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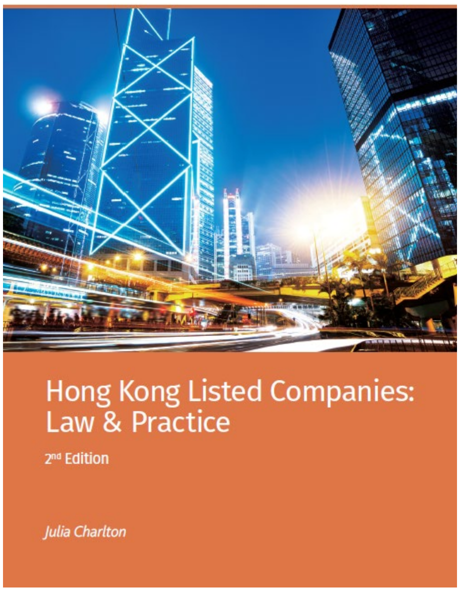

1. **Name of Product**
   Hong Kong Listed Companies: Law & Practice
   2nd Edition

   ISBN: 978-988-79356-5-0

2. **Product Group***
   Legal & Business

3. **Product Type***
   1. Bound Book

4. **Product Code**
   1. 2082H (Book Code)
   2. BHKLR (BOLD Code)

5. **Brief write up of the product***

   With the SEHK's Listing Rules being subject to constant review and revision, the author offers important updates on amendments and fresh regulations introduced since the first edition. Beginning with the basics – What is a public company? What is a stock exchange? ***Hong Kong Listed Companies: Law & Practice 2nd Edition*** works its way methodically through the SEHK's many provisions for regulation and compliance. It is a volume of depth and substance which sets the standard for financial industry reference books.

6. **Key Features (what are the salient points to this publication) ***

   The new 2nd Edition delivers more than 400 pages of new, and up-to-date commentary in relation to the Hong Kong Listing Rules:-

   - These include but not limited to extensive changes to the **sponsor regulatory regime** introduced in 2013 and the major listing reforms in 2018 which added three new chapters (**Chapter 8A, 18C and 19A**) to the listing rules aimed at attracting the listing of **Pre-revenue Biotech and Innovative Companies**, including those with **Weighted Voting Rights** (WVR) structures and providing a new **secondary listing** route for companies primary listed on certain Qualifying Exchanges.

   - More recent listing reforms in 2021 – covering the listing regime for **overseas issuers**, **Special Purpose Acquisition Companies** (SPAC), the SEHK's **new Corporate Governance Code** and the new requirements in relation to **Environmental, Social and Governance** (ESG) – are also highlighted.

   - How to handle ongoing obligations on listed companies under the Listing Rules.

   - Ongoing obligations on listed companies and their shareholders under other legislation, primarily the **Securities and Futures Ordinance Cap. 671** (such as market misconduct, insider dealing, disclosure of interests).

7. **Key Benefits (How will readers profit from reading this title)***

For participants and stakeholders engaged in stock market activities, this second edition of ***Hong Kong Listed Companies: Law & Practice 2nd Edition*** is an essential companion, providing the ultimate guide with regard to the Stock Exchange of Hong Kong's (SEHK) exhaustive regulatory regime.

Easy to follow, with information presented in logical order and plain language, this publication, expertly updated by experienced corporate finance lawyer **Julia Charlton** serves as an invaluable guide for seasoned practitioners, in-house counsel, chartered governance professional, accountants, other practitioners and students who require an understanding of the legal background and practical application of the rules and legislation that apply to listed companies. Other benefits included but not limited to:

- Reduces time wastage and increases productivity by serving as a step by step guide to the understanding of the Listing Rules, the Securities and Futures Ordinance and the Companies Ordinance

- Provides concise commentary on the law to aid readers in determining the best approach to adopt in line with their business needs

- Case studies, diagrams, flow charts ease the company secretary's day to day workflow, by illustrating the rules and giving examples of their application.

