

2.2 COMPANIES WITH WEIGHTED VOTING RIGHTS STRUCTURES

1. This chapter provides guidance to an applicant on the factors that the Exchange will take into account when considering whether an applicant is suitable for listing with a weighted voting rights (“WVR”) structure under MB Chapter 8A.
2. The concept of proportionality between the voting power and equity interest of shareholders, commonly known as the “one-share, one-vote” principle, is an important aspect of investor protection as it helps align controlling shareholders’ interests with those of other shareholders and makes it possible for incumbent management to be removed, if they underperform, by those with the greatest equity interest in an issuer.
3. The Exchange believes that the “one-share, one vote” principle continues to be the optimum method of empowering shareholders and aligning their interests in a company. Consequently, the Exchange will exercise its discretion to find an applicant suitable to list with a WVR structure sparingly. Demonstration of the characteristics in this chapter may not of itself satisfy the Exchange of an applicant’s suitability to list with a WVR structure. The Exchange retains discretion to reject an application for listing with a WVR structure even if the applicant meets the requirements in this chapter.

Definitions

- **Grandfathered Greater China Issuer** means a Greater China Issuer that was (a) primary listed on a Qualifying Exchange on or before 15 December 2017; or (b) primary listed on a Qualifying Exchange after 15 December 2017, but on or before 30 October 2020 and controlled by corporate WVR beneficiaries as at 30 October 2020.
- **Greater China Issuer** means a Qualifying Issuer with its centre of gravity in Greater China.
- **Non-Greater China Issuer** means a Qualifying Issuer that is not a Greater China Issuer.
- **Qualifying Issuer** means an overseas issuer primary listed on a Qualifying Exchange, that is, either The New York Stock Exchange LLC, Nasdaq Stock Market or the Main Market of the London Stock Exchange plc (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment).

Suitability Guidance

4. An applicant, including a Grandfathered Greater China Issuer or a Non-Greater China Issuer, must demonstrate that, in addition to the other requirements for listing under MB Rules, it is an innovative company with reference to the following (collectively, the “**Innovative Company Requirements**”):

Innovative

- (i) The Exchange considers an innovative company for the purpose of the Listing Rules would normally be expected to possess more than one of the following characteristics:
 - (a) 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

	<p>differentiate the company from existing players. An applicant should elaborate on how its operations differ from conventional methods of operating a business in its industry which sets it apart from its peers. If the peers are employing similar technology/business model, the Exchange will consider whether the applicant is the “first mover” in the industry by reference to the timeline of the implementation of its technology, innovation and/or business model as compared to its closest peers;</p> <p>(b) R&D is a significant contributor of its expected value and constitutes a major activity and expense. An applicant should disclose the amount of its R&D expenses during the track record period (both as a figure and as a percentage of total revenue/expenses). In addition, an applicant should explain how the R&D contributes value to the applicant. The Exchange will examine whether the R&D expenses are capitalised as intangible assets in the accounts of the applicant as an indicator of the value generated through the R&D activities. Where a significant portion of the R&D expenses is not capitalised, the applicant should provide the reasons therefor;</p> <p>(c) Its success is demonstrated to be attributable to its unique features or IPs. An applicant should provide detailed explanation on how its IPs enabled it to achieve business success; and/or</p> <p>(d) It has an outsized market capitalisation/intangible asset value relative to its tangible asset value.</p>
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5. Generally, a Grandfathered Greater China Issuer or a Non-Greater China Issuer with a WVR structure that meets the conditions set out in Rule 8A.46 would be considered suitable for listing with a WVR structure as a dual primary listed issuer under MB Chapter 19 or a secondary listed issuer under MB Chapter 19C if it can (i) satisfy the Innovative Company Requirements; and (ii) meet the general suitability requirement in MB Rules 8.04 and 19C.02 (where applicable).
6. An applicant (other than a Grandfathered Greater China Issuer or a Non-Greater China Issuer), in addition to the Innovative Company Requirements, must demonstrate that it meets all the characteristics below for the purpose of demonstrating that it is suitable for listing with a WVR structure under MB Chapter 8A.

Success of the company	(i) The applicant must demonstrate a track record of high business growth, as can be objectively measured by operational metrics such as business operations, users, customers, unit sales, revenue, profits and/or market value (as appropriate) and its high growth trajectory is expected to continue.
Contribution of WVR beneficiary	(i) Each WVR beneficiary must have been materially responsible for the growth of the business by way of his skills, knowledge and/or strategic direction in circumstances where the value of the company is largely attributable or attached to intangible human capital ¹ . The WVR beneficiaries simply being the directors of the applicant by itself will not be sufficient.

