

## Listing of Companies with Weighted Voting Rights soon to happen in Hong Kong

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 (each a “**Qualifying Exchange**”).

As the Proposal closely follows HKSE’s earlier paper on the subject (see our [Legal Update](#) of 20 December 2017), it is expected that the three new chapters of the Main Board Listing Rules (the “**Listing Rules**”), namely Chapter 8A (Weighted Voting Rights), Chapter 18A (Biotech Companies) and Chapter 19C (Secondary Listings of Qualifying Issuers), will come into effect in second quarter of 2018. The public comment period will officially end on 23 March 2018.

This first article summarises the proposed new rules on listing of companies with weighted voting rights. We will discuss in our next article the changes in connection with the listing of pre-revenue biotech companies and the new secondary listing concessionary route.

### Listing of WVR Companies

#### TARGET COMPANIES

Despite the intention to capture companies from emerging and innovative sectors, HKSE does not

attempt to define “**innovative companies**” in the Listing Rules. HKSE will, instead, issue guidance in which an innovative company would normally be expected to possess *more than one* of the following characteristics:

- its success is demonstrated to be attributable to the application, to the company’s core business, of (1) new technologies; (2) innovations; and/or (3) a new business model, which also serves to differentiate the company from existing players;
- research and development is a significant contributor of its expected value and constitutes a major activity and expense;
- its success is demonstrated to be attributable to its unique features or intellectual property; and/or
- it has an outsized market capitalisation/intangible asset value relative to its tangible asset value.

“**Weighted Voting Rights**” (**WVR**) is defined in the proposed new Chapter 8A to mean the voting power attached to a share of a particular class that is greater or superior to the voting power attached to an ordinary share, or other governance right or arrangement disproportionate to the beneficiary’s economic interest in the equity securities of the issuer.

It should be noted that the above definition includes both share-based structures (e.g., dual-class share structure) and non-share based structures (e.g., board control mechanisms). However, a company with a non-share based WVR structure would be permitted to list on HKSE only if it was already listed on a Qualifying Exchange and seek a secondary listing.

## LISTING REQUIREMENTS

As the listing requirements for a WVR Company in the cases of a new applicant, a secondary listing or a spin-off from a parent company are not quite the same, we compare the different scenarios in the table below:

LISTING REQUIREMENTS	WVR COMPANY APPLICANT	NEW APPLICANT	SECONDARY LISTING (NOTE 1)	SPIN-OFF
<b><i>Listing Criteria</i></b>				
Expected market capitalisation ( <b>EMC</b> ) of HK\$10 billion at listing		✓	✓	✓
Revenue of HK\$1 billion in most recent financial year (not applicable if EMC reaches HK\$40 billion)		✓	✓	✓
An Innovative Company (see above)		✓	✓	✓
Success attributable to WVR beneficiaries		✓	✓	✓
Meaningful third party investment from sophisticated investors		✓	✓	×
Eligible and suitable for listing (Note 2)		✓	✓	✓
Two-year good compliance record on Qualifying Exchange		N/A	✓	N/A
<b><i>Investor Protection Safeguards (Note 3)</i></b>				
<b><i>WVR Structure</i></b>				
WVR structure must be share-based (i.e., attached to a specific class (or classes) of shares), unlisted		✓	×	✓
WVR voting power ≤ 10x of ordinary shares		✓	×	✓
No increase in proportion of WVR after listing		✓	×	✓
WVR beneficiaries must, at listing, own collectively a minimum of at least 10% and a maximum of not more than 50% of economic interest in total issued share capital		✓	×	✓
<b><i>WVR Beneficiaries</i></b>				
WVR beneficiaries must be individuals who have been materially responsible for the business growth and are existing directors (Note 4)		✓	×	✓ (Note 4)
WVR will lapse if beneficiary dies, ceases to be a director, or deemed by HKSE incapacitated or no longer meet directors' requirements (e.g., convicted of an offence involving fraud, disqualified, etc.)		✓	×	✓
WVR will lapse upon transfer of WVR shares		✓	×	✓
Conversion of WVR shares to ordinary shares must be on one-to-one ratio		✓	×	✓
<b><i>Non-WVR holders</i></b>				
Non-WVR holders must have at least 10% of voting power at general meeting		✓	×	✓
Holding of 10% of the voting rights on a one-share one-vote basis may call a meeting		✓	×	✓

WVR COMPANY APPLICANT	NEW APPLICANT	SECONDARY LISTING (NOTE 1)	SPIN-OFF
<b>LISTING REQUIREMENTS</b>			
Fundamental corporate matters (such as variation of class rights, changes to constitutional documents or voluntary winding up, etc.) must be decided on a one-share one-vote basis	✓	×	✓
Constitutional backing of investor safeguards	✓	×	✓
<b><i>Enhanced Corporate Governance</i></b>			
Board committee on Corporate Governance	✓	×	✓
Engaging a permanent compliance adviser	✓	×	✓
<b><i>Enhanced Disclosure</i></b>			
Stock name ends with marker “W”	✓	✓	✓
“a company controlled through weighted voting rights” warning statement on every document issued under the Listing Rules	✓	✓	✓
Must disclose identity of WVR beneficiaries and dilution effect upon conversion of WVR shares to ordinary shares	✓	✓	✓

Notes:

1. Secondary Listing: applies only to WVR Companies listed on Qualifying Exchange, whose centre of gravity is not in Greater China, OR whose centre of gravity is in Greater China but listed before 15 Dec 2017. For those WVR Companies with a centre of gravity in Greater China and listed on Qualifying Exchange **after** 15 Dec 2017, they must conform with all Hong Kong WVR listing requirements.
2. As HKSE stresses in the Proposal, it would retain absolute discretion to reject an application for listing with a WVR structure even if the applicant meets the listing criteria to ensure only “bona fide” candidates who fit the target profile are listed.
3. Though the **Investor Protection Safeguards** may not be applicable to secondary listing applicants, all WVR Companies seeking a secondary listing in Hong Kong must satisfy HKSE that the domestic laws, rules and regulations to which it is subject to and its constitutional documents, in combination, provide the **Key Shareholder Protection Standards** set out in the Listing Rules (e.g., fundamental matters such as variation of class rights, changes to constitutional documents or voluntary winding up requires super majority

vote in general meeting; general meeting must be convened every 15 months; holding of 10% of the voting rights on a one-share one-vote basis may call a meeting, etc.).

4. WVR beneficiary may, for estate and/or tax planning purposes, choose to hold WVR shares through a limited partnership, trust, private company or other vehicle, BUT such arrangement must not result in a circumvention of the restriction against transfer of WVRs.

**Corporate WVR Beneficiaries:** there were voices suggesting that corporate shareholder, who controls and consolidates the listing applicant as a subsidiary prior to listing, may have a legitimate justification to seek WVRs. HKSE indicated that it will launch a separate consultation within **three months** of the adoption and implementation of the new Chapter 8A to explore the option of allowing Corporate WVR Beneficiaries.

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