



## AN OVERVIEW OF THE LISTING QUALIFICATIONS IN HONG KONG

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### An overview of the general listing qualifications in Hong Kong and the additional requirements for issuers with weighted voting rights (WVR) structures and pre-revenue/pre-profit biotech companies

Going public has long been recognized as one of the most monumental developments of a company. Yet the IPO process in Hong Kong is heavily scrutinized by the regulatory bodies, namely The Stock Exchange of Hong Kong Limited (the “Exchange”) and the Securities and Futures Commission (SFC), which make it a requirement for the listing applicant to have a strong and sustainable history of operations, financial performance and a healthy outlook. Generally, to qualify for listing on the Main Board or GEM of the Exchange, listing applicants must either meet the listing qualifications provided under Chapter 8 of The Listing Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “MBLR”) or Chapter 11 of the Rules Governing the Listing of Securities on GEM (the “GEMLR”). While the Main Board is suitable for more established companies, GEM serves as a securities market for small and mid-sized companies. This article provides an overview of the general listing qualifications in Hong Kong and the additional requirements for issuers with weighted voting rights (WVR)

structures and pre-revenue/pre-profit biotech companies.

#### General listing qualifications for Main Board and GEM

The listing applicant must be duly incorporated in jurisdiction acceptable to the Exchange and such acceptable jurisdictions include Australia, Bermuda, BVI, Cayman Islands, Canada, China Hong Kong, India, China mainland, Singapore, Japan, Italy and some states in USA etc. Other jurisdictions which are subject to appropriate standards of shareholder protection that are equivalent to those required under Hong Kong Law may also be considered at the Exchange’s discretion.

#### **1. Trading record and financial requirements**

Both the Main Board and GEM listing applicants are required to meet certain financial metrics to gain access to the stock market.

For Main Board, there are three financial standards under Rule 8.05 of MBLR: (1) the profit test; (2) market capitalization/revenue/cash flow test; and (3) market capitalization/revenue test. The listing applicants must satisfy one of these financial standards. The listing applicant will also need to have trading record of not less than three financial years (subject to the exception for biotech companies under Chapter 18A of the MBLR) and management continuity for at least the three preceding years and ownership continuity and control for at least the most recent audited financial year.

Whereas for listing on GEM, the financial conditions under Chapter 11 of the GEMLR focused on market capitalization and positive cash flow. The listing applicant will also need to have trading record of not less than two financial years, management continuity for at least the two preceding years and ownership continuity and control for at least the most recent audited financial year.

The follow table sets out the major requirements for listing on the Main Board and GEM:

	Main Board			GEM
	Financial requirements (satisfy one of the below tests)			Financial requirements
	Profit test	Market cap / Revenue / Cashflow test	Market cap / revenue test	
<b>Profit</b>	≥ HK\$50m note 1	-	-	-
<b>Market capitalization</b>	-	≥ HK\$2 bn	≥ HK\$4 bn	≥ HK\$150m
<b>Latest year revenue</b>	-	≥ HK\$500m	≥ HK\$500m	-
<b>Positive cash flow</b>	-	≥ HK\$100m for the 3 preceding financial years	-	≥ HK\$30m for the 2 preceding financial years
<b>Trading records</b>	≥ 3 financial years			≥ 2 financial years
<b>Management continuity</b> note 2	≥ 3 preceding financial years			≥ 2 preceding financial years
<b>Ownership continuity</b>	at least the most recent audited financial year			

**Note**

1. For the most recent year, the profit attributable to shareholder must not be less than HK\$20m and, for the two preceding years, it must not be less than HK\$30m.
2. Listing Decision LD45-1 noted that the Exchange will attribute proportionately greater responsibility to officers with more senior positions than those with more junior positions. It will focus on reviewing the substance of the management, particularly whether there is an identifiable group of individuals remained with management responsibility throughout the relevant track record period and they form the core management of the listing applicant at the time of listing and thereafter.

## 2. Directors

The Exchange must also be satisfied that the directors of the listing applicant qualify under Chapter 3 of the MBLR or Chapter 5 of the GEMLR. This includes having the character, experience, required level skill and diligence, and being able to demonstrate a standard of competence commensurate with their positions as a director. There must also be at least three independent non-executive directors representing one-third of the directors and at least one of them must have appropriate professional qualification or accounting or financial management related expertise.

## 3. Public float and spread of shareholders

The Exchange will grant a listing only if there is sufficient interest in the securities of the listing applicant. In this connection, both the MBLR and GEMLR require at least 25% of the issuer's total issued share capital at all times be held by the public. However, the Exchange may, at its discretion, accept a public float between 15%-25% if the market capitalization of the listing applicant at the time of listing exceeds HK\$10bn. Nevertheless, the market capitalization of a Main Board listing applicant must be at least HK\$500m at the time of listing and HK\$125m of which must be held by the public; whereas, the market capitalization of a GEM listing applicant at the time of listing only needs to meet the threshold of HK\$150m, with HK\$45m of which being held by the public.

Furthermore, the listing applicant must have an adequate spread of shareholders. While the Main Board and GEM listing applicants must have at least 300 and 100 shareholders, respectively, not more than 50% of the shares in the public hands at the time of listing may be beneficially owned by the three largest public shareholders.

## 4. Suitability for listing

In addition to the above basic requirements, according to Rule 8.04 of the MBLR or Rule 11.06 of the GEMLR, the listing applicant must, in the opinion of the Exchange, be suitable for listing. As stated under Rule 2.06 of the MBLR or Rule 2.09 of the GEMLR, there is no bright line test in determining what would render an issuer and its business unsuitable for listing. The Exchange has set out in guidance letter GL68-13 some non-exhaustive examples of factors that the Exchange takes into consideration when assessing a new applicant's suitability for listing.