¹ In particular, the applicant should clearly disclose (i) the role of each proposed WVR beneficiary; and (ii) how the knowledge and skills of each proposed WVR beneficiary contributed to the business growth of the applicant. See also Company E in **Annex A.10**.

Role of WVR beneficiary	<ul style="list-style-type: none"> (i) Each WVR beneficiary must be an individual who has an active executive role within the business, and has contributed to a material extent to the ongoing growth of the business; and (ii) Each WVR beneficiary must be a director of the applicant at the time of listing.
External validation²	<ul style="list-style-type: none"> (i) The applicant must have previously received meaningful third party investment (being more than just a token investment) from at least one sophisticated investor³ (which must remain at IPO). (ii) Such investors will be required to retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO (subject to exceptions for de minimis investments by specific investors provided that the main investors are in compliance). (iii) The Exchange would not normally require an applicant to demonstrate that it has received meaningful third party investment if the applicant is a spin-off from a parent company⁴.

7. The Exchange reserves the right to reject an applicant on suitability grounds if its WVR structure is an extreme case of non-conformance with governance norms (e.g. if the ordinary shares would carry no voting rights at all).
8. Applicants should note that the factors set out in this chapter are neither exhaustive nor binding and the Exchange will take into account all relevant circumstances in its assessment of the applicant.

Biotech Company⁵ and Specialist Technology Company⁶

9. The listing regimes under MB Chapters 8A, 18A and 18C all target emerging and innovative applicants with similar needs. The additional requirements that apply to MB Chapters 18A and 18C applicants (e.g. R&D and IP requirements) should have been sufficient to demonstrate that eligible applicants possess a degree of “innovation”. In view of the foregoing and based on our vetting experience, a MB Chapter 18A or 18C applicant fully meeting the requirements under MB Chapter 18A or 18C respectively, shall be presumed to have satisfied the Innovative Company Requirements and shall qualify as an innovative company for the purpose of MB Chapter 8A.

² Where the applicant is a Non-Grandfathered Greater China Issuer seeking a dual primary listing or a secondary listing, references to “IPO” under “External validation” in paragraph 6 refers to the applicant’s listing on the Qualifying Exchange provided that there are no substantial change in the WVR structure between the date of the applicant’s listing on the Qualifying Exchange and the date of the applicant’s listing in Hong Kong save for the adoption of the WVR safeguards under MB Chapter 8A.

For other applicants which have a primary listing elsewhere, they should consult the Exchange at an early stage if there are difficulties in complying with the “External validation” requirement. The Exchange may only consider references to “IPO” herein to mean the applicant’s listing on the overseas stock exchange in exceptional circumstances.

³ The Exchange considers an investor to be sophisticated with 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.

⁴ For the purpose of assessing the eligibility and suitability of an applicant to list with a WVR structure, a spin-off applicant will be assessed on a stand-alone basis separate from the characteristics and track record of the parent (irrespective of whether the parent is listed on the Exchange or an overseas exchange).

⁵ As defined in MB Rule 18A.01.

⁶ As defined in MB Rule 18C.01.

10. In addition, MB Chapters 18A and 18C applicants must have previously received meaningful third party investment prior to listing, with such investor remaining at IPO and/or subject to lock-up requirements. This is directly comparable in intent and scope with the external validation requirement (see paragraph 6 above) for an applicant with a WVR structure, and hence can be presumed to have satisfied such requirement, provided that MB Chapter 18A applicants seeking to list with a WVR structure shall comply with the requirement that sophisticated investors must retain an aggregate 50% of their investment at the time of listing for a period of at least six months post-IPO, and MB Chapter 18C applicants seeking to list with a WVR structure have to satisfy the lock-up requirement under MB Rule 18C.14(2).
11. For the avoidance of doubt, a MB Chapter 18A or 18C applicant seeking to list with a WVR structure under MB Chapter 8A shall demonstrate that it meets all the other characteristics set out in paragraph 6 above, namely (i) success of the company; (ii) contribution of WVR beneficiary; and (iii) role of WVR beneficiary, and remain subject to all other applicable requirements under MB Chapter 8A.

What is an innovative company?



