



# Stevenson, Wong & Co.

## 史蒂文生黃律師事務所

In association with AllBright Law (Hong Kong) Offices LLP  
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Our Ref :

Your Ref :

Reply Email :

Reply Fax :

Direct Line :

Date : 6 November 2023

Reply to :

Partners:

Willy Y.P. Cheng\*<sup>o</sup><sup>o</sup><sup>o</sup><sup>o</sup>  
 Hank H.F. Lo<sup>o</sup>  
 Wendy W.S. Lam<sup>o</sup>  
 Lai S. Lam<sup>o</sup>  
 Cornelia W.C. Chu<sup>o</sup>  
 Heidi H.Y. Chui<sup>o</sup><sup>o</sup><sup>o</sup>  
 Rodney Y.F. Teoh<sup>o</sup><sup>o</sup>  
 Milly Y.K. Hung<sup>o</sup>  
 Osbert Y. Hui<sup>o</sup>  
 Janice L.H. Chin  
 Erica Y.Y. Cheng  
 Calvin K.F. Lo<sup>o</sup>  
 Gordon H.Y. Tsang<sup>o</sup><sup>o</sup>  
 Dominic C.M. Lau<sup>o</sup>

鄭炎潘  
 勞恒晃  
 林穎詩  
 林麗嫦  
 朱憲潛  
 徐凱怡  
 張源輝  
 洪玉暉  
 許 懿  
 陳麗卿  
 鄭鈺茵  
 羅啟峰  
 曾浩賢  
 劉俊明

Senior Consultant:

Catherine K.G. Por<sup>o</sup><sup>o</sup>

傅景元

\* Notary Public of Hong Kong  
 香港國際公證人

o China-Appointed Attesting Officer  
 中國委託公証人

o Civil Celebrant of Marriages  
 婚姻監禮人

\* Also GBA Qualified  
 具大灣區執業資格

**BY EMAIL ONLY (response@hkex.com.hk)**

**Corporate and Investor Communications Department**  
**Hong Kong Exchanges and Clearing Limited**  
 8<sup>th</sup> Floor  
 Two Exchange Square  
 8 Connaught Place  
 Central  
 Hong Kong

Dear Sirs,

### **Consultation Paper on GEM Listing Reforms (the “Consultation Paper”)**

We refer to the captioned matter. We hereby submit the comments thereto for your consideration. Unless otherwise defined herein, capitalised terms used in this submission shall have the same meanings as those defined in the Consultation Paper.

Overall, we note that the recent reforms of the GEM have led to confusion of the market and uncertainty as to the positioning of the GEM board. Based on the rule amendments as set out in the Consultation Paper, it appears that the Exchange intends to revert the GEM board back to a “stepping stone” to the Main Board. If this is the case, consideration should be given to affording GEM listed issuers preferential listing conditions when utilising the streamlined board transfer mechanism, especially in light of the higher HK\$80 million 3-year Main Board profit requirement introduced in 2021. At the current state, the proposals do not dissuade potential issuers to list on other capital markets such as NASDAQ, which is disclosure-based and imposes much lenient sets of listing standards.

Furthermore, the current listing framework imposes GEM listing applicants with the same level of, if not higher, due diligence and regulatory scrutiny when compared with Main Board listing applicants. As such, the current framework is in general requiring GEM listing applicants to have the same level of “listing suitability” of that of Main Board listing applicants. As such, a relatively higher proportion of IPO proceeds would have to be utilised on professional fees associated with conducting due diligence and responding to comments on listing applications. Coupled with the overall difficulty to successfully go through the listing vetting process, listing applicants would not have the incentive to

香港中環皇后大道中15號置地廣場告羅士打大廈39樓  
 39/F, Gloucester Tower, The Landmark, 15 Queen's Road Central, Hong Kong  
 香港中環皇后大道中28號中匯大廈501室  
 501, Central Tower, 28 Queen's Road Central, Hong Kong

錦天城律師事務所 AllBright Law Offices:

香港 廣州 上海 北京 杭州 深圳 蘇州 南京 成都 重慶 太原 青島 廈門 天津 濟南 合肥 鄭州 福州 南昌 西安 長春 武漢 烏魯木齊 海口 長沙 倫敦 西雅圖 新加坡 東京  
 Hong Kong Guangzhou Shanghai Beijing Hangzhou Shenzhen Suzhou Nanjing Chengdu Chongqing Taiyuan Qingdao Xiamen Tianjin Jinan Hefei Zhengzhou Fuzhou Nanchang  
 Xi'an Changchun Wuhan Urumqi Haikou Changsha London Seattle Singapore Tokyo

電話 Tel: +852 2526 6311

傳真 Fax: +852 2845 0638

電郵 Email: info@sw-hk.com

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face such level of regulatory scrutiny for a mere GEM listing status. Perhaps, more discussion should be held on the feasibility of concerning the GEM board into a more registration-based listing regime.

