

## ENTERING THE CAPITAL MARKET BY COMPANIES IN THE GREATER BAY AREA Listing in Hong Kong or Mainland China

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### 1. Introduction

On 14 May 2020, the People's Bank of China, the China Banking and Insurance Regulatory Commission, the China Securities Regulatory Commission (the "CSRC") and the State Administration of Foreign Exchange published the Opinions for Financial Support for the Development of the Guangdong-Hong Kong-Macau Greater Bay Area (the "Opinions"). The Opinions specifically mentioned about the support given to the opening up of its market by the financial sector, including banking, insurance and securities industries, as well as the development of cross-border investment pilot programs in private equity investment funds in the Greater Bay Area, and encourage qualified innovative businesses to obtain financing and list in Hong Kong and Macau.

The Greater Bay Area companies may choose to list in the A-shares market in Mainland China or Hong Kong. Small and medium-sized enterprises may also choose to list on GEM in Hong Kong which has relatively lower requirements for listing.

### 2. Respective advantages of listing in Hong Kong and Mainland China

#### (A) Advantages of listing in Hong Kong

As an international financial centre with a well-equipped system and top-tier service, the Hong Kong securities market has attracted many domestic and foreign companies to list in Hong Kong. In recent years, more and more Mainland China companies have started to place greater emphasis on the Hong Kong stock market as the Shanghai Stock Connect and Shenzhen Stock Connect were launched. The advantages of listing in Hong Kong include the followings:

- a) obtaining international capital: Hong Kong is a regional and international financial centre, and also the base for some of the most successful fund managers in the world;
- b) active trading after listing, making it convenient for post-listing fund raising;
- c) international investors are familiar with the Hong Kong regulatory system;

- d) raising company image and reputation through participating in Asia Pacific's international financial centre;
- e) enhancing standards of the management: the Hong Kong regulatory system requires management to increase transparency in corporate governance, and to protect interests of minority shareholders; and
- f) different ways of listing: The Stock Exchange of Hong Kong Limited (the "Exchange") accepts Mainland China companies to choose to list in Hong Kong by way of H-share listing or red chip listing. Further, the Exchange allows companies that have already listed overseas to also list in Hong Kong, including dual primary listing or only secondary listing.

### **(B) Advantages of listing in Mainland China**

Since the successive opening of the Shanghai Stock Exchange (the "SSE") and Shenzhen Stock Exchange (the "SZSE") in 1990 and 1991, the China equity capital market has developed rapidly, structuring a multi-layered securities market including the Main Board, the Small and Medium Enterprise (the "SME") Board, ChiNext Board, Sci-tech Innovation Board and the National Equities Exchange and Quotations (the "NEEQ"). The main advantages of choosing to list in Mainland China capital market for the Greater Bay Area companies are as follows:

- a) familiar with the local market and regulatory environment; and
- b) enhancing domestic profile and maintaining the status of controlling shareholders.

## **3. Choosing to list in Hong Kong**

The Greater Bay Area companies may choose to list in Hong Kong by way of H-share or red chip listing. This section will discuss the differences between listing as a H-share company and a red chip company and provide an overview of the general listing qualifications as well as additional listing requirements for issuers with weighted voting rights ("WVR") structure and pre-revenue bio-tech companies.

### **(A) Choosing the way of listing**

#### **a) Listing as a red chip company**

A red chip company refers to a company incorporated outside Mainland China (normally in places such as the Cayman Islands, Bermuda and Hong Kong), but with its major businesses located in Mainland China and controlled by Mainland China entities.

### **Advantages of listing as a red chip company**

Since red chip companies were not incorporated in Mainland China, they are not subject to the regulatory requirements of the CSRC. As a result, if the Greater Bay Area companies choose to list as a red chip company, no approval from the CSRC shall be required.

Further, there are specific additional requirements for listing of H-share companies in Hong Kong, therefore, choosing to list as a red chip company is relatively simpler in terms of certain documentary requirements and procedures as compared to listing as a H-share company.

### **Corporate reorganization and investment formalities for onshore institutional and individual investors**

A red chip company needs to undergo reorganization prior to listing to inject its domestic assets into an offshore structure. A red chip company will incorporate a listing entity offshore (for example the Cayman Islands), which will then hold the domestic companies through companies incorporated in the British Virgin Islands and Hong Kong. Further, under certain situations, a red chip company also needs to control the domestic operating company through a Variable Interest Entity (“VIE”) structure.

