

From: Lau, Kurt <[REDACTED]>
Sent: 14 March 2018 17:48
To: response
Cc: Mok, Stephen; Li, Kelvin; Dhaliwal, Kamaljeet
Subject: Emerging and Innovative Companies CP - Biotech Companies

Dear Sir/Madam

We refer to your consultation paper on "A listing regime for companies from emerging and innovative sectors" issued in February 2018 (the "**Consultation Paper**"). In your Consultation Paper, your Exchange proposes to add a new Chapter 18A to the Main Board Listing Rules (the "**New Chapter**"), which allows biotech companies to list on your Exchange without meeting the financial eligibility tests under Rule 8.05 (the "**Proposed Rule Amendment**"). As a Hong Kong legal adviser with potential clients in this industry, we would like to clarify some of the following issues with your Exchange.

First Issue – Sophisticated Investor

We note from paragraph 74 of the Consultation Paper that a biotech company must have previously received meaningful third party investment from at least one Sophisticated Investor (the "**Investment From Sophisticated Investor**"). Sophisticated Investor is defined on page 5 as "an investor that the Exchange considers to be sophisticated by 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". However, in the draft new rules set out on pages I-12 to I-17, such requirement are not specifically provided. We only note that in Rule 18A.03(1), an applicant is required to demonstrate to the Exchange's satisfaction that it is both eligible and suitable for listing as a Biotech Company.

Based on the above, our queries to the Exchange are:

1. Whether there is a requirement of Investment From Sophisticated Investor?
2. If the answer to the first question is yes, whether it is embodied in Rule 18A.03(1)?
3. If the answer to the first question is yes, is there a minimum threshold on either assets, investment experience, knowledge and expertise for meeting the Sophisticated Investor requirement? If so, what would be the threshold?
4. If the answer to the first question is yes, whether the Exchange will publish guidance on the requirements (particularly in relation to above questions)?

Second Issue – Patents

We note from paragraph 74 of the Consultation Paper that a biotech company must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s) (the "**Patent Requirement**"). However, in the draft new rules set out on pages I-12 to I-17, such requirement is again not specifically provided. We only note that in Rule 18A.03(1), an applicant is required to demonstrate to the Exchange's satisfaction that it is both eligible and suitable for listing as a Biotech Company.

Based on the above, our queries to the Exchange are:

1. Whether there is such Patent Requirement?
2. If the answer to the first question is yes, whether it is embodied in Rule 18A.03(1)?

Third issue – Principal business

We note from the New Chapter that Biotech Company is defined as "a company primarily engaged in the research and development, application and commercialisation of Biotech Products" (the "**Principal Business Requirement**"). We understand that there are biotech companies which engage in multiple areas of business, which usually include (i) research and development of biotech products that are

subject to approval from FDA (the "**Biotech Business**"); and (ii) sale of other products using similar technologies which are however not subject to FDA's approval (the "**Side Business**"). In most cases, the Biotech Business is not revenue generating but has to incur substantial expenses, because the biotech products are still undergoing clinical trials and are not ready to be marketed. On the other hand, the Side Business is usually revenue generating and is able to provide certain incomes to fund the high costs and expenses involved in the Biotech Business. We also understand that such biotech companies are reluctant to carve out the Side Business for the purpose of listing because of the synergy effects among the various businesses and for tax planning reasons.


Based on the above, our queries to the Exchange are:

1. Whether the assessment of Principal Business Requirement would be based primarily on revenue contribution from different businesses? If so, what are the minimum threshold of revenue contribution to meet the Principal Business Requirement?
2. If the answer to the first question is no, what factors will your Exchange take into account when assessing the Principal Business Requirement? Would the relative amount of expenses involved in different businesses be relevant? Would there be a minimum threshold of any financial indicator to meet the Principal Business Requirement?
3. Whether the Principal Business Requirement would require the listing applicants to dispose the Side Business for the purpose of listing on your Exchange?
4. If the answer to the third question is yes, whether the disposal of the Side Business will have to be completed before A1 submission or could be done shortly before listing?

We are looking forward to receiving your responses to the above queries soon. For any queries, please contact our Kurt Lau with contact details set out below. Many thanks.

Kind regards
Eversheds Sutherland team

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