### **WEBINAR SERIES:** LISTING WEIGHTED VOTING RIGHTS, PRE-REVENUE BIOTECH AND MINERAL COMPANIES ON THE HKEX

### PART I - HKEX: LISTING WVR STRUCTURED COMPANIES

#### 11 DECEMBER 2020

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## **LISTING RULES**

**Ch. 8A** Tech companies with WVRs

Ch.19C Secondary listing innovative companies

Ch.18A Pre-revenue biotech companies

Ch.18 Mineral companies









### IPO Market Stats 2018 & 2019

2019	.019				2018			
Rank	Stock exchange	IPO proceeds (USD billion) <sup>1</sup>		Rank	Stock exchange	IPO proceeds (USD billion)		
1	HKEX	37.2		1	HKEX	36.9		
2	NASDAQ	27.5		2	NYSE	27.5		
3	NYSE	27.1		3	Tokyo Stock Exchange	26.7		
4	Saudi Stock Exchange <sup>2</sup>	26.6		4	NASDAQ	25.5		
5	Shanghai Stock Exchange	25.3		5	Frankfurt Stock Exchange	13.8		
1) Note: .	All analysis is based on data as at 8 Dec 20	19, adjusted to numbers	of confirmed li	stings up to	13 Dec 2019, unless otherwise stated. S	ources: Bloomberg and KPMG ana		

Note: All analysis is based on data as at 8 Dec 2019, adjusted to numbers of confirmed listings up to 13 Dec 2019, unless otherwise stated.
Adjusted for the expected listing of Saudi Aramco on Dec 11 for USD 25.68 (before over-allotment).

Source: KPMG

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### Global IPO Market Q3 2020

#### 2020 Q3 YTD

Rank	Stock exchange	IPO proceeds (USD billion) <sup>1</sup>
1	Shanghai Stock Exchange	38.2
2	NASDAQ	31.1
3	HKEX	23.4
4	NYSE	21.7
5	Shenzhen Stock Exchange	10.5

Source: KPMG





of HKEx market cap. attributed to financial and property sector companies in May 2017



## 2007 - 2017

new economy companies (as a % of market cap)

> HKEx - 3% NASDAQ - 60% NYSE - 47% LSE - 14%

### TECH COS & MAIN BOARD OF HKEX

33.2%

of HKEx Main Board market cap (as at 30 June 2020) attributed to tech cos

tech cos listed on the Main Board (as at 30 June 2020)

27.6%

163

(by value) of shares traded on the HKEx in the first half of 2020 were tech stocks

### CHINESE TECH COS



AUG 2018

HK\$58.8 bn IPO

JUL 2018

xiaomi

HK\$42.6 bn IPO



#### NOV 2019

HK\$101.2 bn secondary listing under Ch.19C

### **CH.18A LISTINGS**

#### listing of pre-revenue biotech companies under Ch.18A



Note: 2 of the 21 18A companies transferred to general listing Source: HKEx data as of 30 October 2020



### Why did the rules change?

advantages of WVR structures e.g. allowing founders to fend off hostile takeovers and protecting the company from the short-term focus of institutional investors

loss of Ali NYSE

Chinese tech companies increasingly preferring Hong Kong listings over US listings

### LISTING COS WITH WVR STRUCTURES (Ch.8A)

loss of Alibaba US\$21.8 bn IPO in 2014 to the

# **CHINA'S PIPELINE OF UNICORNS**





### HKGX × X hkex.com hk?sc\_lang=en

# **CORPORATE WVR BENEFICIARIES**

Greater China issuers that are:

- controlled by corporate WVR beneficiaries as at 30 Oct 2020; and
- are primary listed on a qualifying exchange on or before 30 Oct 2020

be treated in the same manner will as Grandfathered Greater China Issuers for the purposes of Ch.19C.



