexibility for holding of WVR through limited partnerships, trusts, private companies and other vehicles (in circumstances not constituting a circumvention of the transfer restrictions on WVR) have been redrafted and moved into Rule 8A.18, but the effect of the provision has not changed. The Stock Exchange has specifically rejected suggestions to allow transfers of WVR to corporate affiliates of the WVR beneficiary due to risks of circumvention (see paragraph 196 of the Consultation Conclusions).</li> <li>▪ The concept of “incapacity” (which potentially leads to cessation of a WVR) is clarified in Rule 8A.17(3) as incapacity for the purposes of performance of a director’s duties.</li> <li>▪ A Note 2 is added to Rule 8A.17 clarifying that the dealing / issue restrictions of Rule 10.06 and directors’ dealing restrictions (under the Appendix 10 Model Code) will not apply when the dealing or issue is solely to facilitate the conversion of WVR shares into ordinary shares.</li> <li>▪ Examples are given in paragraph 193 of the Consultation Conclusions of cases where arrangements will not lead to WVR lapsing as a circumvention of the restrictions, e.g.:                             <ul style="list-style-type: none"> <li>▪ for a partnership, the terms of the partnership agreement expressly providing that the voting rights attached to the shares are <b>solely</b> dictated by the WVR beneficiary;</li> <li>▪ for a trust, (i) the WVR beneficiary in substance retaining an element of <b>control</b> of the trust and any immediate holding companies and (ii) the purpose of the trust being estate / tax planning; and</li> <li>▪ for a private vehicle, the WVR beneficiary (or a trust as described above) <b>wholly owning</b> and controlling that vehicle.</li> </ul> </li> <li>▪ The Stock Exchange has agreed with the Securities and Futures Commission (“SFC”)</li> </ul>

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		<p>that a mandatory general offer will not normally be required if the takeover or creeper thresholds are crossed upon the WVR falling away, if the relevant person is independent of the event which has led to the cessation of the WVR (e.g. upon the death of a WVR beneficiary). It stresses, however, that the SFC should be consulted in appropriate cases (see paragraph 293 of the Consultation Conclusions).</p> <ul style="list-style-type: none"> <li>▪ There are two notable points regarding ownership continuity and control: <ul style="list-style-type: none"> <li>▪ The Stock Exchange has turned down a suggestion to provide specifically for ownership continuity and control of a WVR listing applicant. The existing rules and guidance, including the normal ways to rebut a presumption of break of continuity, will apply generally to WVR companies (see paragraphs 199 – 200 of the Consultation Conclusions).</li> <li>▪ There are no modifications to the current rules or practice to cater for the treatment of WVR beneficiaries as “controlling shareholders”. The Stock Exchange states (in paragraph 243 of the Consultation Conclusions) that this will remain a question of fact to be considered on the circumstances of each case, but adds that it would not allow transfer of WVR shares between WVR beneficiaries even if they are in fact a group of controlling shareholders.</li> </ul> </li> </ul>
<p><b>WVR structural limits</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> </ul> </li> <li>▪ the WVR attached to this class of shares must confer only enhanced voting powers on resolutions tabled at general meetings</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 a general meeting; a WVR beneficiary is expressly prohibited from taking any frustrating action against this rule</li> <li>▪ a shareholder holding 10% (or such lower percentage as is prescribed under applicable company law) on a one-vote-per-share basis</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no material deviation from the Consultation Draft.</li> <li>▪ Interestingly, the Stock Exchange states in paragraph 240 of the Consultation Conclusions that although issuers are expected only to have one class of WVR shares, more than one such class may be considered on a case-by-case basis if there is enough justification so that it should not be considered an “extreme” case of non-conformity.</li> </ul>

