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12 December 2022

Responses to the Consultation Paper on the Listing Regime for Specialist Technology Companies

Dear Sirs,

Introduction

1. We refer to the Consultation Paper dated 19 October 2022 from The Stock Exchange of Hong Kong Limited (the "**Stock Exchange**") seeking public feedback on proposals to expand Hong Kong's existing listing regime to permit listing of Specialist Technology Companies (the "**Consultation Paper**"). Unless otherwise defined in this letter, capitalized terms used herein shall have the respective meanings as ascribed to them in the Consultation Paper.
2. We submit this response on behalf of our client (the "**Client**"), a company in one of the Specified Technology Industries, who intends to apply for listing under the proposed

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Chapter 18C of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "**Listing Rules**") as set out in the Consultation Paper.

3. While our Client welcomes the Consultation Paper and the initiative of the Stock Exchange to allow companies in the Specialist Technology Industries to list in Hong Kong, our Client, taking into account the policy objectives, respectfully submits the following suggestions (i) to seek more clarity in respect of the meaningful investment requirement as required under paragraph 23 of the draft guidance letter in the Consultation Paper and (ii) to lower the revenue threshold for Commercial Companies as provided under Rule 18C.03(4) of the draft Listing Rules.

(i) The meaningful investment requirement

4. Paragraph 23 of the draft guidance letter in the Consultation Paper states,

"As an indicative benchmark, an applicant applying to list under Chapter 18C and meeting the following requirement will generally be considered as having met the requirement of having received meaningful investment for the purpose of Rule 18C.04:

(a) third party investment from at least two sophisticated independent investors at least 12 months before the date of the listing application, each holding such amount of shares or securities convertible into shares equivalent to 5% or more of the issued share capital of the listing applicant as at the date of its listing application and throughout the pre-application 12-month period; and

(b) the investment from all sophisticated independent investors result in them holding, in aggregate, such amount of shares or securities convertible into shares equivalent to at least the percentage of the issued share capital of the applicant at the time of listing set out in the table below: ... "

5. It is understood that the policy objective of the "meaningful investment" requirement is to ensure the listing applicant is supported by investors who has substantial experience in investing in the requisite industry and who, after having undertaken extensive due diligence checks on the listing applicant, are willing to commit meaning capital and take on significant investment risks in the viability of the technology and products/services of the listing applicant. Such that in the absence of a competent authority, there are independent third parties, who are professional and with the relevant industry experience, validating and supporting the technology/products of the listing applicant to a certain extent. Our Client believes the guidance letter should provide greater clarity and flexibility regarding the first prong of the "meaningful investment" requirement, in order not to shut out viable companies who are otherwise qualified to list under Chapter 18C.

6. The starting paragraph was drafted with language (including "indicative benchmark" / "generally be considered") that seems to suggest the requirements as set out in sub-paragraphs (a) and (b) are only indicative, non-exhaustive and are open-ended for listing applicants to demonstrate fulfilment. However, it is not entirely clear whether the Stock Exchange would actually accept deviation from the requirements, particularly for sub-paragraph (a), since it was drafted with such precision regarding the number of investors, the timing of investment and the size of investment.
7. Our Client suggests the following for the Stock Exchange's consideration:
 - 7.1. in the starting paragraph of paragraph 23 of the draft guidance letter, indicating clearly that (i) the requirement in sub-paragraph (a) is non-exhaustive example, (ii) the Stock Exchange will consider the facts and circumstances of each listing applicant on a case-by-case basis, and to express clearly if the listing applicant is required to make a pre-A1 submission to the Stock Exchange in respect of the fulfilment of the meaningful investment requirement;
 - 7.2. the Company believes that it is more common for companies in this space to have one lead investor who takes (and maintains) a more substantial stake in the company. This is especially so where reputable investors are competing for the best investee companies. Other common circumstances could be that the significant stakes taken up by lead investors have been diluted over time as a result of subsequent rounds of fundraisings. Such circumstances surrounding an investee company should not disqualify it from being eligible for listing under the Chapter 18C. Accordingly, the Company believes that requiring the listing applicant to have at least two such significant sophisticated investors would unnecessarily limit the application of Chapter 18C and shut out companies who are otherwise highly qualified and with viable business and products/services. In this regard, the Company suggests amending the requirement in paragraph 23(a) of the draft guidance letter, in alternatives:
 - 7.2.1. *"third party investment from at least one ~~two~~ sophisticated independent investors at least 12 months before the date of the listing application, each holding such amount of shares or securities convertible into shares equivalent to 5% or more of the issued share capital of the listing applicant as at the date of its listing application and throughout the pre-application 12-month period";* or
 - 7.2.2. *"third party investment from at least two sophisticated independent investors, each of which (i) had made its first investment in the listing applicant [at least 12 months before the date of the listing application] with an each holding such amount of shares or securities convertible into shares first invested equivalent to 5% or more of the issued share capital of the listing applicant as at the date of its*

listing application first investment, and throughout the pre-application 12-month period (ii) has not disposed of such amount of shares or securities convertible into shares first invested thereafter"; or