8. **Topics Covered***

- Overview of the Hong Kong Market for Listed Companies
- Requirements for Listing
- Routes to Listing
- Dual Primary and Secondary Listings (***New***)
- Listing Companies with Weighted Voting Rights (***New***)
- Listing Pre-Revenue Biotech Companies (***New***)
- Listing Mineral Companies
- IPOs – Sponsors and other IPO Parties
- The IPO Process
- Responsibilities and Liability
- Disclosure and other Continuing Obligations
- Notifiable Transactions
- Reverse Takeovers and Cash Companies (***New***)
- Connected Transactions
- Corporate Governance and Environmental, Social and Governance (***New***)
- GEM Listing Requirements and Continuing Obligations
- Market Misconduct
- Disclosure of Interests

9. **Target Audience**

- Lawyers, in-house counsel
- Compliance professionals engaged in matters related to Listed Companies
- Governance professionals
- Company Directors and Company Secretaries of Listed Companies
- Tax professionals/in-house tax consultants
- ESG consultants engaged in preparation of ESG report for Listed Companies
- Students preparing for their professional qualification examinations

10. **What does the purchase include? (eg, book with PRC Briefing)***

    A soft-cover bound book / 1,026 pages.

11. **Price**

    HK$1,980

12. **About the Author**

Julia Charlton is one of Hong Kong's most prominent corporate finance lawyers. She is an accomplished practitioner with a particular focus on securities law, capital markets, private equity, M&A, investment funds, restructuring and regulatory issues. Much in demand, she advises financial institutions and listed companies on the Listing Rules of both the Main Board and GEM of the Stock Exchange of Hong Kong.

A senior fellow of the Hong Kong Securities Institute, Julia sits on a variety of regulatory, investigative and advisory bodies. A member of the Listing Committee of the Hong Kong Stock Exchange from 2012 to 2018, she now serves on the independent Listing Review Committee. Fluent in Mandarin, she is also vastly experienced in private equity investment in mainland China, advising European, US and Hong Kong-based funds on investment in a range of sectors.

Julia gained her law degree (first class with honours) at Kings College, University of London, followed by a postgraduate diploma from the University of Oxford. She is Principal Partner of Charltons, the renowned boutique law firm she founded in 1998.

About Charltons

Charltons is an award-winning Hong Kong law firm specialising in corporate finance. It has offices in Beijing and Shanghai and is one of the few Hong Kong legal practices with a presence in Yangon, Myanmar. The firm's practice areas include capital markets, M&A, regulatory and securities work, natural resources law, corporate and commercial, private equity and funds, corporate restructuring and offshore and China funds.

Over more than 20 years, Charltons has built a strong track record in representing a wide variety of clients, from local start-ups to multinational corporations, on a broad range of matters. In particular, the firm is experienced in advising companies, controlling shareholders, sponsors and underwriters on initial public offerings on both the Main Board and Growth Enterprise Market of the Stock Exchange of Hong Kong.

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¶5-000 Introduction

As part of the 2018 SEHK listing regime reforms aimed at attracting the listing of tech companies (and discussed at ¶1-000 to ¶1-010), tech and other "innovative" companies with weighted voting rights ("WVR") structures have been allowed to list on the Main Board of the SEHK (but not on the GEM) since April 2018. Chapter 8A of the Listing Rules sets out additional rules and modifications to the general Listing Rules for applicants and listed issuers with WVR structures and provides an exception for tech companies from the Listing Rules' "one share one vote" principle.

Companies with WVR structures typically have dual-class stocks where the company's shareholders own Class A shares carrying one vote per share while the founders and management hold Class B shares carrying multiple votes per share. Prior to the 2018 Listing Rule changes, the "one share one vote" principle of Listing Rule 8.11 (discussed at ¶2-120) prevented companies with WVR structures from listing. Chapter 8A listings are now an explicit exception to Listing Rule 8.11.

