

Are You Ready for a Hong Kong IPO?

Skadden

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With deep and liquid capital markets offering unique access to the Mainland China investor market, many international businesses are considering pursuing their IPOs in Hong Kong. However, the regulatory regime for IPOs on the Stock Exchange of Hong Kong Limited (HKEx) includes a number of unique features and can pose unforeseen challenges for companies that may be familiar with or that have already commenced the IPO process in other markets. Accordingly, companies considering an IPO in Hong Kong need to be fully informed of the relevant HKEx requirements to properly prepare and ensure a smooth IPO process.

This summary provides a high-level overview of the key issues for companies preparing to pursue an IPO in Hong Kong and seeking a primary listing on HKEx, with a particular focus on those features that may be distinctive from the requirements in other IPO markets.

This information is intended solely as a summary overview and is not intended to take the place of detailed legal advice based on the specific facts and circumstances in a particular case. We have assumed for the purposes of this summary that the company seeking listing is incorporated in the Cayman Islands.* All references to rules refer to The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules). Separately, detailed requirements apply to companies with dual-class share structures and pre-revenue biotech companies, which are beyond the scope of this guide. This guide also does not address the requirements for a secondary listing on HKEx.

* Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates do not practice Cayman Islands law.



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- 1. Confirm Eligibility for Listing
- 2. Confirm the Accounting Standards and Trading Record
- 3. Confirm Management Continuity
- 4. Confirm Ownership Continuity and Control
- 5. Engage Sponsor(s) and Overall Coordinator(s)
- 6. Conduct Due Diligence
- 7. Verify the Prospectus
- 8. Confirm the Relationship With Controlling Shareholders
- 9. Check Compliance of Constitutional Documents and Local Regulatory Regime
- 10. Check VIE Compliance
- 11. Review Pre-IPO Investment Agreements
- 12. Disclose Pre-IPO Mergers and Acquisitions
- 13. Consider Pre-A1 Submissions/ Identify Key Waivers
- 14. Analyze Connected Transactions
- 15. Appoint Various Intermediaries
- 16. Appoint Independent Nonexecutive Directors (INEDs)
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- 18. Check Articles of Association for Compliance
- 19. File Disclosure of Interests in Securities
- 20. Check Compliance of Share Award Schemes
- 21. Register Trademark
- 22. Register as Non-Hong Kong Company
- 23. Prepare Hong Kong Prospectus
- 24. Prepare A1 Documents and A1 Redacted Proof Prospectus
- 25. Consider Weighted Voting Rights (WVR)/Dual Class Shares
- 26. Considerations for Biotech Companies
- 27. Stock Connect Eligibility