## WVR STRUCTURES ELIGIBLE FOR PRIMARY LISTING

- definition of WVRs the voting power attached to a share of a particular class that is greater than the voting power attached to an ordinary share, or another governance right or arrangement which is disproportionate to the beneficiary's economic interest in a listco's shares (LR8A.02)
- only companies with share-based WVR structures are allowed to list in Hong Kong









### LISTING CRITERIA (HKEx-GL93-18)

01 must be an innovative company i.e it has 1+ of the following characteristics:

(a) success attributable to application of new tech/innovations and/or new business model to its core business, which differentiates it from existing players

(b) R&D significantly contributes to expected value and comprises major activity and expense

(c) success attributable to unique features / IP

(d) has an outsized market cap/intangible asset value relative to tangible asset value







### LISTING CRITERIA (HKEx-GL93-18)(cont.)

02 must h growth

03 WV resp

04

individuals who are directors at listing have materially contributed to business' ongoing growth

must have a track record of high business

WVR beneficiaries have been materially responsible for the business' growth







### **LISTING CRITERIA** (HKEx-GL93-18)(cont.)

05

must have previously received meaningful 3rd party investment from sophisticated investor(s)

• sophisticated investors are investors the HKEx considers to be sophisticated by reference to factors including net assets or AUM, investment experience, knowledge and expertise in the relevant field

• sophisticated investors must retain 50% of their investment at listing for at least 6 months after listing

#### Market Cap Requirements

- at least HK\$40 bn at listing; or
- market cap of at least HK\$10 bn at listing and at least HK\$1 bn of revenue in the most recent financial year

- WVR structure
- - WVRs

#### **Ring Fencing & Anti-avoidance**

• only new listing applications may list with a

 cannot increase the proportion of WVR shares from the proportion in issue at the date of listing (LR8A.13)

• restrictions on further issues of shares with

• prohibited from changing the terms of a class of shares carrying WVRs to increase the WVRs carried by that share class

### **WVR** BENEFICIARIES

- time the company lists on the HKEx
- growth of the business
- ceases to be a director
- capital
- (if not already)

• must be natural persons who must be directors at the

 must be individuals with an active executive role within the business who have materially contributed to the

• WVRs cease on death or when the WVR beneficiary

• must collectively beneficially own at least 10% of the underlying economic interest in the total issued share

• WVR beneficiaries (and any vehicle through which the beneficiary holds shares carrying WVRs) are deemed to be connected persons and core connected persons

### OWNERSHIP CONTINUITY AND CONTROL

listing applicant may be able to rebut presumption of a change in ownership continuity and control by demonstrating that there was no material change in influence on management







## **LIMITS ON WVR POWER**

- eligible for listing
- one vote per share basis
- voting power of ordinary shares
- general meetings

• WVRs can only attach to a class of shares and that class is not

• HKEx expects only one share class to carry WVRs

• WVRs can only confer enhanced voting power on resolutions tabled at general meetings but cannot confer enhanced voting power on matters the Listing Rules require to be decided on a

• other rights attached to WVR shares must be the same as the rights attached to the company's ordinary shares

• WVR beneficiaries must not be entitled to more than 10% of the

• non-WVR shareholders must be entitled to cast at least 10% of votes that are eligible to be cast on resolutions at the company's

#### **NON-WVR SHAREHOLDERS' RIGHTS**

 non-WVR shareholders holding 10%+ of voting rights on a one vote per share basis must be able to convene an EGM and to add resolutions to the meeting agenda

ICLARED STREET

#### WVR SHAREHOLDERS' RIGHTS

or modify cannot remove WVR structures

• WVRs attached to a share class can only be varied with the consent of the holders of that share class



## RESTRICTIONS ON TRANSFER OF WVR SHARES

 WVRs attached to WVR beneficiary's shares cease if the WVR beneficiary transfers his/her beneficial ownership of or economic interest in the WVR shares to another person or transfers control over the voting rights attached to his/her shares to a third party



### **CONVERSION OF WVR SHARES TO ORDINARY** SHARES

- conversion must be on a one-to-one basis
- HKEx approval is required for listing shares issuable on conversion of the shares carrying WVRs

### DISCLOSURE REQUIREMENTS **FOR WVR** COMPANIES

02

03

01

#### prominent warning ("a company controlled through WVRs)

disclosure of structure, rationale & risks of WVR structure

disclosure WVR beneficiaries, of circumstances where WVRs will cease and impact of WVR conversion

# **CORPORATE GOVERNANCE** REQUIRMENTS

 $\mathbf{01}$ 

日前前

must establish a corporate governance committee made up of INEDs and chaired by an INED

02

annual confirmations must state company's compliance with WVR restrictions and report on committee's work

 $\mathbf{03}$ 

must review and monitor management of conflicts of interest make and recommendations to the board where there is a potential conflict