The "one share one vote" principle proved problematic because WVR structures are commonly adopted by tech companies which need to raise large amounts of capital but whose founders want to retain control and be able to pursue their vision for the company with a reduced shareholding. Arguments in favour of WVR structures are that they allow founders to fend off hostile takeover bids and protect the company from the short-term focus of institutional investors. Many of the new breed of tech giants including Facebook, Alibaba and Baidu have adopted the structure. Hong Kong's prohibition of WVR structures meant that the new Chinese tech companies with the highest growth prospects could not list in Hong Kong – historically the preferred offshore listing venue for Chinese companies. They were also prevented from listing in China and listed instead on the New York Stock Exchange (the "NYSE") and NASDAQ. Both these exchanges have allowed WVR listings for many years for all companies irrespective of sector.

The impetus for change in Hong Kong was the SEHK losing the biggest IPO in history, Alibaba Group Holding Limited's US$21.8 billion IPO, to the NYSE in 2014. A long and contentious debate on WVR listings ensued involving several public consultations before the Listing Rules were finally changed in 2018.

¶5-010 Eligible WVR structures

Weighted voting rights are defined in Listing Rule 8A.02 as 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 listed company's shares.

Only companies with share-based WVR structures – that is where the superior voting powers are attached to a class of the company's shares – are allowed to list under Chapter 8A.[1] The SEHK will not list companies with a "board-based" WVR structure which gives certain individuals control of the board which is disproportionate to their equity stake in the company.

It is worth noting, however, that Non-Greater China Issuers and Grandfathered Greater China Issuers (i.e. those primary listed on or before 15 December 2017 on a Qualifying Exchange[2]) with non-share-based WVR structures are able to secondary list in Hong Kong under Chapter 19C of the Listing Rules without changing their existing WVR structures. This is because Listing Rule 19C.12 exempts these companies from the Chapter 8A requirements for the WVR structures of primary listing applicants[3] (including the requirement for a share-based WVR structure) when they secondary list under Chapter 19C. This exception allowed Alibaba Group Holding Limited to secondary list in Hong Kong with a non-share-based WVR structure. Please refer to ¶4-060 to ¶4-180 for information on Chapter 19C listings.

In November 2021, the SEHK published its "Consultation Conclusions on the Listing Regime for Overseas Issuers" (the "Overseas Issuers

1 LR 8A.07

2 For the purpose of Chapter 19C, the "Qualifying Exchanges" are the NYSE, NASDAQ and the "Premium Listing" segment of the London Stock Exchange's Main Market (LR 19C.01)

3 Under LR 19C.12, LRs 8A.07-8A.36, LR 8A.43 and LR 8A.44 do not apply to Non-Greater China Issuers or Grandfathered Greater China Issuers that secondary list on the SEHK under Chapter 19C of the Listing Rules

Consultation Conclusions"). The conclusions are discussed at ¶1-180, ¶2-320 and ¶4-300. The Listing Rule amendments will take effect on 1 January 2022.

As set out in the Overseas Issuers Consultation Conclusions, the dual-primary listing regime and the secondary listing regime will be aligned with respect to Grandfathered Greater China Issuers and Non-Greater China Issuers with WVR structures. The provision currently set out in Listing Rule 19C.12 will be moved (and modified) in a new Listing Rule 8A.46. The new Listing Rule 8A.46 will provide that a Grandfathered Greater China Issuer or a Non-Greater China Issuer will not need to comply with the Chapter 8A requirements for WVR structures of primary listing applicants[4] if the issuer has or is seeking either:

(i) a dual-primary listing on the SEHK, provided that the issuer satisfies Listing Rule 8A.06 (see ¶5-040 below) and has two full financial years of good regulatory compliance on a Qualifying Exchange; or

(ii) a secondary listing under Chapter 19C.

As set out in note 1 to new Listing Rule 8A.46, the SEHK will reserve the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if its WVR structure represents an extreme case of non-conformance with corporate governance norms. Note 2 to new Listing Rule 8A.46 will stipulate that the exemption will only be applicable to the WVR structure in effect at the time of the issuer's dual-primary or secondary listing on the SEHK.