Should you have any questions on our responses or proposals or would like to discuss any of our comments, please feel free to contact our [REDACTED]

Yours faithfully,

[REDACTED]

**STEVENSON, WONG & CO.**

**Question 1:** *Do you agree that an alternative eligibility test should be introduced to enable the listing of high growth enterprises substantively engaged in R&D activities on GEM?*

*Please give reasons for your views.*

**Reply**

We do not disagree to implement an alternative eligibility test which allows listing of the SMEs which had a relatively high proportion of their funds being used for R&D activities. Nevertheless, it is unclear as to whether such alternative test is attractive, given that the same still requires a relatively high proportion of budget to be allocated to R&D expenses.

**Question 2:** *If your answer to Question 1 is “Yes”, do you have any comments on the proposed thresholds for the alternative eligibility test as set out in paragraphs 63 to 75 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We understand that the proposed alternative eligibility test includes, among others, (i) a higher market capitalisation threshold of HK\$250 million, (ii) a minimum revenue threshold of HK\$100 million and (iii) R&D expenditure requirement.

Regarding the market capitalisation threshold, we understand that the Exchange would like to accommodate the risk of the absence of track record of cashflow. However, we believe that the increase of such high threshold is not necessary and there could even be no requirement on market capitalisation (note that there is no market capitalisation requirement in AIM of the LSE and Catalyst of SGX as well). Higher market capitalisation does not guarantee the quality of the company. As GEM targets young companies with high-growth potential, it should be recognised that they would be small- to mid-cap companies. Higher market capitalisation threshold would, therefore, contradict with the position of GEM as the listing platform of SMEs. Indeed, the increase of market capitalisation threshold of the Main Board listings in earlier years had led to issuers with relatively high price-to-earning ratios at the time of listing and subsequent price drops thereafter.

In terms of the minimum revenue threshold, we believe it is acceptable, noting the similar threshold in one of the listing standards of the BSE (i.e. RMB100 million for Listing Standard II). Yet, it should be noted that the analysis should not be all based on the existing figures of GEM applicants as the current listing reforms should aim to attract new SMEs to list on GEM rather than those which had already met the existing listing qualifications such that they had been successful listed or made their listing application for GEM.

In respect of the R&D expenditure requirement, we suggest lowering the threshold of the proposed R&D expenses requirement from HK\$30 million to HK\$15 million. It is because HK\$30 million, being the same amount as in the current cash flow requirement, may be too high to the SMEs which are still not listed as they may be hindered by such high threshold. The R&D expenditure requirements in other comparable junior markets were also not that high, for example, in fact there is no

requirement on R&D expenditure for AIM of LSE, Catalist of SGX and NASDAQ Capital Market, for the one with R&D expenditure requirement, it only required, say around HK\$17.5 million (i.e.  $\geq 8\%$  of total revenue for the last two years for the Listing Standard III of BSE provided that the revenue requirement is  $\geq$ RMB200 million (HK\$218 million) for the last year). In such case, we believe a lower threshold HK\$15 million would be reasonable. Regarding the percentage threshold, we further suggest a lower percentage threshold of 10% of the total operating expenditure for each of the two financial years over the track record period instead of 15% based on the aforementioned reasons. Also, such ratio should be intentionally set lower as this is designed for young company and not especially for Specialist Technology Companies where such companies have an alternate listing route through the Chapter 18C regime already.

**Question 3:** *Do you agree with the proposal to reduce the post-IPO 24 month lock-up period imposed on controlling shareholders of GEM issuers to 12 months as set out in paragraph 76 of the Consultation Paper?*

*Please give reason for your views.*

**Reply**

We agree.

**Question 4:** *Should any other existing eligibility requirement for a listing on GEM be amended?*

*If so, please state the requirement(s) that should be amended and give reasons for your views.*

**Reply**

We believe that the cash flow requirement should be more lenient, for example, by having a positive requirement on the cash flow and restricting to only last financial year before listing application only, or even be abolished as there are no comparable tests in other comparable junior markets overseas, except that the Listing Standard II of BSE has a positive cash flow requirement. It should be recognised that young SMEs which are on the path of developing their businesses, may, for instance, try to attract more business by offering a longer credit period, etc., such that it may adversely affect the cash flow of the company. In such case, we believe lowering the threshold would be beneficial to reviving GEM, considering that the difficulty to meet the high cash flow requirement may be one of the reasons for making GEM an unpopular listing platform in recent years.

**Question 5:** *Do you agree with the proposed consequential and housekeeping amendments to the reverse takeover and extreme transaction Rules as set out in paragraphs 81 and 82 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We agree.

**Question 6:** *Do you agree with the Exchange's proposal to remove GEM's compliance officer requirement as set out in paragraph 85(a) of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We agree.

**Question 7:** *Do you agree with the Exchange's proposal to shorten the period of engagement of GEM issuers' compliance advisers and to remove the additional obligations currently imposed on a GEM issuer's compliance adviser as set out in paragraphs 85(b) and 86 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We agree, and this may also reduce the compliance cost payable by GEM issuers and would attract more GEM listing applicants.

**Question 8:** *Should any other continuing obligation currently applicable to a GEM listed issuer also be removed?*

*If so, please state the requirement(s) and give reasons for your views.*

**Reply**

No.

