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Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
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Hong Kong

Our Ref PKYL/CMAG

20 March 2018

Dear Sirs,

Re: Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors

KPMG welcomes the opportunity to respond to the *Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors* (the "Consultation Paper"). We have considered the Consultation Paper in totality and are in support of the proposed new listing regime with appropriate safeguards for shareholder protection, which is an important step in the right direction to enhance the overall competitiveness of Hong Kong.

Under this premise, we have set out the following comments and suggestions to facilitate further consideration or finalisation of the proposals. Unless otherwise noted, terms used in our responses herein shall have the same meanings as those defined in the Consultation Paper.

Biotech Companies

Expert advice and criteria for listing eligibility and suitability

As the ecosystem for the listing of Biotech Companies that do not meet any of the Financial Eligibility Tests is still at an early stage, we believe it is important that the Exchange, sponsors, legal advisors and other key stakeholders have proper access to expertise and resources which will be key in the vetting process of these companies and in ensuring only qualified candidates are eligible to list. In this regard, we are in strong support of the Exchange's proposal to engage expert advice in the eligibility and suitability assessment of Biotech issuers.

In addition, we welcome the proposal that further guidance will be provided in relation to the factors that the Exchange will take into consideration when determining a Biotech applicant's eligibility and suitability to list. While the Exchange expects to publish the consultation conclusions in late April at the earliest, with the new Rules to implement the regime expected to come into effect shortly thereafter, it is critical for the Exchange to issue the guidance as soon as possible for interested companies to assess their eligibility and suitability, and make their listing decisions accordingly.



Track record period financial information requirements

Under the proposal, it is expected that a Biotech Company applicant must have been engaged with the R&D of its Core Products for a minimum of 12 months prior to listing. It is also expected that such Biotech Company applicant has been in operation in its current line of business for at least two years prior to listing under substantially the same management. However, it is not apparent from the Consultation Paper whether the Exchange is prepared to accept an accountants' report for a shorter period than the normal three financial years under Listing Rule 4.04(1) where the applicant has been in operation for more than two years prior to listing (albeit not in its current line of business). Also, as the two-year track record requirement under the proposal is with reference to the time of *listing*, rather than with reference to the number of financial years immediately preceding the issue of the Prospectus, it appears the track record financial information to be included in the accountants' report for some of the Biotech Company applicants could be less than two complete financial years.

Despite the pre-revenue, start-up nature of certain Biotech Company applicants, we believe the historical financial information of these companies is still very crucial for investors to assess the liquidity, further working capital needs, and results of the applicant's operations (e.g. R&D effort). We recommend that the Exchange clarify the track record period financial information requirements for a new Biotech Company applicant and the relevant criteria for a waiver from the track record requirements for a new applicant under Listing Rule 4.04(1).

Issuers with WVR structures

Corporate Governance Committee

A Corporate Governance Committee comprising a majority of INEDs and chaired by an INED is required under the proposals to ensure that the issuer with a WVR structure is operated and managed for the benefit of all shareholders and to help ensure the issuer's compliance with the Rules, including the relevant WVR safeguards.

Under the current Corporate Governance Code (Code Provision), the board is responsible for performing the corporate governance duties set out in the terms of reference in Code Provision D.3.1, or it may delegate the responsibility to a committee or committees. The proposal under the Consultation Paper will mandate the establishment of a Corporate Governance Committee for WVR issuers with at least the terms of reference in Code Provision D.3.1 and the additional WVR safeguards set out in paragraph 138 of the Consultation Paper.

While we are in favour of an enhanced corporate governance framework for issuers with WVR structures, there are listed issuers who believe that governance should be an issue for its board of directors and across the company as a whole, and that it should not be vested with a committee. Therefore, we consider it reasonable to allow WVR issuers a choice of establishing an overall Corporate Governance Committee as proposed in the Consultation Paper, or establishing a WVR Safeguards Committee (or other appropriately titled committee), which will be specifically tasked with the duties of reviewing, monitoring and reporting on the issuer's compliance with the WVR safeguards under the proposals.



WVR beneficiaries

Under the proposals, all beneficiaries of a WVR company are required to collectively beneficially own a minimum of 10% and a maximum of not more than 50% of the underlying economic interest in the company's total share capital at the time of listing. It will also be a requirement that an issuer with WVR structures include the warning "a company controlled through weighted voting rights", amongst other enhanced disclosure requirements, on the front page of its listing documents, periodic financial reports and other corporate communications. Taking the relevant requirements as a whole, it appears that each individual WVR beneficiary (where there are multiple individual beneficiaries for a listed issuer with a WVR structure) would be considered a "Controlling Shareholder" for purposes of the Listing Rules, and that the WVR beneficiaries could be deemed as 'parties acting in concert' under the Takeovers Code. This is, however, not entirely apparent from the Consultation Paper, and we would welcome the Exchange's and/or SFC's clarification and further guidance in this regard.

The WVRs attached to a WVR beneficiary's shares will lapse permanently if a WVR beneficiary transfers his beneficial interest or economic interest in those shares, or the voting rights attached to them, to another person. Should the individual beneficiaries be deemed collectively as "Controlling Shareholder" for purposes of the Listing Rules and/or 'parties acting in concert' for purposes of the Takeovers Code, we consider an exception to the restriction on transfer could be where such transfer is between existing WVR beneficiaries, subject to approval by all shareholders on a one-share, one-vote basis.

Corporate WVR beneficiaries

We note the Exchange's proposal to limit WVR beneficiaries to individuals who are (and remain as) directors of the issuer. Undoubtedly, whether WVR beneficiaries should be expanded to corporates is a competitiveness issue for Hong Kong that should be studied and debated, as not allowing corporates to hold WVRs would likely render Hong Kong less attractive to certain 'unicorn' companies vis-a-vis other leading global stock exchanges.

In this regard, we support the Exchange's commitment to launch a separate consultation within three months of the date of the implementation of the Rules on WVR to explore the option of allowing corporate entities to benefit from WVRs. We believe this will involve a thorough analysis of the distinct features and risks associated with the control of a listed issuer through corporate as opposed to individual WVRs. We are hopeful that Hong Kong will continue to adopt a balanced approach, recognising the importance of a competitive Hong Kong listing regime and preservation of high regulatory standards that protect investors from abuse.



Conclusion

As emerging and innovative companies are the key growth engines of the global economy, we strongly support the need to attract more listings of these companies in Hong Kong and the general direction the Exchange is heading to achieve this objective.

We look forward to seeing the conclusions of the Exchange in relation to the Consultation Paper.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kpmg', with a stylized, cursive flourish extending from the end of the word.