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Our ref
MEM

Date
16 December 2022

By email (response@hkex.com.hk)

Dear Sir or Madam

Re: Consultation Paper on the Listing Regime for Specialist Technology Companies

We refer to the Consultation Paper on the Listing Regime for Specialist Technology Companies (the "**Consultation Paper**") issued in October 2022 and are pleased to respond with comments. Unless otherwise defined, all capitalised terms used in this letter shall have the same meanings as defined in the Consultation Paper.

In preparing this response, we have had discussions with a number of clients who are potentially interested in seeking a listing in Hong Kong under the proposed Chapter 18C and so our comments reflect their feedback on the proposed regime.

As we do not have detailed comments on all of the questions set out in the Consultation Paper we have not completed the questionnaire and prefer to respond in more general terms which we trust is acceptable.

Overall support and observations on market readiness

We are very supportive of the Exchange's ongoing efforts to reform the listing regime in Hong Kong and diversify the companies that are able to list here to ensure our market remains competitive and attractive. The introduction of Chapter 18A of the Listing Rules to permit the listing of Biotech Companies in 2018 has successfully positioned Hong Kong as a leading fundraising hub for biotech companies in Asia. In addition, the changes in the Listing Rules to permit the listing of WVR Issuers has broadened the market's familiarity with innovative and high growth companies with different voting structures. This has enabled Hong Kong to attract listing applicants from broader sectors, as well as facilitating the listing of a number of homecoming IPOs.

The new listing categories have enabled market practitioners to build experience and expertise in dealing with pre-revenue and development stage companies as well as innovative companies. Investors and the broader market have also gained familiarity with the issues associated with such listings and more complex issuer structures. This has adequately paved the way and readied the market for further diversification.

We are very supportive of the proposed reforms to permit the listing of Specialist Technology Companies. This will create greater diversity in Hong Kong's market which is essential for its long-term success.

Minimum expected market capitalisation (questions 8&9)

We understand from speaking to a number of our clients that there are concerns that the market capitalisation requirements have been set at too high a level. We understand that the market capitalisation level is designed to provide assurance that large amounts of funds have already been raised prior to the listing and that this level has been set with reference to the investment industry's threshold for categorising a "unicorn". Notwithstanding this, the feedback we have received is that this requirement may be too high and difficult to achieve in practice, particularly in the current market conditions. We would invite the Exchange to consider this further.

For Commercial Companies, we would suggest lowering the minimum expected market capitalisation at the time of listing from the proposed HK$8 billion to HK$6 billion. This would still represent a 50% larger market capitalisation than is required under the market capitalisation/revenue test in Rule 8.05(3) of the Listing Rules and should provide sufficient assurance to the market as to extent of the fundraisings and the valuation of the listing applicant.

In relation to Pre-Commercial Companies, we would suggest reducing the minimum expected market capitalisation at the time of listing from the proposed HK$15 billion to HK$10 billion. We believe this would be a more realistic amount, which is consistent with larger IPOs that are considered eligible for a public float waiver under Rule 8.08(1)(d).

R&D investment (Question 14)

We have received feedback from certain of our clients that the requirement for R&D expenditure as a fixed percentage of total operating expenditure in *each* of the three financial years prior to listing may be too rigid. We agree that R&D is indispensable as a metric to demonstrate growth. However, we would encourage the Exchange to build flexibility into the rules to cater for fluctuations during the track record period in the overall expenditure and the ratio attributable to R&D.

We note, for instance, that in relation to the profit test under Rule 8.05(1) of the Listing Rules, the Exchange has indicated that on a case-by-case basis it may be prepared to grant relief from the profit spread requirements where the aggregate profit threshold of HK$80 million is met. This provides greater flexibility for companies who are unable to meet both the requirement for profit of HK$35 million in the most recent financial year or the aggregate of HK$45 million in the preceding two years. We would suggest a similar approach is taken in respect of R&D expenditure to allow some flexibility on a case-specific basis, subject to the Exchange's evaluation of the circumstances.

Please let us know if you have any queries in relation to the above.

HERBERT SMITH FREEHILLS

Date
16 December 2022
Letter to
Corporate Communications Division

This response represents the views of Herbert Smith Freehills following client feedback. We confirm that we are happy for the contents of this letter to be made publicly available as part of the consultation process.

Yours faithfully

[redacted]

Herbert Smith Freehills