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LEGISLATIVE COUNCIL  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
OF THE PEOPLE'S REPUBLIC OF CHINA

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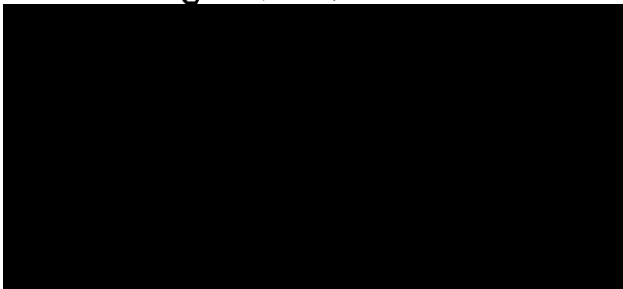
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23 March 2018

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**To whom it may concern**

Please see attached my view on the Consultation Paper on Proposed Listing Regime for Companies from Emerging and Innovative Sectors issued by the Stock Exchange of Hong Kong Limited.



**Kenneth Leung**  
Legislative Councillor (Accountancy)



## **Proposed Listing Regime for Companies from Emerging and Innovative Sectors**

The Stock Exchange of Hong Kong Limited (the "HKEX") has proposed to expand the existing listing regime to facilitate the listing of companies from emerging and innovative sectors.

The consultation paper (the "Proposal") suggests amending the rules to allow the listing on the Main Board of:

- a. Biotech Companies that do not meet any of the Financial Eligibility Tests, including companies that do not have any prior record of revenue or profit;
- b. high growth and innovative companies that have weighted voting right structures ("WVR Structures") ; and
- c. Qualifying Issuers seeking a secondary listing on the Exchange.

The Proposal claims that the expanded listing regime will allow Hong Kong's listing regime to maintain its overall competitiveness versus other major global listing venues, particularly in respect of attracting companies from emerging and innovative sectors.

We welcome the efforts of HKEX to review Hong Kong's listing regime, in order to improve the competitiveness of Hong Kong stock market and propose new measures to attract high value-added, quality companies from all over the world to list in Hong Kong.



## **Biotech Companies**

The proposal suggests adding a new Chapter 18A to the Listing Rules, to allow listing of Biotech Companies that do not meet the Financial Eligibility Test.

This proposal will attract new opportunities for Hong Kong - as many businesses which are involved in R&D intensive sectors will have legitimate financing needs before the completion of any revenue-generating commercial product or service.

Nevertheless, companies which are unable to satisfy the Financial Eligibility Tests may potentially carry additional risks to investors. Investing in early stage Biotech Companies that do not have prior record of revenue would be a new territory for Main Board investors. HKEX and perhaps more appropriately the Securities and Futures Commission (SFC), should make extensive efforts to educate investors and the public about the risks when investing in Biotech Companies. A standard health warning should be included in any IPO documents issued to the public to warn the potential investors of the nature of this type of company.

## **Imposing a Sunset Clause to WVR Structure**

The Proposal broadens Hong Kong's listing criteria to facilitate the listing of companies with non-standard governance features (including WVR structures). The intention of the proposal is to attract more innovative and high growth companies to list in Hong Kong. However, HKEX and regulators should also act as gatekeepers to safeguard the interests of investors. Prior to allowing the listing of companies with WVR Structures, HKEX should also consider imposing a sunset clause of 5 years to the WVR structure (i.e. the



founder's WVR should be subject to a renewal by a vote of the non-WVR shareholders every 5 years.)

### **A Commitment to Class Action Legislation**

The fair and equal treatment of all shareholders is a fundamental principle of Hong Kong's Listing Rules. Main Board Rule 2.03(4) states that: "*The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:- All holders of listed securities are treated fairly and equally*". However, under WVR Structures, public shareholders contribute by supplying equity financing, but their rights to monitor corporate governance could be undermined under this structure.

Although the proposal suggests measures to limit WVR powers and protect non-WVR shareholders rights to vote, along with enhanced mechanisms on disclosure and corporate governance, The Hong Kong government should show its commitment to protect minority shareholders rights by setting out a timetable to implement class action step by step in accordance with the recommendations set out in Report on Class Actions published by the Law Reform Commission of Hong Kong in 2012, starting with a class action reform which aims to protect investors. The HKEX should not raise any objection to this proposal, if it is committed to protect shareholders' rights. This will also entail the setting up of an investor's protection litigation fund.



## Conclusion

The proposal on the listing regime will be a positive step to attract companies in the new economy to list in Hong Kong and maintain Hong Kong's competitiveness as a global financial centre. However, the quality of the companies listed on the market, the standard of corporate governance, regulatory threshold, investors' interests and Hong Kong's hard-earned reputation as an international financial centre should not be compromised.

The Office of the Hon Kenneth Leung  
23 March 2018