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Issue/Task	HKEx Requirement	Comment/Timing
1 Confirm Eligibility for Listing	<p>A company must have:</p> <ul style="list-style-type: none"> - Profit attributable to shareholders (excluding extraordinary items) of not less than HK\$35 million for the most recent year and not less than HK\$45 million in the two preceding fiscal years (in aggregate); OR - HK\$2 billion market capitalization; HK\$500 million revenue in the previous fiscal year; and HK\$100 million cash flow in aggregate for the three most recent fiscal years; OR - HK\$4 billion market capitalization; HK\$500 million revenue in the previous fiscal year. 	<ul style="list-style-type: none"> - A company seeking to list with WVR structure must also have (i) HK\$40 billion market capitalization or (ii) HK\$10 billion market capitalization and HK\$1 billion revenue in the previous fiscal year.
2 Confirm the Accounting Standards and Trading Record	<ul style="list-style-type: none"> - Audited accounts should adopt International Financial Reporting Standards or Hong Kong Financial Reporting Standards. - A company needs a trading record of three years (unless listing under the market capitalisation/revenue test, in which case the HKEx may accept a shorter trading record). 	<ul style="list-style-type: none"> - US generally accepted accounting principles (GAAP) and Public Company Accounting Oversight Board standards are acceptable only for a dual primary listing on the HKEx of a U.S.-listed company.
3 Confirm Management Continuity	<ul style="list-style-type: none"> - The majority of the board of directors and senior management should remain unchanged for the three preceding fiscal years. 	<ul style="list-style-type: none"> - The company/advisers should review any directorship changes and changes in the senior management team prior to A1 filing to ensure continuity has been maintained.
4 Confirm Ownership Continuity and Control	<ul style="list-style-type: none"> - There should be no change in the company's controlling shareholders (defined as shareholders controlling 30% or more of the company, or, if no controlling shareholders, then largest shareholder) for the most recent full fiscal year. 	<ul style="list-style-type: none"> - The company/advisers should review any shareholding changes prior to A1 filing to ensure continuity has been maintained.
5 Engage Sponsor(s) and Overall Coordinator(s)	<ul style="list-style-type: none"> - Issuer must appoint (i) Hong Kong-licensed sponsor(s) and (ii) overall coordinators (OCs) to act as bookrunners and manage the offering. - At least one sponsor needs to be independent of the company. - At least one independent sponsor must also be appointed as "sponsor overall coordinator" (sponsor-OC). - OCs must be appointed in writing with their fee arrangements (including minimum fixed fee) agreed upon in the engagement letter. 	<ul style="list-style-type: none"> - The company must submit a copy of the duly signed sponsors' and sponsor-OC's engagement letters to the HKEx at least two months before filing its A1. - If any new sponsors are engaged after the initial submission of the sponsors' engagement letter to the HKEx, the company must wait for another two months to file its A1. - The company must appoint all OCs and agree to their fee arrangements no later than two weeks after filing its A1.

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6 Conduct Due Diligence	<ul style="list-style-type: none"> - HKEx and the Securities and Futures Commission (SFC) impose detailed due diligence requirements on sponsors, as set out in Practice Note 21 of the Listing Rules. 	<ul style="list-style-type: none"> - Sponsors will likely be required to perform/refresh certain due diligence steps and undertake third-party interviews (with suppliers, customers, finance providers and other third parties). The SFC requires that sponsors directly arrange these interviews and conduct them face-to-face.
7 Verify the Prospectus	<ul style="list-style-type: none"> - Under Hong Kong market practice, sponsors' counsel undertakes verification of the prospectus content to ensure its accuracy. This process is separate from due diligence. 	<ul style="list-style-type: none"> - Sponsors' counsel must complete verification of the prospectus content before the company files its A1.
8 Confirm the Relationship With Controlling Shareholders	<ul style="list-style-type: none"> - HKEx requires listing applicants to demonstrate independence from their controlling shareholders in three key areas: management independence, operational independence and financial independence. - There should be a clear delineation of business between the company and its controlling shareholders. To the extent controlling shareholders operate any businesses that may compete with the listing applicant, the company should establish that these are not material, and/or enter into appropriate noncompete agreements. 	<p>The company needs to:</p> <ul style="list-style-type: none"> - Ensure that no undue overlap of executive directors/senior management occurs between the company and the controlling shareholders. - Ensure that the company does not rely on the controlling shareholder as a key supplier or customer or for other aspects essential to the operations of the business (e.g., provision of technology/intellectual property, land, facilities, etc.). - Ensure that no outstanding financial assistance (e.g., loan or guarantee) exists between the company and the controlling shareholders at the time of listing. The company should therefore plan ahead to have these repaid/released no later than the time of listing.
9 Check Compliance of Constitutional Documents and Local Regulatory Regime	<ul style="list-style-type: none"> - The company must demonstrate how its constitutional documents and the domestic laws to which it is subject can comply with the Listing Rules and the Takeovers Code. 	<ul style="list-style-type: none"> - Constitutional documents must include at least the minimum shareholder protection standards set out in Appendix 1A to the Listing Rules. - The securities regulator in the company's home jurisdiction and place of central management and control must be full signatories of the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU).
10 Check VIE Compliance	<ul style="list-style-type: none"> - HKEx requires any variable interest entity (VIE) structures to be "narrowly tailored" so that only businesses in sectors prohibited/restricted from foreign investment are included in the VIE structure. - Further requirements apply to the specific terms of VIE contracts. 	<ul style="list-style-type: none"> - In advance of A1 filing, PRC counsels will need to assess whether all businesses currently within the VIE structure are subject to foreign investment restrictions and that the terms of the VIE contracts comply with HKEx requirements. If not, restructuring the VIEs may be necessary in order to comply with the Listing Rules/guidance.