04

must review and monitor WVR structurerelated risks

05

must maintain an on-going dialogue with shareholders

07

80

09

10

06

must give effect to safeguards under Ch.8A by including them in articles of association

must report on its work on half-yearly and annual basis (must comply with Appendix 14 of the Listing Rules)

must set up a nomination committee

must appoint a compliance adviser on a permanent basis

directors, senior management and company secretary must undergo training on WVR Listing Rules and associated risks of WVR structure

## **CORPORATE WVR** BENEFICIARIES

- - at this time

 January 2020 - Consultation Paper on proposals to allow corporate WVR beneficiaries

October 2020 - Consultation Conclusions released:

• HKEx decided not to proceed with the proposal

• Greater China Issuers that are "innovative companies" with corporate WVR beneficiaries and primary listed on a Qualifying Exchange as at 30 October 2020 will be treated in the same manner as Grandfathered Greater China Issuers for the purposes of Ch.19C

#### **TO BE ELIGIBLE FOR LISTING**

- market capitalisation of at least HK\$40 bn or of at least HK\$10 bn if it has HK\$1 bn of revenue for its most recent audited financial year; and
- must be controlled by a single corporate WVR beneficiary (or group of corporate WVR beneficiaries acting in concert) which is the company's largest shareholder in terms of voting power and controlling at least 30% of voting power.



### **CORPORATE WVR BENEFICIARIES**

- 42%
  - unicorns
- \$540bn

42

of Mainland companies with WVR structures that listed in the US had **corporate WVR beneficiaries** 

of the Mainland's 50 largest unlisted have well-established corporate shareholders

combined market value of these 42 unicorns

### **SUITABILITY REQUIREMENTS FOR CORPORATE WVR BENEFICIARIES**

(1) should be an innovative company or have a track record of investments in / contributions to innovative companies

(2) 10% economic interest in and been materially involved in the listing applicant's business for 2 FYs prior to listing application , increasing to 30% at listing date

(3) contribution to listing applicant must be of a type that is not easily replicated or substituted

applicant

(4) must own and operate an ecosystem that benefits the listing

### ELIGIBILITY REQUIREMENTS

• must be primary listed on HKEx or Qualifying Exchange

• minimum market cap. of HK\$200 bn

• market cap. must not be more than 30% of that of the corporate WVR beneficiary

• capped at 5x the voting power of the company's ordinary shares



#### **CONTINUING REQUIREMENTS**

- should have at least 1 corporate representative on the board and must remain listed on HKEx or a Qualifying Exchange
- must continue to own at least a 30% economic interest in the listco

### CESSATION OF WVRs HELD BY CORPORATE BENEFICIARIES

- lapse after a time defined sunset period of no more than 10 years
- can be renewed for successive periods of no more than 5 years
- lapse permanently if contribution to WVR issuer is substantially terminated or materially disrupted or suspended for 12 months +



### Which of the following statements is correct?

A. WVR-structured issuers are required to engage a compliance adviser for a period of two years from the date of listing.



B. WVR-structured issuers should establish a nomination committee made up of a majority of INEDs.

C. WVR-structured issuers are required to establish a Corporate Governance Committee made up of a majority of INEDs.

D. All of the above.



#### Which of the following statements is correct?

can primary list in Hong Kong.

in Hong Kong.

modify WVR structures.



- A. Companies with a board-based WVR structure
- B. A share class with WVRs is eligible for listing
- C. Non-WVR holders are allowed to remove or
- D. WVR-structured companies cannot change the terms of a class of shares carrying WVRs to increase the WVRs carried by that share class.

#### Which of the following does NOT demonstrate that a company is an "innovative" company?

A. Its success is attributable to the application of new technology.



B. It has a track record of high business growth.

C. R&D contributes significantly to its expected value and is a major activity and expense.

D. It has an outsized market capitalisation/intangible asset value relative to its tangible asset value.





Which of the following is TRUE with respect to WVR beneficiaries of companies primary listing under Ch 8A?

A. WVR beneficiaries may be natural or legal persons.

B. WVR beneficiaries need not have an active executive role in the business.

C. The WVRs held by an individual are capped at five times the voting power of the company's ordinary shares.



D. WVR beneficiaries owe fiduciary duties to the company.



### Which of the following was NOT a proposed suitability requirement for a corporate WVR beneficiary?



A. Must hold at minimum 10% economic interest in the WVR issuer at the date of listing.

B. Corporate representative must sit on the board of directors of the WVR issuer.

C. Must be primary listed on the HKEx or a Qualifying Exchange.

D. Must own and operate an ecosystem at listing and on an ongoing basis that benefits the listing applicant.