A new guidance letter on change of listing status from secondary listing to dual-primary or primary listing will come into effect on 1 January 2022. According to the Overseas Issuers Consultation Conclusions, it will provide that a Grandfathered Greater China Issuer or a Non-Greater China Issuer which becomes primary listed on the SEHK (due to the migration of a majority of its trading to Hong Kong, the de-listing of its shares from the stock exchange of its primary listing or a voluntary conversion of its secondary listing to a dual-primary listing on the SEHK)

4 Under new LR 8A.46 (to come into effect 1 January 2022), LRs 8A.07-8A.36, LR 8A.43 and LR 8A.44 will not apply to Non-Greater China Issuers or Grandfathered Greater China Issuers that dual-primary list on the SEHK (and satisfy certain requirements) or secondary list under Chapter 19C

will be allowed to retain a non-compliant WVR structure which exists at the time of its SEHK listing.

REQUIREMENTS FOR LISTING

¶5-020 Introduction

WVR-structured applicants must satisfy the listing eligibility and suitability requirements applicable to all issuers (discussed in Chapter 2 of this book) – other than the "one share one vote" principle. They are also required to meet the additional requirements set out in Chapter 8A.

¶5-030 Suitability

Listing Rule 8A.04 requires that a WVR-structured applicant must be eligible and suitable to list with a WVR structure. SEHK Guidance Letter GL93-18 "Suitability for Listing with a WVR Structure" sets out the characteristics a WVR-structured applicant needs to demonstrate in order to be considered suitable for listing with a WVR structure. These characteristics are summarised below:

1. ***Innovative company***: The applicant must be an "innovative" company which is normally demonstrated by the company having more than one of the following characteristics:

   (a) its success is attributable to the application of new technologies, innovations and/or a new business model to its core business, which differentiates the applicant from existing players. If its peers are utilising similar technology or a similar business model, the SEHK will consider whether it was a "first mover" in the industry;[5]

   (b) research and development ("R&D") significantly contributes to its expected value and constitutes a major activity and expense. The applicant should provide the amount of its R&D expenses during the track record period (both as a figure and as a percentage of revenue/total expenses) and explain how the R&D contributes value to the applicant.

5 SEHK Frequently Asked Questions on Listing Regime for Companies from Emerging and Innovative Sectors (Released on 24 August 2018 / Last Updated in April 2020) FAQ 030-2018

The SEHK will examine whether the R&D expenses are capitalised as intangible assets in the applicant's accounts as an indicator of the value generated through the R&D activities;[6]

(c) its success is attributable to its unique features or intellectual property; and/or

(d) it has an outsized market capitalisation/intangible asset value relative to its tangible asset value.

What is considered to be "innovative" may of course change over time. A WVR-structured company with an "innovative" business model may qualify for listing, but once that business model becomes widely adopted, it may cease to be "innovative", so that WVR-structured companies adopting the same business model in the future may not necessarily qualify for listing.

The superficial application of new technology to an otherwise conventional business will not satisfy the suitability criteria. For example, where a retail business merely develops an online sales platform, this would not be suitable for listing with a WVR structure unless it can demonstrate other distinctive features.

2. ***Success of the company***: The applicant is required to have a track record of high business growth, which can be objectively measured by operational metrics, for example business operations, users, customers, unit sales, revenue, profits and/or market value (as appropriate). The high growth trajectory should also be expected to continue.

3. ***Contribution of WVR holders***: Each WVR beneficiary must have been materially responsible for the business' growth, through his/her skills, knowledge and/or strategic direction in circumstances where the company's value is largely attributable or attached to intangible human capital.

4. ***Role of WVR holders***: The WVR beneficiaries must be individuals who each have an active executive role within the business and have materially contributed to the business'

6 Ibid.

growth. Each WVR beneficiary must be a director of the company when it lists on the SEHK. Please see ¶5-250 for the position on corporate WVR beneficiaries.