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11 Review Pre-IPO Investment Agreements	<ul style="list-style-type: none">- The company needs to complete and fully settle consideration of pre-IPO investments (including any transfer of shares) 28 clear days before A1 filing, otherwise the listing date will need to be postponed to at least 120 clear days after the settlement of the last pre-IPO investment.- The company must terminate almost all special rights given to pre-IPO investors upon listing.- The HKEx Guide for New Listing Applicants also prescribes detailed disclosure requirements for pre-IPO investments.- These rules also apply to convertible shares/instruments/loans.	<ul style="list-style-type: none">- Review the terms of all pre-IPO investments in advance of A1 filing to determine if they comply with the guidance issued by the HKEx. If they are not, the company should start liaising with the pre-IPO investors to amend the agreements and ensure that any amendments are finalized prior to A1 filing.- The company should also notify pre-IPO investors to ensure they do not transfer their shares within 28 days prior to the expected date of A1 submission (or within 120 days prior to the listing date).
12 Disclose Pre-IPO Mergers and Acquisitions	<ul style="list-style-type: none">- If the size of any acquisitions within the three-year track record period is 25% or more (relative to the size of the company, as measured by revenues, total assets, profits and equity capital), the company will need to disclose separate accounts for these acquisition targets in the prospectus.- If any acquisitions take place after the track record period, accounts of the target company must be disclosed, in principle regardless of the size of the acquisition. In practice, the HKEx is normally prepared to grant a waiver from such disclosure requirement for acquisitions that represent less than 5% of the company.	<ul style="list-style-type: none">- The company should identify any acquisitions made during the track record period with size tests of 25% or above and liaise with its auditors to assess the time required for them to prepare the relevant accounts to be disclosed in the prospectus.- The company should assess whether any acquisitions are planned after the track record period and consider the implications for a Hong Kong IPO — deferring acquisitions to after the IPO may be advisable.
13 Consider Pre-A1 Submissions/ Identify Key Waivers	<ul style="list-style-type: none">- HKEx allows Pre-A1 submissions on novel issues or key suitability issues.- The Listing Rules are complex, but certain routine waivers can be granted.	<ul style="list-style-type: none">- The company and its advisers should consider whether the company is not able to comply with any HKEx requirements, either as to listing eligibility or general compliance, and if so, whether waivers might be sought.- HKEx is open to meetings/communications with companies prior to A1 filing. Novel issues can be resolved by way of written Pre-A1 submissions.