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<p><b>Reserved matters</b></p>	<p>must be able to convene a general meeting and to propose resolutions in the meeting agenda</p> <p>A number of matters must be decided on a one-vote-per-share 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 directors (INED)</li> <li>▪ appointment or removal of auditors</li> <li>▪ voluntary winding-up</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no material deviation from the Consultation Draft. The list of reserved matters has not changed.</li> <li>▪ A note has been added to Rule 8A.24 explaining its purpose, namely, to protect non-WVR shareholders from resolutions being passed by WVR shareholders without the former's consent. It states expressly that the provision is not intended to enable non-WVR shareholders to remove or further constrain WVR. The WVR attached to a class of shares may be varied only with the consent of shareholders of the relevant class, as provided in the relevant laws or regulations. Where such laws or regulations do not require class approval to alter class rights, the Stock Exchange will mandate it in the listing applicant's constitutional documents.</li> </ul>
<p><b>Enhanced disclosure and corporate governance</b></p>	<ul style="list-style-type: none"> <li>▪ enhanced disclosure: <ul style="list-style-type: none"> <li>▪ summary of work of corporate governance committee to be included in half-yearly and annual reports</li> <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, periodic financial reports, circulars and announcements</li> <li>▪ disclosure of WVR beneficiaries' identities and any impact of conversion in listing document and interim and annual reports</li> <li>▪ disclosure in listing documents, interim and annual reports of all circumstances in which WVR will cease</li> </ul> </li> <li>▪ enhanced corporate governance: <ul style="list-style-type: none"> <li>▪ mandatory corporate governance committee composed entirely of INEDs, with mandatory terms of reference</li> <li>▪ establishment of nomination committee comprising INEDs</li> <li>▪ rotation of INEDs every three years</li> </ul> </li> </ul>	<p>There is no material deviation from the Consultation Draft. The following are new features:</p> <ul style="list-style-type: none"> <li>▪ An additional provision has been made (in Rule 8A.30) that part of the Corporate Governance Committee's terms of reference must be to: <ul style="list-style-type: none"> <li>▪ make a recommendation to the board on any matter where there is a potential conflict of interest between the issuer, a subsidiary of the issuer and/or shareholders of the issuer (considered as a group), on the one hand, and any WVR beneficiary on the other; and</li> <li>▪ review and monitor risks relating to connected transactions between the issuer and/or a subsidiary of the issuer, on the one hand, and any WVR beneficiary on the other, and make relevant recommendations to the board.</li> </ul> </li> <li>▪ The original requirement in Rule 8A.40 for disclosure of the "dilution impact" of conversion of WVR shares has been amended to disclosure of the "impact" generally of such conversion, following a market comment that WVR conversion should not have any dilution impact as it will be restricted under the rules to a 1:1 ratio.</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ mandatory engagement of compliance advisers on permanent basis, whose advice must be sought in relation to prescribed matters involving WVR or a potential conflict of interest</li> <li>▪ training requirements for directors and senior management</li> </ul>	<ul style="list-style-type: none"> <li>▪ Instead of the previously proposed INED-majority corporate governance committee, this committee must now be composed entirely of INEDs.</li> <li>▪ The original proposal to disclose detailed information about the WVR on the front page of listing documents and financial reports has been modified so that only a standard warning is required on the front page, leaving the detailed disclosure to the texts of the documents.</li> <li>▪ A new requirement is added in Rule 8A.41 to disclose all the circumstances in which WVR will cease.</li> </ul>
<b>Enforcement and other matters</b>	<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 clearance 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> <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>	There is no material deviation from the Consultation Draft.

### Biotech companies

As envisaged, a new chapter 18A will be added to the Listing Rules, to be supplemented with a relevant Guidance Letter on the factors that the Stock Exchange will take into account to determine 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.

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<b>Entry</b>	<ul style="list-style-type: none"> <li>▪ has minimum expected market cap of</li> </ul>	<ul style="list-style-type: none"> <li>▪ There is no material deviation from the</li> </ul>

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<p><b>requirements</b></p>	<p>HK\$1.5b</p> <ul style="list-style-type: none"> <li>▪ meets enhanced working capital requirement (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>▪ is able to demonstrate that it is both eligible and suitable as:               <ul style="list-style-type: none"> <li>▪ having at least one core product beyond the concept stage (measured against development milestones specified by the Stock Exchange in paragraph 3.3 of the relevant Guidance Letter)</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 registered patents, patent applications and/or intellectual property in relation to the core products</li> </ul> </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>	<p>Consultation Draft. There are a number of clarifications:</p> <ul style="list-style-type: none"> <li>▪ An additional provision has been made in Note 2 to Rule 18A.03 that biotech companies must include research and development costs, irrespective of whether they are capitalised, in the calculation of working capital requirements.</li> <li>▪ A new Rule 18A.06 clarifies that a biotech company may include two instead of three financial years of audited financial statements in its accountants' report. The Stock Exchange reminds issuers (in paragraph 124 of the Consultation Conclusions) that a certificate of exemption under the Companies (Winding Up and Miscellaneous Provisions) Ordinance will be required for the accountants' report to cover less than three financial years.</li> <li>▪ A new note to Rule 8.21A clarifies that the listing applicant's working capital statement must comply with the 125% capital requirement.</li> <li>▪ As envisaged, the eligibility and suitability requirements are written as broad concepts into the rules (Rule 18A.03), whilst the detailed factors to be considered are set out in the accompanying Guidance Letter.</li> <li>▪ The suitability criteria in the draft Guidance Letter "Suitability for Listing of Biotech Companies" do not deviate materially from those previously discussed by the Stock Exchange. Additional details include:               <ul style="list-style-type: none"> <li>▪ spelling out the specific development milestones for small molecule drugs, biologics and medical devices (including diagnostics) respectively;</li> <li>▪ in the case of an in-licensed or acquired product, specifying that the proof of R&amp;D activity will be in the form of demonstrating R&amp;D progress since the in-licensing or acquisition; and</li> <li>▪ in respect of pharmaceutical (small molecule drugs) products or biologic products, the applicant must be able to demonstrate a pipeline of such potential products.</li> </ul> </li> <li>▪ The detailed criteria for a number of key</li> </ul>

