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Hon Charles Mok's Response to the "Proposed New Listing Regime for Emerging and Innovative Companies" Consultation

With the stated objective of facilitating listings of companies from emerging and innovative sectors, the Stock Exchange of Hong Kong has proposed separate new chapters in the Listing Rules for biotech, WVR and the new concessionary secondary listing route.

It is a positive step towards the direction of making Hong Kong more attractive to high growth companies from emerging and innovative sectors. Yet from the perspective of local technology sector, the hopes that were elevated among the local technology startup community that a "New Board" could soon become a new avenue of expediting access to capital were almost dashed, as the WVR companies are required to have a higher market capitalisation requirement (≥HK$10 billion with ≥HK$1bn in revenue if <HK$40 billion).

A most likely scenario would be Chinese companies listed in US markets or spin-off from Chinese ICT conglomerates benefiting the most out of HKEx's proposal instead of local innovative startups wanting to scale its business through IPO.

The government has set out four priority areas in the context of innovation and technology development in this year's Budget: artificial intelligence and big data analytics, biomedicine, smart city, as well as fintech.

It is recommended that the Exchange engage in regular review to evaluate the suitability of allowing companies that do not meet the Financial Eligibility tests to be subject to similar arrangement, in order to foster innovation and clustering of potential issuers in Hong Kong, with the long term goal of attracting more talent and investment into these fast-growing industries.

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Since publication of the "New Board" consultation conclusions in December 2017, it is observed that insufficient protection to local retail shareholders remains one of the major concerns towards allowing companies with a WVR structure to list in Hong Kong.

From the perspective of **shareholder protection**, the 3 characteristics of an "innovative business" (para. 18(a)) and the contribution of WVR beneficiaries (para. 18(c)) that are "materially responsible for growth of the business" leaves room for interpretation.

The HKEx should maintain a high level of transparency regarding the vetting process of potential WVR issuers, for example periodically publishing guideline with quantified examples that illustrate the contribution of WVR beneficiaries and approved "innovative companies".

In addition, measures such as INED system, Corporate Governance Committee, or require key matters to be decided on a one-share one-vote basis, have been proved to be incapable in protecting shareholders (regardless of size). Additional requirement on corporate governance have limited effect and are highly likely to be circumvented, the associated risk of which might cause confusion to retail investors.

We recommend enhancing the level of disclosure and ease of identification by investors, for instance changing the proposal of attaching a "W" stock marker from the end of the stock name of issuers with WVR structure to the prefix (W____.hk). Also the nomination process of INEDs proposed in para. 30 should ensure appointed persons have no conflict of interest and to be appointed solely by independent shareholders. .

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To maintain fairness to shareholders, the class action protection system should be studied as soon as possible to protect investors from circumvention of or non-compliance of the Listing Rules that disciplinary and enforcement actions by the HKEx cannot sufficiently address.

The HKEx should also consider requiring companies listed with a WVR structure to conduct a vote on a one-share-one-vote basis on the continuation of WVR structure. More robust audits into the market valuation claims of applicants for WVR structure should be required to prevent applicants motivated to boost its market cap with projections that lack transparency and verification. Mandating a time-defined sunset clause for WVR beneficiaries should be revisited after 3 years of implementing the new Rules.

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