For onshore residents in Mainland China, apart from fulfilling the registration formalities under the *Notice on the Administration of Foreign Exchange Involved in Overseas Investment, Financing and Return on Investment Conducted by Residents in China via Special-Purpose Companies* (known as “Circular No.37”), they also need to comply with the rules under the *Provisions on the Acquisition of Domestic Enterprises by Foreign Investors* (known as “Circular No.10”).

### **Issues relating to VIE structure**

According to Listing Decision HKEX-LD-43-3 issued by the Exchange, VIE structure may only be used for restricted and prohibited businesses in the foreign direct investment policies in Mainland China, after demonstrating genuine efforts to comply with applicable laws and regulations and that they are really unable to fulfil shareholding requirements.

### **b) Listing as a H-share company**

A H-share company refers to a company incorporated in Mainland China which has obtained approval from the CSRC to list in Hong Kong. A H-share company needs to fulfil the general listing requirements in Hong Kong and also the specific additional

requirements of the Exchange for companies incorporated in Mainland China.

### **Advantages of listing as a H-share company**

A H-share company is not required to undergo reorganization and set up a red chip infrastructure, so the costs at the establishment stage are lower and the procedure is simpler.

### **Onshore approval procedures for H-share listing**

H-share company must have obtained the approval from the CSRC prior to listing. Further, a H-share company needs to obtain approval from the CSRC when it issues new shares.

### **H-Share Full Circulation**

On 31 December 2019, H-share Full Circulation was officially launched. H-share Full Circulation refers to domestic unlisted shares of a H-share company being listed and in circulation on the Exchange. In other words, all the shares of a H-share company (whether offshore or onshore) may be traded and circulated on the Exchange.

According to the Guidelines for the Application for the “Full Circulation” of the Domestic Unlisted Shares of H-Share Companies, an application may be made in respect of the domestic unlisted shares of a H-share company to be listed on the Exchange. For an unlisted onshore joint-stock limited company, it may make an application for full circulation at the same time as it applies for the initial public offering of its shares outside of Mainland China.

## (B) Listing qualifications in Hong Kong

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

#### Trading record, financial and other requirements

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

	Main Board			GEM
	Financial requirements (satisfying one of the tests below)			Financial requirements
	Profit test	Market cap/ Revenue/ Cashflow test	Market cap/ revenue test	
Profit	≥HK\$50m <sup>Note a</sup>	-	-	-
Market capitalization	-	≥ HK\$2bn	≥ HK\$4bn	≥ HK\$150m
Latest year revenue	-	≥ HK\$500m	≥ HK\$500m	-
Positive cash flow	-	≥ HK\$100m for the 3 preceding financial years	-	≥ HK\$30m for the 2 preceding financial years
Trading records	≥ 3 financial years			≥ 2 financial years
Management continuity <sup>Note b</sup>	≥ 3 preceding financial years			≥ 2 preceding financial years
Ownership continuity	At least the most recent audited financial year			
Spread of shareholders	At least 300 shareholders			At least 100 shareholders
	The 3 largest public shareholders may not hold more than 50% shares in the public hands at the time of listing			
Public float	At least 25% of the issuer's total issued shares If the market capitalization at the time of listing exceeds HK\$10bn, the Exchange may, at its discretion, accept a public float between 15%-25%			

#### Note

- For the most recent year, the profit attributable to shareholders must not be less than HK\$20m, and not less than HK\$30m for the two preceding years.
- The Exchange will focus on reviewing the substance of the management, particularly whether there is an identifiable group of individuals that has management responsibility throughout the relevant track record period and forms the core management of the listing applicant at the time of listing and thereafter.

### b) Companies with WVR structures and pre-revenue biotech companies

The Exchange allows companies with WVR structures and pre-revenue biotech companies to be listed in Hong Kong, but they have to demonstrate that they possess certain additional characteristics apart from the aforementioned general listing qualifications.

#### Specific listing requirements for issuers with WVR structures

Listing applicants with WVR structures must demonstrate that they have certain additional characteristics, a summary of which is set out below (please refer to guidance letter HKEX-GL93-18 of the Exchange for more details):

### Innovative

The listing applicant 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") is 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 in which the listing applicant operates that will be changing as technology, market and industry develop.

### WVR holders

WVR holders must have an active executive role within the business and must continue to be a director at the time of listing. Nevertheless, their voting power must not be more than 10 times of the voting power of non-WVR holders. The listing applicants must also ensure that non-WVR holders will hold at least 10% of the voting power of the shares.