**Question 9:** *Do you agree with the Exchange's proposal to remove quarterly financial reporting as a mandatory requirement for GEM issuers and instead introduce it as a recommended best practice in GEM's Corporate Governance Code?*

*Please give reasons for your views.*

**Reply**

In view of the requirements in other comparable junior markets, such as AIM of LSE and NASDAQ Capital Market, we agree to remove the mandatory quarterly financial reporting requirement. The interim and annual reporting should be sufficient to keep investors informed of the performance of the company as significant transactions would be required to be disclosed according to the relevant listing rules (such as Chapter 19 of the GEM Listing Rules for notifiable transactions and Chapter 20 of the GEM Listing Rules for connected transactions) already.

**Question 10:** *Do you agree with the Exchange's proposal to align the timeframes for GEM issuers to publish their annual reports, interim reports and preliminary announcements of results for the first half of each financial year with those for the Main Board, as set out in paragraphs 94 and 95 of the Consultation Paper?*

*Please give reasons for your views.*

#### **Reply**

If the mandatory quarterly financial reporting requirements are to be removed, we agree that the corresponding timeframes for publishing financial results should also be aligned with those for the Main Board.

**Question 11:** *Do you agree that a streamlined mechanism should be introduced to enable qualified GEM issuers to transfer their listing to the Main Board?*

*Please give reasons for your views.*

#### **Reply**

We agree that a streamlined mechanism should be introduced as it may attract more GEM listings in general. However, ultimately, how the new streamlined mechanism should be formulated goes to the positioning of GEM by the Exchange, i.e. whether the Exchange would see it as a "stepping stone" as prior to the 2018 reforms, or the Exchange wishes to have GEM as a "stand-alone board".

**Question 12:** *If your answer to Question 11 is "Yes", do you agree with the removal of the requirement for the appointment of a sponsor for the purpose of a streamlined transfer as set out in paragraph 108 of the Consultation Paper?*

*Please give reasons for your views.*

#### **Reply**

We agree. GEM issuers have gone through the same due diligence process during GEM listing applications and have the same continuing obligations as Main Board issuers. The existing requirement for appointment of a sponsor adds unnecessary costs to streamlined transfer applicants.

**Question 13:** *If your answer to Question 11 is “Yes”, do you agree with, for the purpose of a streamlined transfer, the removal of the requirements for a “prospectus standard” listing document and other requirements as set out in paragraphs 111 to 114 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We agree.

**Question 14:** *If your answer to Question 11 is “Yes”, do you agree with the track record requirements for a streamlined transfer applicant as set out in paragraphs 117 to 118 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We do not agree with imposing a minimum track record of three full financial years as a GEM listed issuer. It means that a GEM issuer can only apply for transfer to the Main Board at least 3 years after its initial listing on GEM. Moreover, if a GEM issuer wishes to transfer to the Main Board, effectively they are required to meet a five-year track record period, comprising the two-year track record requirement for initial GEM listing and the three full financial years after its GEM listing. It is likely that the excessively long waiting time and track record requirement would further deter companies from listing on GEM. It is also difficult to understand the rationale of this requirement, should the Exchange consider positioning the GEM as a “stepping stone” to Main Board.

**Question 15:** *If your answer to Question 11 is “Yes”, do you agree with the daily turnover and volume weighted average market capitalisation requirements for a streamlined transfer applicant as set out in paragraphs 120 to 133 of the Consultation Paper?*

*Please give reasons for your views.*

**Reply**

We do not disagree. The daily turnover and volume weighted average market capitalisation requirements for a streamlined transfer applicant requirements can ensure that the shares of the intended GEM transfer applicant have sufficient liquidity.

**Question 16:** *If your answer to Question 15 is “Yes”, should the Minimum Daily Turnover Threshold for the Daily Turnover Test be set at:*

(a) HK\$100,000;

(b) HK\$50,000; or

(c) another figure (please specify)?

Please give reasons for your views.

### **Reply**

We consider that the Minimum Daily Turnover Threshold for the Daily Turnover Test should be set at HK\$50,000.

Referring to Tables 2 and 3 on page 37 of the Consultation Paper, 83% of eligible GEM issuers could pass the threshold of HK\$50,000; in contrast, if the threshold is set at HK\$100,000, only 50% of eligible GEM issuers could pass. While we agree liquidity can be a factor to consider, GEM issuers with lower liquidity does not necessarily mean that it is not suitable for transferring to the Main Board. There could be factors outside of the quality of the transfer applicant that affect the liquidity of its shares. Therefore, if a threshold is to be set, the lower figure should be taken, which in this case be HK\$50,000.

Question 17: If your answer to Question 11 is "Yes", do you agree with the proposed compliance record requirement for a streamlined transfer applicant as set out in paragraph 134 of the Consultation Paper?

Please give reasons for your views.

### **Reply**

We agree.

**Question 18:** Do you agree with the proposed modification to the existing compliance record requirement for a transfer from GEM to the Main Board as set out in paragraph 136 of the Consultation Paper?

Please give reasons for your views.

### **Reply**

We agree.

**Question 19:** Do you agree that the Exchange should exempt GEM transferees to the Main Board from the Main Board initial listing fee?



*Please give reasons for your views.*

**Reply**

We agree.