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14 Analyze Connected Transactions	<ul style="list-style-type: none">- Connected transactions are subject to complex Listing Rules requirements.- Generally, “connected transaction” refers to any transaction between the company (or its subsidiaries) and any “connected person” of the company (which includes directors, CEOs or holders of 10% or more voting rights of the company or its subsidiaries and their respective associates).- Subject to certain exemptions, connected transactions require independent shareholders’ approval. The company must also appoint an independent board committee and independent financial advisor who must confirm that the terms of the connected transaction are fair and reasonable.- De minimis transactions below certain thresholds (measured against the company’s profits, revenues, asset and market capitalization) are exempted from the requirements above.	<ul style="list-style-type: none">- The company should assess transactions with connected persons in advance of A1 filing.- The company may apply for a waiver from the shareholder approval/announcement requirements for specified continuing connected transactions (e.g., ongoing contractual relations), subject to certain conditions including:<ul style="list-style-type: none">(a) the agreement term must not exceed three years;(b) the agreement must be on normal commercial terms or better, and must be fair and reasonable and in the interests of the company’s shareholders as a whole; and(c) the agreement must observe the annual monetary caps on the transaction amounts.- Sponsors will need to undertake diligence on the transactions subject to the waivers (including the proposed caps) to give an opinion in the prospectus that the transactions are fair and reasonable.
15 Appoint Various Intermediaries	<ul style="list-style-type: none">- The company must appoint certain individuals/intermediaries to comply with the Listing Rules requirements, including: company secretary, share registrar, compliance advisor, property valuer (if the company holds significant real property assets), among other roles.- Local legal counsel must be appointed in the company’s jurisdiction of incorporation and jurisdictions where the company has material business operations in order to advise on the company’s compliance with local legal and regulatory requirements.- An industry consultant is typically appointed to provide industry data for the prospectus, but is not mandatory.- Sponsors will usually require the appointment of an internal control consultant to meet HKEx/SFC diligence requirements in this specialised area.	<ul style="list-style-type: none">- The company must appoint these parties prior to A1 filing.- Underwriters (referred to as “capital market intermediaries” (CMIs)) must be appointed and their fee arrangements agreed upon prior to commencement of the roadshow/marketing.
16 Appoint Independent Nonexecutive Directors (INEDs)	<ul style="list-style-type: none">- INEDs need to represent not less than one-third of the board, subject to a minimum of three INEDs.- One INED must have “appropriate professional qualifications or accounting or related financial management expertise.”	<ul style="list-style-type: none">- The company must identify INED candidates prior to A1 filing.- The company should reevaluate INED candidates against the HKEx independence requirements and seek additional candidates if necessary.- Gender diversity is a key focus of the HKEx: Companies must have at least one female board member.

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17 Establish Board Committees	<ul style="list-style-type: none">- HKEx requires listed companies to have an audit committee, remuneration committee and nomination committee.- The audit committee must consist of only nonexecutive directors, with a majority INEDs (at least one of whom is an INED with accounting or related financial management expertise), and be chaired by an INED.- The remuneration committee must consist of a majority INEDs and be chaired by an INED.- The nomination committee must consist of a majority of INEDs and be chaired by an INED or the chairman of the board.	<ul style="list-style-type: none">- The company must identify committee members prior to A1 filing and disclose them in the draft prospectus.- A company seeking to list with WVR structure must also establish a corporate governance committee comprised only of INEDs. Its nomination committee must be chaired by an INED and cannot be chaired by the chairman of the board.
18 Check Articles of Association for Compliance	<ul style="list-style-type: none">- Company/Cayman counsel will need to prepare new HKEx-compliant post-IPO articles of association.	<ul style="list-style-type: none">- Counsel needs to incorporate certain provisions into the articles to comply with the HKEx/SFC requirements (e.g., 10% or less as the threshold for minority shareholders to convene a general meeting).
19 File Disclosure of Interests in Securities	<ul style="list-style-type: none">- Shareholders holding an interest of 5% or more in any class of shares (including derivative interests), and any subsequent changes in such interests crossing a whole percentage threshold, must make a "disclosure of interests" filing with the company and the SFC.- Directors of the company must disclose any and all interests they, their immediate family and entities controlled by them hold in the company, and any changes in those interests.	<ul style="list-style-type: none">- The company must disclose in the prospectus such interests as at the time of listing.- After listing, directors and substantial shareholders must within three business days of acquiring an interest or of any change of interest disclose the event on a form prescribed by the SFC and submit it online. Such forms are a matter of public record and can be viewed by the public online.
20 Check Compliance of Share Award Schemes	<ul style="list-style-type: none">- The company must grant all pre-IPO share awards (including options, RSUs and similar share grants) before finalizing the prospectus for the IPO.- Any post-IPO share schemes will need to comply with the requirements in Chapter 17 of the Listing Rules.- The Listing Rules require detailed disclosures of share awards granted to directors and senior management; a waiver from disclosure regarding ordinary employees may be available (such that the company can disclose details in aggregate and not on an individual basis).	<ul style="list-style-type: none">- HKEx rules cover all forms of share schemes, including options, grants of awards of new shares (including RSUs and similar awards) and grants of existing shares (including through trust schemes or similar arrangements).