### Financial requirements

Firstly, 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.

Secondly, there must be previous third-party investment from at least one "sophisticated investor". Such investor(s) must retain an aggregate 50% of the investment for a period no less than six months after listing.

### Specific listing requirements for pre-revenue biotech companies

Pre-revenue biotech companies applying for listing are also subject to additional listing requirements under Chapter 18A of The Listing Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, which came into effect in April 2018.

### Suitability

The listing applicant must qualify as a biotech company whereby its principal business is R&D, application and commercialization of biotech products. In particular, it must demonstrate the following features:

- 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 HKEX-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) its primary reason for listing must be to raise finance for R&D to bring its core product(s) to commercialization;

- v) it must have registered intellectual property rights attached to its core product(s); and
- vi) if the listing applicant is engaged in the R&D of pharmaceutical products or biological products, a pipeline of those potential products must be demonstrated.

#### 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 (including general administrative, operating and R&D costs) for at least 12 months from the date of publicizing its listing documents.

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

## 4. Choosing to list in Mainland China

### **(A) Choosing the route of listing:**

The Greater Bay Area companies can choose to list on the following boards in Mainland China:

#### **a) Main Board**

Companies listed on the Main Board in Mainland China are listed on the SSE and SZSE. The threshold of listing on the Main Board is higher, which has higher requirements on different aspects of the issuers including their operation period, size of share capital, profitability and minimum market capitalization etc. Most companies that can be listed on the Main Board are sizeable mature enterprises with larger capital scale and stable profitability.

#### **b) SME Board**

SME Board is a gathering platform of small and medium-sized companies specifically set up by the SZSE to encourage independent innovation. Although the industrial ranking of companies listed on the SME Board is usually not as high as that of companies listed on the Main Board, some of them have stronger corporate growth and developed

exponentially after listing with rapid increase in their market capitalization.

#### **c) ChiNext Board**

ChiNext Board is a capital market for fund raising by small and medium-sized enterprises and high-technology companies with high growth potential. At present, ChiNext Board has implemented the registration system.

#### **d) Sci-tech Innovation Board**

Sci-tech Innovation Board is the first market in Mainland China to implement a registration system, mainly for sci-tech innovation enterprises which are in line with national strategy, have made breakthroughs in key core technologies and have high market recognition.

#### **e) NEEQ**

The NEEQ is the national share transfer system for small and medium-sized enterprises, mainly for innovative, entrepreneurial and growth-oriented small and medium-sized enterprises. However, as enterprises listed on the NEEQ cannot issue shares publicly, listing on the NEEQ is not considered as listing in the usual sense.

**(B) Listing qualifications in Mainland China**

Qualification	Main Board/ SME Board	ChiNext Board	Sci-tech Innovation Board
Issuer's Qualification	<ul style="list-style-type: none"> <li>➤ Issuer should be a joint-stock limited company duly incorporated and validly existing under the law.</li> <li>➤ Since incorporation of the joint-stock limited company, the issuer should have been in continuous operation for at least 3 years.</li> <li>➤ Where a limited liability company is converted into a joint-stock limited company by converting the entire original book value of its net assets, the term of operation may be counted from the establishment date of the limited liability company.</li> </ul> <p>Note: Applicants on the Main Board and SME Board are exempt from the continuous operation requirement if approved by the State Council.</p> <p>Red chip companies not yet listed abroad with fast-growing revenues, independent research capacities, internationally-leading technologies and comparative advantages in their industry can also apply for listing on the ChiNext Board or Sci-tech Innovation Board.</p>		
Industry Requirement	No specific requirement.	ChiNext Board is a platform for growth-oriented, innovative and entrepreneurial enterprise, relying on the general trend of innovation, creation, and creativity to support the deep integration of traditional industries with new technologies, new industries, new business types and new models.	Sci-tech Innovation Board focuses on supporting high-tech industries and strategic emerging industries such as new generation of information technology, high-end equipment, new materials, new energy, energy conservation and environmental protection and biomedicine, promote the in-depth integration of the internet, big data, cloud computing, artificial intelligence and manufacturing.
Main Business	No significant change in issuer's main business in the past 3 years.	Stable main business, with no significant adverse change in the past 2 years.	Stable main business, with no significant adverse change in the past 2 years.
Financial Requirements	<ul style="list-style-type: none"> <li>➤ The issuer has been profitable with an accumulated net profit exceeding RMB 30m for the last 3 fiscal years, calculated based on the lower of the net profit before and after deduction of non-recurring gains and losses (Pilot innovative enterprises can be exempted);</li> <li>➤ The issuer has had an accumulative net cash flow from operating activities of over RMB 50m, or an accumulated operating revenue</li> </ul>	<p>The issuer shall at least meet one of the following criteria:</p> <ul style="list-style-type: none"> <li>➤ positive net profit in the last 2 years, and the accumulated net profit not less than RMB 50m;</li> <li>➤ an expected market capitalization of not less than RMB 1bn, with positive net profit and operating income of not less than RMB 100m in the most recent year; or</li> <li>➤ an expected market capitalization of not less than RMB 5bn, and the operating revenue in the most recent year not less than RMB 300m.</li> </ul> <p>The net profit shall be the lower of before and after</p>	<p>The issuer shall at least meet one of the following criteria:</p> <ul style="list-style-type: none"> <li>➤ an expected market capitalization of not less than RMB 1bn and a positive net profit during the last 2 years with accumulated net profit not less than RMB 50m, or an expected market capitalization of not less than RMB 1bn and a positive net profit and an operating revenue of not less than RMB 100m in the most recent year;</li> <li>➤ an expected market capitalization of not less than RMB 1.5bn, and an operating revenue of not less than RMB 200m during the most recent year and a</li> </ul>