12. The Exchange recognises that what is considered “innovative” depends on the state of the industry and market in which an applicant operates, and will change over time as technology, markets and industries develop and change. For example, a new and “innovative” business model may cease to be so if it is adopted by numerous industry players over time.
13. Conversely, a company may develop an “innovative” way of deploying existing technologies that qualifies it for listing with a WVR structure. Accordingly, the fact that a particular company has qualified for listing with a WVR structure does not necessarily mean that another applicant with a similar technology, innovation or business model will also qualify for listing with a WVR structure.
14. The Exchange will review the facts and circumstances of each case to determine if an applicant has demonstrated that it is an innovative company for the purpose of this chapter. To enable the Exchange to make a prompt assessment, an applicant should submit a pre-IPO enquiry and include in its submission all relevant facts with a meaningful and balanced discussion of its core business, technologies and innovations, instead of making selective disclosures focusing only on favourable facts. Doing so will avoid the Exchange’s assessment being prolonged because of further information and/or clarification requests.
15. The superficial application of new technology to an otherwise conventional business will not be sufficient to demonstrate the characteristics set out in paragraph 4(i) above. For example, the Exchange may consider that an applicant that operates a retail business with an online sales platform may not be suitable to list with a WVR structure if it does not exhibit other distinctive features or characteristics.

Characteristics of applicants unable to demonstrate WVR suitability

16. Applicants which are unable to demonstrate WVR suitability generally failed to substantiate how they are able to differentiate themselves from existing market players, which is a key element of innovativeness. They generally possess one or more of the following characteristics:
- (i) Inability to demonstrate that its success is attributable to the application, to its core business, of new technologies, innovations, and/or a new business model;
 - (ii) R&D not being a significant contributor of its expected value or constitute a major activity and expense;
 - (iii) The absence of an outsized market capitalisation relative to its tangible asset value; or
 - (iv) The absence of innovative technologies in its IPs or a lack of relevance of such IPs to its core business.
17. **Annex A.10** sets out the relevant facts and circumstances of certain applicants which were determined not to have demonstrated their suitability to list with a WVR structure. A number of these applicants have proceeded to list on the Exchange without a WVR structure.

WVR Applicants subject to Foreign Investment Restrictions

18. In general, there may be relevant laws and regulations which specifically restrict foreign investment (e.g. the PRC Foreign Investment Law) or disallow foreign investors from using any agreements or contractual arrangements to gain control of or operate a foreign restricted business. Companies operating in an industry sector that is subject to foreign ownership restrictions often use contractual arrangements to indirectly control the part of their businesses which are subject to foreign ownership restrictions. See **Chapter 4.1** for the Exchange's approach towards the adoption of contractual arrangements.

Applicants Establishing Control via WVR

19. An applicant with a WVR structure operating in an industry subject to foreign ownership restrictions may have sought to rely on the WVR structure to demonstrate that it is under de facto control of citizens of the relevant country/jurisdiction if the WVR beneficiaries are citizens.
20. If an applicant seeks to demonstrate compliance with the relevant laws and regulations relating to foreign ownership restrictions through WVR after obtaining favourable legal advice and/or regulatory assurance from the relevant government authorities, and the WVR in question will not exist indefinitely (for example, they are personal to the holder and incapable of being transferred, or are subject to sunset), the applicant must clearly explain and disclose the risk that its WVR may fall away and it may not be able to comply with the foreign ownership restrictions as a result.

Contractual Arrangements adopted by Grandfathered Greater China Issuers and Non-Greater China Issuers

21. The Exchange notes that the requirements of Qualifying Exchanges regarding contractual arrangements are not as extensive as the Exchange's requirements and many of the Greater China Issuers listed on Qualifying Exchanges may have adopted contractual arrangements that do not fully comply with the Exchange's requirements. These companies may find it undesirable or impractical to vary their corporate structures to incorporate all aspects of the

Exchange's requirements for contractual arrangements for the sake of a dual primary or secondary listing.

22. For Grandfathered Greater China Issuers and Non-Greater China Issuers to retain their existing contractual arrangements⁷ (where there is no substantial change in the contractual arrangements since the issuer's listing on the Qualifying Exchange):

(A) They must comply with the requirements below:



- (i) Provide the Exchange with a legal opinion that their existing contractual arrangements comply with the relevant laws, rules and regulations; and
- (ii) Comply with the disclosure requirements on contractual arrangements set out in **Chapter 4.1**.

(B) In general, for the purpose of assessing suitability, the Exchange will take into account, among other matters, the factors listed below in considering whether to allow such existing contractual arrangements on a case-by-case basis:



- (i) Extent to which their existing contractual arrangements depart from the standard contractual arrangements contemplated under **Chapter 4.1**;
- (ii) Materiality of the operations conducted via their contractual arrangements to their financial position and prospects; and
- (iii) Reasons for the adoption of the contractual arrangements.

23. Subject to meeting the requirements in paragraph 19(A) and the assessment of suitability set out in paragraph 19(B) above, the Grandfathered Greater China Issuer and the Non-Greater China Issuer are not expected to comply with all the requirements in **Chapter 4.1**.

⁷ The purpose is to facilitate the dual primary or secondary listing of such issuers on the Exchange.