Hong Kong to establish a New Secondary Listing Concessionary Route

With a view to attracting well-established high growth companies from emerging and innovative sectors to list on the Main Board, The Stock Exchange of Hong Kong Limited (**HKSE**) has released, for consultation purpose, proposed new rules (the "**Proposal**") to facilitate:

i. listing of pre-revenue biotech companies;
ii. listing of companies with weighted voting rights; and
iii. secondary listing of issuers primary listed on The New York Stock Exchange, Nasdaq Stock Market or the Main Market of the London Stock Exchange.

We have discussed the proposed new rules on listing of companies with weighted voting rights (WVR) and listing of pre-revenue biotech companies. This article will examine the new secondary listing concessionary route.

The New Secondary Listing Concessionary Route

TARGET COMPANIES

The new Chapter 19C of Listing Rules (Secondary Listings of Qualifying Issuers) creates a new route to secondary listing for companies with *all* of the following characteristics:

- an innovative company (see our Legal Update of 1 March 2018 for definition);
- primarily listed on the New York Stock Exchange, NASDAQ or the Main Market of the London Stock Exchange (and belonging to the UK Financial Conduct Authority's "Premium Listing" segment), each a "**Qualifying Exchange**";
- good record of compliance for at least two full financial years on a Qualifying Exchange; and
- have an expected market capitalisation at the time of secondary listing in Hong Kong of at least HK$10 billion. A secondary listing applicant (i) with a WVR structure; and/or (ii) with a "centre of gravity" in Greater China will also be required to have a minimum revenue of HK$1 billion in its most recent audited financial if it has an expected market capitalisation at the time of secondary listing in Hong Kong of less than HK$40 billion.

LISTING REQUIREMENTS

As the requirements differ depending on whether the applicant was listed on a Qualifying Exchange before 15 December 2017 (the date on which the related reform was first announced) or whether its centre of gravity is in Greater China, we set out the different scenarios in the table below:

SECONDARY LISTING APPLICANT / LISTING REQUIREMENTS	COMPANIES WITH A CENTRE OF GRAVITY IN GREATER CHINA AND LISTED ON QUALIFYING EXCHANGE **ON OR BEFORE** 15 DEC 2017	COMPANIES WITH A CENTRE OF GRAVITY IN GREATER CHINA AND LISTED ON QUALIFYING EXCHANGE **AFTER** 15 DEC 2017	COMPANIES LISTED ON QUALIFYING EXCHANGE, WHOSE CENTRE OF GRAVITY IS **NOT** IN GREATER CHINA
Automatic waivers from full compliance with Listing Rules	Apply *but* will cease to apply if 55% of the total trading volume in the shares migrates to Hong Kong in the most recent fiscal year, in which case the companies would be treated as having a dual-primary listing in Hong Kong		Apply and will continue to apply even if the bulk of trading in their shares moved permanently to Hong Kong

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Key Shareholder Protection Standards	*No need* to amend constitutional documents BUT need to comply with the standards set out in the Listing Rules	*Need to amend* constitutional documents (as necessary) to meet equivalent standards to those of Hong Kong	*No need* to amend constitutional documents BUT need to comply with the standards to set out in the Listing Rules
WVR structure (if applicable)	*No need* to meet Hong Kong WVR safeguards (except on disclosure) nor change WVR structure to meet primary listing requirements	*Must* meet Hong Kong WVR safeguards and WVR structure must conform with primary listing requirements	*No need* to meet Hong Kong WVR safeguards (except on disclosure) nor change WVR structure to meet primary listing requirements
VIE structure (if applicable) (Note 1)	May list with existing VIE structure in place, *but* need enhanced disclosure as per HKSE's VIE Guidance and provide PRC legal opinion confirming compliance with PRC laws, rules and regulations	*Must* meet HKSE's VIE Guidance requirement	May list with existing VIE structure in place, *but* need enhanced disclosure as per HKSE's VIE Guidance

Note 1: VIE structure means "Variable Interest Entity Structures" or "Structured Contracts" that allow a foreign company to control and receive the economic benefits of a PRC company owning assets or operating in an industry sector that is subject to foreign investment restrictions. HKSE has issued a VIE Guidance (HKEX-GL77-14) which requirements are more extensive than those of Qualifying Exchanges. As a result, many of the Mainland companies listed on Qualifying Exchanges have done so with VIE Structures that do not meet HKSE's VIE Guidance in all respects.

TAKEOVERS CODE IMPLICATION

Securities and Futures Commission proposes that the Takeovers Code would not apply to secondary listings of companies with centre of gravity in Greater China, which was listed on a Qualifying Exchange before 15 December 2017, in so far as they might be regarded as "public companies in Hong Kong" for the purposes of the Takeovers Code. However, if the bulk of trading moves to Hong Kong and therefore a company is treated as having a dual primary listing in Hong Kong, the Takeovers Code would apply at that point.

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