7.2.3. *"third party investment from ~~at least~~ one or two sophisticated independent investor(s) at least 12 months before the date of the listing application, each holding such amount of shares or securities convertible into shares equivalent to 10% 5% or more, in aggregate (as appropriate), of the issued share capital of the listing applicant as at the date of its listing application and throughout the pre-application 12-month period"*.

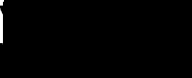
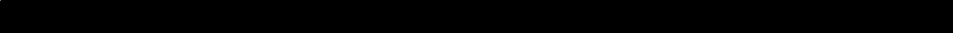
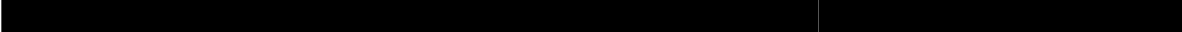
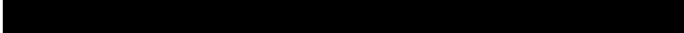
(ii) The revenue threshold for a Commercial Company

8. Rule 18C.03(4) of the draft Listing Rules as provided in the Consultation Paper states, a Commercial Company applying for listing under Chapter 18C of the draft Listing Rules must " *have revenue of at least HK\$250,000,000 for its most recent audited financial year*".
9. The main policy objective of the proposed listing regime for Specialist Technology Companies, as set out in the Consultation Paper, is to enhance diversification of the Hong Kong market by increasing the number and market capitalization of companies belonging to the Specialist Technology Industries. It was also acknowledged in the Consultation Paper that the Specialist Technology Companies face difficulties in fulfilling the revenue or cash flow requirements of the Stock Exchange's Main Board Eligibility Tests because of their material R&D expenses and the nature of their business models.
10. As noted in the Consultation Paper, the proposed revenue threshold for Commercial Companies was based on feedback from stakeholders who indicated that a revenue threshold of HK\$250 million would reflect a meaningful commercialisation of business.
11. However, when compared with the financial eligibility tests of securities exchanges in other markets, the proposed HK\$250 million revenue threshold is arguably a more stringent entry point. For example, as set out in Appendix II to the Consultation Paper, the minimum revenue threshold in the STAR Market is RMB200 million (equivalent to HK\$ 220.39 million¹), which is lower than the proposed HK\$250 million threshold. As provided in paragraph 61 of the Consultation Paper, the SGX does not impose a bright line revenue benchmark and only requires actual or pro-forma operating revenue in the most recent financial year prior to listing. The relevant market segments or market segments under consultation of NYSE, NASDAQ and LSE also do not impose any specific revenue thresholds.

¹ Based on applicable exchange rates at close of market on 30 November 2022.

12. With reference to the revenue requirements in the other markets as set out above, our Client respectfully submits that a lower revenue threshold will be able to attract more Specialist Technology Companies to list in Hong Kong and to further enhance the competitiveness and diversification of the Hong Kong market.
13. Therefore, our Client suggests amending the requirement in Rule 18C.03(4) of the draft Listing Rules to "*for a Commercial Company, have revenue of at least ~~HK\$250,000,000~~ HK\$150,000,000 for its most recent audited financial year*". Our Client believes that such a revenue threshold equally demonstrates that the business of the listing applicant has reached a sufficient level of commercialisation to support the viability and commerciality of the products/services of the listing applicant.

Conclusion

14. Our Client respectfully submits to the Stock Exchange the suggestions to the draft guidance letter and the draft Listing Rules as set out above, and looks forward to the publication of the conclusion to the Consultation Paper and the final rules and guidance letter for Chapter 18C of the Listing Rules. Our Client hopes to be among the first batch of Specialist Technology Companies listing in Hong Kong in the near future.
15. Should you have any queries, please do not hesitate to contact our 




Yours faithfully,