5. ***External validation***: The applicant must have previously received meaningful third-party investment (that is more than just a token investment) from one or more sophisticated investors who are still investors at the time of the IPO.

   There are no bright line tests for determining who is a "sophisticated investor" or what is a "meaningful investment". GL93-18 defines sophisticated investors as investors the SEHK considers to be sophisticated by reference to factors including their net assets or assets under management, their relevant investment experience, and their knowledge and expertise in the relevant field. In its 2018 "Consultation Conclusions on a Listing Regime for Companies from Emerging and Innovative Sectors" (the "2018 Consultation Conclusions"), the SEHK stated that in determining whether an investment is "meaningful", it will examine the nature and timing of the investment, the amount invested, and the size of the stake taken up. An applicant that is a spin-off from a parent company will not normally be required to demonstrate that it has received meaningful third-party investment.

   GL93-18 requires sophisticated investor(s) to retain 50% of their investment at listing for at least six months after listing, although there are exceptions for de minimis investments by specific investors where the main investors comply with the requirement.

GL93-18 notes that the SEHK exercises its discretion to determine a WVR-structured applicant as being suitable to list sparingly and that it considers all relevant circumstances in determining an applicant's suitability. The suitability factors listed in the guidance letter are not exhaustive or binding. Moreover, there is no guarantee that a company which demonstrates these characteristics will be considered suitable for listing as the SEHK retains a discretion to reject listing applications. In particular, the SEHK reserves the right to reject a listing application where the applicant's WVR structure represents an extreme case of non-conformance with governance norms, for example if the ordinary shares carry no voting rights.

¶5-040 Minimum market capitalisation

Under Listing Rule 8A.06, applicants with WVR structures must have a market capitalisation of at least HK$40 billion (approximately US$5.2 billion) at listing, or a market capitalisation of at least HK$10 billion (approximately US$1.3 billion) at listing and at least HK$1 billion (approximately US$130 million) of revenue for the most recent audited financial year.

¶5-050 WVR beneficiaries

Currently, WVR beneficiaries must be natural persons who, pursuant to Listing Rule 8A.11, must be directors at the time the company lists on the SEHK. As directors, they owe fiduciary duties to the company under Listing Rule 3.08 (elaborated on at ¶15-060). Please refer to ¶5-250 for the position on allowing corporate WVR beneficiaries.

As noted above, the suitability requirements for WVR listings set out in GL93-18 require that WVR beneficiaries are individuals with an active executive role within the business who have materially contributed to the business' growth through their skills, knowledge and/or strategic direction.

¶5-060 Minimum economic interest

At the time of listing, a company's WVR beneficiaries must collectively beneficially own at least 10% of the underlying economic interest in its total issued share capital.[7] This requirement does not continue after listing. A shareholding below 10% may be accepted by the SEHK on a case by case basis, if it still represents a very large amount in absolute dollars terms, for example where the applicant's expected market capitalisation at listing is above HK$80 billion (approximately US$10.3 billion).

7 LR 8A.12

¶5-070 Ownership continuity and control

Questions were raised in the 2018 consultation exercise as to how an applicant which adopts a WVR structure on listing can comply with the Listing Rules' requirement that new applicants must demonstrate ownership and control for at least their most recent audited financial year[8] (discussed at ¶2-090). The concern related to whether there would be considered to be a change in ownership continuity and control where the persons granted WVRs only met the definition of controlling shareholders on listing due to the increase in their voting power under the WVR structure. The SEHK noted in response that an applicant may be able to rebut a presumption that there has been a change in ownership continuity and control, by demonstrating that there was no material change in influence on management notwithstanding the technical change in controlling shareholder(s) resulting from an increase in voting power conferred by the WVR structure.[9]

¶5-080 Public float requirement

A WVR beneficiary and any vehicle through which the beneficiary holds shares carrying WVRs are deemed to be core connected persons of the listed issuer (if they are not already) under Listing Rule 8A.20. Since shares held by the core connected persons of an issuer are excluded from the public float under Listing Rule 8.24, WVR shares cannot be counted towards meeting the public float requirement under Listing Rule 8.08 (elaborated on at ¶2-170).