## 5. Other requirements

There are certain other listing requirements focusing on the securities to be issued. Both the MBLR and GEMLR require the securities to be issued be freely transferable. Also, the voting power of the shares must bear a reasonable relationship to the equity interest those shares represent. This is the "one-share, one-vote" concept, whereby the shares shall carry the same voting right and a shareholder will have same voting power as another with the same amount of equity in the listing applicant.

This effectively prohibits companies with dual-class shares structure from listing in the stock market. However, with the new Chapter 8A of the MBLR, which came to effect in April 2018, listing applicants with WVR structure may be allowed to list on the Main Board.

### Specific listing requirements for issuers with WVR structures

In addition to satisfying the general listing qualifications as aforementioned, listing applicants with WVR structure must demonstrate that it has met certain additional characteristics for the purpose of demonstrating to the Exchange that it is suitable for listing in Hong Kong with a WVR structure, a summary of which is set out below (please refer to guidance letter GL93-18 for more details):

## 1. Innovative

Firstly, the listing applicants should be an innovative company with the following characteristics:

- (i) its success is attributable to the application, to the company's core business, of (1) new technologies; (2) innovations; and/or (3) a new business model;
- (ii) research and development (R&D) are a significant contributor of its expected value and constitutes a major activity and expense;
- (iii) its success is attributable to its unique features or intellectual property; and/or
- (iv) it has an outsized market capitalization/intangible asset value relative to its tangible asset value.

Whether the listing applicant is "innovative" will depend on the state of the industry and market that the listing applicant operates which will be ever-changing as the technology, market and industry develop.

## 2. WVR holders

For WVR holders, they must have an active executive role within the business and must continue to be a director at the time of listing. They must also have been materially responsible for the growth of the business by way of their skills, knowledge or strategic direction in circumstances where the value of the company is mainly derived from intangible human capital. Nevertheless, their voting power shall not be more than 10 times of the voting power of the non-WVR holders. The listing applicants must also ensure that the non-WVR holder will hold at least 10% of the voting powers of the shares.

## 3. Financial requirements

There are two financial requirements for the WVR requirements to meet. The first concerns market capitalization, whereby the

listing applicant must achieve, at the time of listing, either:

- (i) a market capitalization of at least HK\$40bn; or
- (ii) a market capitalization of at least HK\$10bn and revenue of at least HK\$1bn for the most recent audited financial year.

Another financial requirement concerns external validation in which there must be previous third-party investment from at least one "sophisticated investor". The Exchange, in considering whether an investor is "sophisticated", will consider the investor's knowledge and expertise in the relevant field, investment experience and net assets etc. Such investor(s) must retain an aggregate 50% of its/their investment for a period no less than six months after listing.

### Specific listing requirements for biotech companies

Biotech companies applying for listing under Chapter 18A of MBLR are also subject to additional listing qualifications. Pre-revenue/pre-profit biotech companies will not be able to achieve the financial metrics as set out under chapter 8 of the MBLR. The new chapter 18A of the MRLR, which came into effect in April 2018, allows such biotech companies to list if they satisfy the qualifications as set out below.

## 1. Suitability

The listing applicant must qualify as a biotech company whereby its principal business is research development, application and commercialization of biotech products. In particular, it must demonstrate the following features (please refer to guidance letter GL92-18 for more details):

- (i) the listing applicant must have developed at least one core product beyond the concept stage, i.e., having met the developmental milestones specified for the relevant type of

product as defined in guidance letter GL92-18;

- (ii) it must have been primarily engaged in R&D for the purpose of developing its core product;
- (iii) it must have been engaged with the R&D of its core product for a minimum of 12 months prior to listing;
- (iv) it must have as its primary reason for listing the raising of finance for R&D to bring its core product to commercialization;
- (v) it must have registered intellectual property rights attached to its core product; and
- (vi) if the listing applicant is engaged in the R&D of pharmaceutical products or biologic products, a pipeline of those potential products must be demonstrated.

## 2. Financial requirement

The listing applicant must have been in operation in its current line of business for at least two financial years prior to listing with the same management. There must also be sufficient working capital to cover at least 125% of the group's costs for at least 12 months from the date of publicizing its listing documents. Such costs must substantially consist of (i) general administrative and operating costs; and (ii) research and development costs.

At the time of listing, the market capitalization of the listing applicant must reach at least HK\$1.5bn.

Lastly, similar to listing applicant with WVR structure, the listing applicant must have received "meaningful investment" from at least one "sophisticated investor" at least 6 months before listing (which must remain at the time of listing). The Exchange will assess whether an investor is a "sophisticated investor" for the purpose of applications for

listing under Chapter 18A on a case-by-case basis 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. As set out in guidance letter GL92-18, for this purpose, the Exchange would generally consider the following as examples, for illustrative purposes only, of types of sophisticated investor:

- (i) a dedicated health care or biotech fund or an established fund with a division/department that specializes or focuses on investments in the biopharmaceutical sector;
- (ii) a major pharmaceutical/health care company;
- (iii) a venture capital fund of a major pharmaceutical/healthcare company; and
- (iv) an investor, investment fund or financial institution with minimum assets under management of HK\$1 billion.

As a guidance, the Exchange listed out investment benchmarks for one to qualify as "meaningful investment" under guidance letter GL92-18, and they are:

- (i) for an applicant with a market capitalization between HK\$1.5bn to HK\$3bn, an investment of not less than 5% of the issued share capital of the applicant at the time of listing;
- (ii) for an applicant with a market capitalization between HK\$3bn to HK\$8bn, an investment of not less than 3% of the issued share capital of the applicant at the time of listing; and
- (iii) for an applicant with a market capitalization of more than HK\$8bn, an investment of not less than 1% of the issued share capital of the applicant at the time of listing.

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