Qualification	Main Board/ SME Board	ChiNext Board	Sci-tech Innovation Board
	<p>of over RMB 300m for the last 3 fiscal years; and</p> <ul style="list-style-type: none"> <li>➤ The issuer has had no uncovered losses at the end of the most recent period (Pilot innovative enterprises can be exempted).</li> </ul>	<p>deducting non-recurring gains and losses.</p> <p>In addition, for red chip companies not yet listed abroad which have rapid growing revenues, independent research capacities, internationally leading technologies and comparative advantages in the competition in the same industry applying for the issuance of shares or depository receipts and listing on ChiNext Board, or for issuers with differential voting arrangements to apply for initial public offerings of shares or depository receipts and listing on ChiNext Board, they shall meet at least one of the following listing criteria:</p> <ul style="list-style-type: none"> <li>➤ an expected market capitalization of not less than RMB 10bn and a positive net profit for the most recent year; or</li> <li>➤ an expected market capitalization of not less than RMB 5bn, with positive net profit and operating income of not less than RMB 500m in the most recent year.</li> </ul>	<p>total R&amp;D investment during the last 3 years, representing not less than 15% of the total operating revenue of the same period;</p> <ul style="list-style-type: none"> <li>➤ an expected market capitalization of not less than RMB 2bn, an operating revenue of not less than RMB 300m during the most recent year, and a total net cash flow from operating activities of not less than RMB 100m during the last 3 years;</li> <li>➤ an expected market capitalization of not less than RMB 3bn and an operating revenue of not less than RMB 300m during the most recent year; or</li> <li>➤ an expected market capitalization of not less than RMB 4bn, with its main businesses or products required to be approved by relevant national government authorities, having a large market space and currently having achieved a milestone progress and obtained investment by notable investment institutions. For pharmaceutical companies, at least one of the core products to be approved for phase II clinical trial, and for other eligible enterprise, it has to possess significant superiority in technology and meet the corresponding requirements.</li> </ul> <p>In addition, for red-chip companies not yet listed abroad which have rapid growing revenues, independent research capacities and development, internationally leading technologies, and comparative advantages in the competition in the same industry, to apply for the issuance of shares or depository receipts and listing on Sci-tech Innovation Board, or for issuers with differential voting arrangements to apply for initial public offerings of shares or</p>



Qualification	Main Board/ SME Board	ChiNext Board	Sci-tech Innovation Board
			depository receipts and listing on Sci-tech Innovation Board, they shall meet at least one of the following listing criteria: <ul style="list-style-type: none"> <li>➤ an expected market capitalization of not less than RMB 10bn; or</li> <li>➤ the expected market capitalization of not less than RMB 5bn, with operating revenue of not less than RMB 500m in the most recent year.</li> </ul>
<b>Ownership and Management Continuity</b>	No change in issuer's actual controller and no significant change in directors or other senior management in the last 3 years.	No change in issuer's actual controller and no significant adverse change in directors or other senior management in the last 2 years.	No change in issuer's actual controller and no significant adverse change in directors, senior management and core technical personnel in the last 2 years.

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