¶5-090 Limits on WVR powers

Listing Rules 8A.07 and 8A.08 stipulate that WVRs can only attach to a class of shares and that class is not eligible for listing. As set out in the 2018 Consultation Conclusions, the SEHK expects only one share class to carry WVRs. However, the SEHK will consider listing applications from companies with more than one share class holding WVRs on a case by case basis where the company's particular circumstances justify

8 LR 8.05(1)(c), LR 8.05(2)(c) or LR 8.05(3)(c), as applicable

9 SEHK "Consultation Conclusions: A Listing Regime for Companies from Emerging and Innovative Sectors" ("2018 Consultation Conclusions") (April 2018) at chapter 4, paragraphs 197-200

having more than one class of WVR shares and the WVR structure is not an extreme case of non-conformance with governance norms. A WVR structure which provides for non-voting ordinary shares would be regarded as an extreme case.

Listing Rule 8A.07 further provides that WVRs can only confer enhanced voting power on resolutions tabled at general meetings, but cannot confer enhanced voting power on resolutions which Listing Rule 8A.24 requires to be passed on a one vote per share basis. These are resolutions to approve:

- changes to the listed issuer's constitutional documents;
- changes to the rights attached to any class of shares;
- the appointment or removal of an independent non-executive director ("INED");
- the appointment or removal of the listed issuer's auditors; and
- the voluntary winding-up of the listed issuer.

With the exception of enhanced voting rights, the rights attached to WVR shares must be the same as the rights attached to the issuer's ordinary shares.

Listing Rule 8A.10 imposes a limit on the voting rights that can attach to WVR shares. WVR beneficiaries must not be entitled to more than 10 times the voting power of ordinary shares.

¶5-100 Non-WVR shareholders' rights

A listed issuer's non-WVR shareholders must be entitled to cast at least 10% of the votes that are eligible to be cast on resolutions at the issuer's general meetings.[10] Under Listing Rule 8A.23, non-WVR shareholders holding 10% or more of the voting rights on a one vote per share basis must be able to convene an extraordinary general meeting and add resolutions to the meeting agenda.

10 LR 8A.09

RING-FENCING AND ANTI-AVOIDANCE

¶5-110 Ring-fencing and anti-avoidance

As set out in Listing Rule 8A.05, the SEHK only allows new applicants to list with a WVR structure. Listed issuers are not permitted to adopt a WVR structure after listing. The note to Listing Rule 8A.05 contains an anti-avoidance provision which gives the SEHK the discretion to reject listing applications from companies which have tried to circumvent or avoid this rule, for example by de-listing as a conventional company and then applying to list as a WVR company.

After listing, issuers with WVR structures are prohibited from increasing the proportion of WVR shares from the proportion in issue at the date of listing.[11]

A WVR listed company is also subject to restrictions under Listing Rule 8A.14 on further issues of shares with WVRs. It can only allot, issue or grant shares carrying WVRs in a *pro rata* offer to all shareholders, a *pro rata* issue of securities to all shareholders by way of scrip dividends, or a stock split or other capital reorganisation which will not increase the proportion of shares holding WVRs. The SEHK's prior approval is required in each of these situations.

If a WVR beneficiary does not take up any WVR shares or rights to WVR shares in a *pro rata* offer, the shares or rights not taken up can be transferred to another person, but the transferred rights must only entitle the transferee to an equivalent number of ordinary shares.

Where a listed company reduces the number of its issued shares, the WVR beneficiaries are required by Listing Rule 8A.15 to reduce their WVRs proportionately if the reduction in issued shares would cause an increase in the proportion of shares carrying WVRs.

Listed companies are also prohibited under Listing Rule 8A.16 from changing the terms of a class of shares carrying WVRs to increase the WVRs carried by that share class. However, they can reduce the WVRs carried with the SEHK's approval, provided that they comply with relevant legal requirements.

11 LR 8A.13