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21 Register Trademark	<ul style="list-style-type: none"> The company must register the logos appearing on the prospectus cover as trademarks in Hong Kong (or have submitted the application for registration). 	<ul style="list-style-type: none"> Prior to A1 submission, if the company's logo appearing on the prospectus cover is not registered in Hong Kong, the company will need to engage an intellectual property law firm to apply for such registration, provide a legal opinion that the trademark is in the process of being registered in Hong Kong and then submit this mandatory opinion to the HKEx as part of A1 submission.
22 Register as Non-Hong Kong Company	<ul style="list-style-type: none"> The company is required to be registered as a non-Hong Kong entity under Part 16 of the Companies Ordinance. 	<ul style="list-style-type: none"> The company secretary must make this filing prior to A1 submission.
23 Prepare Hong Kong Prospectus	<ul style="list-style-type: none"> The company must prepare a prospectus that complies with HKEx format/style and with the requirements in the Listing Rules and the Guide for New Listing Applicants. The company must prepare a Chinese language translation of the prospectus to submit at the time of A1 filing. 	<ul style="list-style-type: none"> The Listing Rules and Guide for New Listing Applicants issued by the HKEx dictate the contents of the HK prospectus, and the level of disclosures and details are significantly more comprehensive than the typical prospectus requirements in many other jurisdictions.
24 Prepare A1 Documents and A1 Redacted Proof Prospectus	<ul style="list-style-type: none"> A1 filing documents are voluminous and require coordination from all professional parties. A redacted A1 proof prospectus will be published on the HKEx's website after A1 filing. 	<ul style="list-style-type: none"> The company should allow time and coordinate with printers to prepare translations of and make available the redacted A1 proof prospectus in both English and Chinese.
25 Consider Weighted Voting Rights (WVR)/ Dual Class Shares	<ul style="list-style-type: none"> WVR structure is permissible only if it complies with Chapter 8A of the Listing Rules. 	<ul style="list-style-type: none"> Many companies will need to unwind or amend existing WVR structures.
26 Considerations for Biotech Companies	<ul style="list-style-type: none"> Chapter 18A of the Listing Rules applies to all pre-revenue biotech companies. 	<ul style="list-style-type: none"> Companies must have at least one "core product," among other requirements.
27 Stock Connect Eligibility	<ul style="list-style-type: none"> This provision allows Mainland China investors to purchase eligible company's securities available in Hong Kong ("Southbound" trading). 	<ul style="list-style-type: none"> This option is available to companies with primary or dual primary listing on HKEx. The company must be a constituent of Hang Seng Composite LargeCap Index, MidCap Index or SmallCap Index with market capitalization greater than HK\$5 billion.

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General Timeline for a Hong Kong Listing

Assuming no other filings are required to be made with regulators other than HKEx/SFC

IPO Preparation

Corporate Structure and Reorganization

- Reorganize group into suitable listing structure
- Tax structuring

Pre-IPO Investments

- HKEx requires pre-IPO investments to be completed 28 days before the listing application or 120 days before the listing date

Filing Preparation (14-16 Weeks)

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|---|-----------------------|
| Due Diligence | Prospectus |
| - Business | - Prospectus drafting |
| - Financial | - Verification |
| - Legal | |
| - Accounting | |
| - Sponsors and sponsor-OCs appointed at least two months before A1 filing | |

Kickoff Meeting

HKEx Review (10-12 Weeks)

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| HKEx Vetting | Listing Hearing |
| - Usually involves 2-3 rounds of comments | - Hearing by Listing Committee |
| - Each round of comments is typically issued within 2-3 weeks of the previous submission | |

A1 Submission

Marketing and Pricing (4 Weeks)

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| Marketing and Pricing | Listing |
| - Road show | |
| - Execute underwriting agreements | |

Post-Hearing Information Pack

Total 28-32 Weeks