

The AIMA logo consists of the letters "AIMA" in a white, sans-serif font, centered within a solid black square.

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Sent via email

23 March 2018

Dear Sirs

Re: Consultation Paper on A Listing Regime for Companies from Emerging and Innovative Sectors (February 2018)

The Alternative Investment Management Association (AIMA)¹ writes further to the Consultation Paper on "A Listing Regime for Companies from Emerging and Innovative Sectors" (the "**Listing Regime Consultation Paper**") dated February 2018 and issued by The Stock Exchange of Hong Kong Limited (the "**SEHK**"), inviting written comments on the matters discussed in the Listing Regime Consultation Paper and in particular, considering certain amendments to the listing regime in Hong Kong in order to enable the listing of:

- (i) "biotech companies" which would otherwise be unable to meet applicable financial eligibility tests for the main board of the SEHK; and
- (ii) certain "high growth" and "innovative" companies with weighted voting rights ("**WVR**");
- (iii) certain "qualifying issuers" (already listed elsewhere on a qualifying exchange) and seeking a secondary listing on the SEHK.

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than US\$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 80 members that manage US\$500 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

We are grateful to the SEHK for the opportunity to provide written commentary on the matters presented in the Listing Regime Consultation Paper. The purpose of this letter is to outline in general terms our members' views regarding the proposals in Chapters 1-4 of the Listing Regime Consultation Paper, and the draft amendments to the listing rules in Hong Kong as set out in Appendix 1 of the Listing Regime Consultation Paper ("**Appendix 1**").

Chapter 2: Biotech Companies

AIMA agrees with SEHK's proposal to allow the listing of Biotech Companies that do not meet the financial eligibility tests set out by the HKEX. By relaxing the existing Financial Eligibility Tests (which would otherwise preclude "early stage" companies involved in the biotech space and which would be not able to comply with traditional financial eligibility tests) it is hoped that this would allow for a more diverse range of issuers to exist on the Main Board.

AIMA generally agrees with the list of suitability features that HKEX proposes to require Biotech Company applicants to demonstrate. Coupled with the additional restriction of: (i) the expected market capitalisation threshold of minimum HK\$1.5billion; (ii) the enhanced disclosure requirements applicable to such issuers; (iii) the proposed restrictions on counting investments from cornerstone investors; and (iv) the restriction on material change of business; AIMA considers that these additional checks and balances will exclude "unsuitable" companies from the listing process, and ensure that only high-calibre Biotech Companies are able to achieve listed status.

We would offer that the market capitalisation threshold of minimum HK\$1.5billion may be too low, and that there may be a very high volume of Biotech Companies that may qualify and submit applications. Even with a higher threshold, we suggest that to address what we anticipate may be a very large volume of applicants, the HKEX and the Securities and Futures Commission ("**SFC**") must ensure that they have sufficient resources in order to properly review listing candidates.

Chapter 3: Issuers with Weighted Voting Rights (WVR)

As noted in our previous submission made in connection with the New Board Concept Paper (June 2017), AIMA has a number of serious concerns from a corporate governance perspective regarding the WVR proposals.

In particular, notwithstanding the limitations proposed in the Listing Regime Consultation Paper, including (but not limited to):

- (i) imposing suitability requirements on such companies (such as being an "innovative" company, and being able to demonstrate a level of success);
- (ii) expected market capitalisation;
- (iii) ring-fencing;
- (iv) minimum and maximum economic interest at listing;
- (v) enhanced disclosure;
- (vi) enforcement and the requirement to hardwire the WVR safeguards into the constitutional documents of the issuer.

AIMA remains concerned regarding the proposed voting rights attached to the founders' shares in such companies. AIMA's primary concern remains that WVR arrangements may lead to the oppression of minority shareholders. In particular, minority shareholders are likely to have little or no say in the appointment and removal of directors and the board may be conflicted when it comes to its representation of minority shareholders.

As previously explained, this effective disenfranchisement of minority shareholders runs counter to the principles set forth in the SFC's "*Principles of Responsible Ownership*", which emphasized that "*Ownership of shares brings with it important responsibilities, particularly the right to speak and vote on matters that can influence the way in which a business*

*is conducted.*²

This disenfranchisement is particularly relevant in the context of Hong Kong shareholders, who do not have access to redress by way of class action suits against a company. The option exists in the US as a counterbalance to the inequities that are created through the use of WVR structures and is often pursued on the basis of contingency fee arrangements.