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		<p>concepts have been spelt out in the Guidance Letter. In particular:</p> <ul style="list-style-type: none"> <li>▪ in terms of “sophisticated investor”, there will, as the Exchange has previously decided, not be any brightline test; relevant factors for consideration include net assets or assets under management, investment experience (especially the experience of the senior management or management team – see paragraph 83 of the Consultation Conclusions), and the investors’ knowledge and expertise in the relevant field – for example, the Stock Exchange may treat as a sophisticated investor a dedicated healthcare or biotech fund, a major pharmaceutical or healthcare company (or a venture capital fund of such company), or an investor / fund / financial institutional with a minimum of HK\$1b under management;</li> <li>▪ indicative benchmarks of “meaningful investments” are also given – for example not less than 5% in issued capital for a company with a market cap of HK\$1.5b- HK\$3b;</li> <li>▪ there is more elaboration on the meaning of “development beyond the concept stage” for different types of products and devices; and</li> <li>▪ the originally proposed requirement for “durable” patents has been put aside following public comments.</li> </ul> <p>Other practical matters covered in the Guidance Letter include:</p> <ul style="list-style-type: none"> <li>▪ any change in ownership continuity during the 12 months before the listing application will be reviewed in the assessment of listing suitability;</li> <li>▪ subscription of shares by existing shareholders is generally allowed, subject to compliance with Rules 8.08(a) and 18A.07; and</li> <li>▪ the Stock Exchange may exercise discretion to disregard the revenue ratio and profit ratio and to accept alternative size tests for the purposes of Chapters 14 and 14A transactions – practitioners may expect occasions where further Stock</li> </ul>

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		<p>Exchange guidance will be required, as there may be circumstances where the revenue test is technically applicable but leads to anomalous results (e.g. where the company begins to generate revenue in a negligible amount), and/or when it may not be possible to come up with an appropriate alternative test.</p> <ul style="list-style-type: none"> <li>▪ There has not been any major change to the Stock Exchange's position regarding the requisite stages of clinical trials and the treatment of devices or products that fall outside the "standard" clinical trials process or other stages towards commercialisation. See paragraph 75 of the Consultation Conclusions for the reasons for retaining the Phase I clinical trial requirement and paragraphs 95-96 for circumstances potentially to be examined on a case-by-case basis.</li> <li>▪ Interestingly, the Stock Exchange has specifically turned down a market suggestion that the core product of a listing applicant must be "innovative", opting instead for a test based on holding of patents or other intellectual property as a mode of establishing the "innovative" nature of the business (see paragraph 71 of the Consultation Conclusions).</li> <li>▪ Retaining the position in the Consultation Draft, only the US, European and Chinese medical authorities will be included in the definition of "Competent Authority" for the time being. The Stock Exchange explains in paragraph 91 of the Consultation Conclusions that others such as the Canadian, Australian or Japanese authorities will only be considered at a later stage.</li> </ul>
<p><b>Enhanced disclosure</b></p>	<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> </ul>	<p>There is no material deviation from the Consultation Draft. Some additional disclosure items have been added, including:</p> <ul style="list-style-type: none"> <li>▪ (in the case of a core product that is a biologics) the planned capacity and production-related technology details; and</li> <li>▪ measures that the applicant has in place to retain key management or technical staff.</li> </ul>

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	<ul style="list-style-type: none"> <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><b>Cornerstone investment and Public float</b></p>	<ul style="list-style-type: none"> <li>▪ cornerstone investments will be allowed</li> <li>▪ a portion of the total number of the applicant's issued shares with a market cap of at least HK\$375m must be held by the public at the time of listing</li> <li>▪ any shares subscribed by cornerstone investors or existing shareholders at the time of listing shall not be considered as being held by the public for this purpose</li> </ul>	<p>The original proposal was that cornerstone investment would be allowed but would not count towards the public float prior to the expiry of the lock-up period imposed by the Stock Exchange. This provision (the new Rule 18A.07) has been amended from the Consultation Draft to give more flexibility. As explained in paragraph 105 of the Consultation Conclusions, the Stock Exchange's intention is that provided the company has at least HK\$375m in monetary value of public float (being 25% of HK\$1.5b which is the market cap requirement for biotech listings) which is exclusive of subscriptions by existing shareholders and cornerstone investors, cornerstone investment and shares subscribed by existing shareholders can be included in the determination of the public float if the relevant shareholders or investors are not core connected persons (or otherwise not considered as members of the public under Rule 8.24).</p>
<p><b>Additional requirements</b></p>	<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 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</li> <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>	<ul style="list-style-type: none"> <li>▪ There is no material deviation from the Consultation Draft.</li> <li>▪ Note that in paragraph 110 of the Consultation Conclusions, the Stock Exchange acknowledges the unique funding needs of biotech companies whilst stating that there is no current intention to make special accommodations of the connected transaction rules, which it considers to be an important feature of Hong Kong's shareholders' protection regime.</li> <li>▪ A profit forecast memorandum will be required for pre-revenue biotech listing (see paragraph 126 of the Consultation Conclusions for the reason why there is no intention to modify the relevant rule).</li> </ul>