In the event that SEHK permits companies with a WVR structure to list in Hong Kong, AIMA members would strongly advocate a range of safeguards in order to deliver a level of protection for the interests of minority shareholders, in addition to those set out in the Listing Regime Consultation Paper. Such additional safeguards might include the following:

- (1) the creation of an effective "class action" rights concept in Hong Kong, as a mechanism for enforcing claims. Class action rights in Hong Kong (in addition to the existing statutory and common law protections in Hong Kong afforded to minority shareholders) would ensure that management of companies are likely to be more scrupulous about making decisions which could potentially oppress minority shareholders;
- (2) a disclosure-based approach - whereby such companies are required to prominently disclose to investors (and potential investors) the existence of a WVR structure, and the corresponding risks associated with a WVR structure. The purpose here is to achieve a level of transparency for investors (current investors and prospective investors): (a) so that investors are clearly alerted to the fact that a company has a WVR structure in place, and that their rights as a shareholder in that company will be limited compared with their rights as a shareholder in a company listed on the Main Board; and (b) so that full details of the WVR structure implemented within the company are disclosed to investors in the listing documents, in order that investors are fully aware of how the WVR structure operates and are able to understand the identities of the persons controlling the company and the manner in which such control powers are exercised. AIMA considers that the proposal that such companies are identified with a unique stock marker "W" goes some way to helping investors to identify that a company has a WVR arrangement, and AIMA endorses such a proposal. In addition, the requirement to hardwire the WVR provisions into the constitutional documents of such issuers (and the need to therefore make corresponding disclosures in the listing documents) also goes some way to achieving an appropriate level of disclosure to prospective investors;
- (3) minimum equity participation requirements for WVR arrangements in order to ensure that the person(s) controlling the company are actually invested to a material extent in the company. AIMA notes that this appears to be addressed somewhat by the proposed minimum / maximum economic interest requirements proposed in the Listing Regime Consultation Paper;
- (4) a requirement that where the company is listed on a recognized exchange and then pursues a secondary listing with HKEX, the company **must** have a clean corporate governance compliance track record. AIMA notes the requirement proposed for secondary listings to be able to demonstrate a minimum of five (5) years good record of compliance on a "qualifying exchange";
- (5) additional ongoing market disclosure obligations for WVR companies - particularly in the context of connected party transactions by that company and involving WVR participants, and any changes to the WVR structure; and
- (6) a "sunset" arrangement, whereby the WVR arrangement falls away following a set period of time after listing on the New Board, to be replaced by conventional voting rights arrangement (one share one vote). This reflects a better compromise between the founders and shareholders in terms of balancing the founder's desire for control of a company (at least in the initial stage following listing) against the "cost" of accessing third party equity investment on international capital markets. AIMA notes that the provisions in proposed Listing Rule 8A.23 are too limited as they do not provide for a set drop-dead date to the arrangement (i.e. three years following the listing date).

² <http://www.sfc.hk/web/EN/rules-and-standards/principles-of-responsible-ownership.html>

Chapter 4: Secondary Listing of Qualifying Issuers

As noted in our previous submission made in connection with the New Board Concept Paper (June 2017):

- (i) AIMA is broadly in favour of proposing a mechanism to enable companies with a primary listing on another international financial exchange (such as in the US) obtaining a secondary listing in Hong Kong; and
- (ii) AIMA is of the view that SEHK should seek to relax the existing restrictions on such applicants, in order to best position itself as the primary market in Asia on which such companies choose to list (in particular when compared with other competitor exchanges).

AIMA considers that the restrictions proposed in the Listing Regime Consultation Paper with respect to secondary listings go some way to alleviate AIMA's concerns which would otherwise apply to such issuers (in particular Mainland listed issuers) seeking a secondary listing in Hong Kong. AIMA applauds the proposals to require that such issuers:

- (i) are able to demonstrate a minimum of two (2) years good record of compliance on a "qualifying exchange" (NYSE, NASDAQ or the premium listing segment of the LSE);
- (ii) amend their constitutional documents in order to provide for the key shareholder protection standards set out in Section 1 of the 2013 Joint Policy Statement ("**Key Shareholder Protection Standards**"); and
- (iii) are required to demonstrate to HKEX how the domestic laws, rules and regulations of the issuer (together with the issuer's constitutional documents) provide for the Key Shareholder Protection Standards.

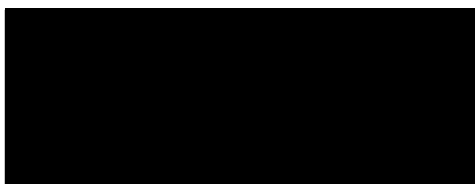
We propose that under Point (i), the track record for good record of compliance on a "qualifying exchange" be lengthened to five (5) years. Points (ii) and (iii) above go some way to alleviating AIMA's main concerns regarding the permitting of secondary listings, and to ensure that: (1) balance is achieved between investors and promoters; and (2) such companies are required to adopt comprehensive and well drafted corporate governance policies and procedures.

Conclusion

We hope that the SEHK finds the points set out above helpful.

We would be very happy to further discuss the responses provided in this letter should the SEHK require this.

Yours faithfully



Kher Sheng Lee
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Deputy Global Head of Government Affairs