### Concessional route to secondary listing

As part and parcel of the reforms, the Stock Exchange 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. Again, the new rules are accompanied by a new Guidance Letter “Suitability for Secondary Listing as a Qualifying Issuer under Chapter 19C”.

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<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>There is no material deviation from the Consultation Draft.</p>
<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)</li> <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</li> </ul>	<p>There is no material deviation from the Consultation Draft.</p>

Theme	Summary of final rules and guidance	What's new (or notable)?
	<p>requirement</p> <ul style="list-style-type: none"> <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> <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 December 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, meets 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 structure, but they must:               <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> </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 their 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>▪ There is no material deviation from the Consultation Draft.</li> <li>▪ Paragraph 18 of Practice 22 has been modified so that a Chapter 19C secondary listing applicant will be entitled to make a confidential A1 filing.</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 worldwide trading volume (by dollar value, including trading of depositary receipts on relevant shares) over the most recent financial year migrates to HK on a permanent</li> </ul>	<p>There is no material deviation from the Consultation Draft. Note 1 to Rule 19C.13 has been amended to clarify a number of details – e.g. consideration of worldwide trading volume by its dollar value, etc.</p>

Theme	Summary of final rules and guidance				What's new (or notable)?																
	<p>basis</p> <ul style="list-style-type: none"> <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>																				
<p><b>Application of new regime</b></p>	<table border="1"> <thead> <tr> <th></th> <th>Grandfathered Greater China Companies</th> <th>Non-Grandfathered Greater China Companies</th> <th>Non-Greater-China Companies</th> </tr> </thead> <tbody> <tr> <td><b>Automatic waivers</b></td> <td colspan="3">Apply</td> </tr> <tr> <td><b>HK equivalent shareholder protection requirements</b></td> <td>Required to comply with KSPS</td> <td>Required to change constitutional documents (as necessary) in accordance with existing rules</td> <td>Required to comply with KSPS</td> </tr> <tr> <td><b>WVR safeguards (if applicable)</b></td> <td>No need to meet WVR safeguards (except on disclosure), nor change WVR structure to meet primary listing requirements</td> <td>Must meet WVR safeguards and WVR structure must conform with primary listing requirements</td> <td>No need to meet WVR safeguards (except on disclosure), nor change WVR structure to meet primary listing requirements</td> </tr> </tbody> </table>					Grandfathered Greater China Companies	Non-Grandfathered Greater China Companies	Non-Greater-China Companies	<b>Automatic waivers</b>	Apply			<b>HK equivalent shareholder protection requirements</b>	Required to comply with KSPS	Required to change constitutional documents (as necessary) in accordance with existing rules	Required to comply with KSPS	<b>WVR safeguards (if applicable)</b>	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	<p>There is no material deviation from the Consultation Draft.</p>
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<p><b>Disclosure requirements</b></p>	<ul style="list-style-type: none"> <li>▪ prominent disclosure in the listing document of 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>				<ul style="list-style-type: none"> <li>▪ There is no material deviation from the Consultation Draft.</li> <li>▪ The relevant Guidance Letter addresses the impact of the (consultation draft) PRC Foreign Investment Law. If a listing applicant seeks to demonstrate compliance with the draft Foreign Investment Law through WVR holding, it must clearly disclose the risks associated with the non-permanent nature of the WVR under Hong Kong rules (which may ultimately cause non-compliance with the law).</li> </ul>																

## Implementation and next step

The new rules and accompanying Guidance Letters will come into effect on 30 April 2018. Listing applicants and sponsors may submit pre-IPO enquiries at any time, and formal applications for listing under the new regime will be accepted as from 30 April 2018.

As reported in our earlier client memorandum “[Hong Kong Stock Exchange Fleshes Out Game Plan for Dual Class and Biotech Listings](#)”, the Stock Exchange has promised the market to conduct a further round of public consultation on the question of allowing corporations to be WVR beneficiaries. This is expected to take place by 31 July 2018.

The new regime is an important new chapter in the history of the Hong Kong IPO market and we look forward to its successful implementation.

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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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