

# Davis Polk

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December 16, 2022

## Re: Consultation Paper on Listing Regime for Specialist Technology Companies

Ms. Bonnie Y Chan  
Head of Listing  
Hong Kong Exchanges and Clearing Limited

Dear Ms. Chan,

We are submitting this letter in response to the consultation paper (the “**Consultation Paper**”) published by The Stock Exchange of Hong Kong Limited (the “**Exchange**”) on 19 October 2022 seeking market feedback on proposals to create a listing regime for Specialist Technology Companies on the Main Board of the Exchange in Hong Kong. Capitalized terms used but not otherwise defined in this letter have the respective meanings given to such terms in the Consultation Paper.

As a market participant that is deeply involved in the Hong Kong capital markets on the legal front, we warmly welcome and fully support the initiatives taken by the Exchange as outlined in the Consultation Paper. We concur with the Exchange’s observation on the challenges faced by Specialist Technology Companies seeking listing in Hong Kong and are confident that, with the progress on the regulatory side to facilitate such companies to have access to listing on the Exchange, more and more high quality innovative and technology companies will be able to tap into and further strengthen the Hong Kong capital markets.

Noting that Hong Kong as an important capital market in the world still lags behind other major capital markets in the world in the number and market capitalization of listed tech companies, we are very excited to see that the Exchange is taking the initiative to consider the implementation of a listing regime for Specialist Technology Companies in Hong Kong to further elevate Hong Kong’s position as the listing venue of choice for innovative companies from around the world, which we believe will be an important step and expansion of the Exchange’s existing listing regime to attract a range of innovative companies to participate in Hong Kong’s deep, liquid, international markets and will offer investors even greater and wider choice.

We understand the importance of investor protection and quality of the market players to Hong Kong’s competitiveness as an international financial center. We appreciate the Exchange’s endeavor to strike a right balance between upholding market fairness and quality and creating a commercially viable regime that meets the fundraising needs of the Specialist Technology Companies. The proposals in the Consultation Paper demonstrate such principle

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by categorizing Specialist Technology Companies into Commercial Companies and Pre-Commercial Companies, with more stringent requirements for Pre-Commercial Companies given their risk profile.

We are supportive of differentiating Commercial Companies and Pre-Commercial Companies, and we note that various measures proposed in the Consultation Paper provide robust investor protections. However, having preliminarily discussed with certain stakeholders on the Consultation Paper, we understand that certain proposals in the Consultation Paper warrant some reassessment when weighing the minimal incremental protections they may afford the investors against the potential chilling effect on Specialist Technology Companies' desire to list under the newly proposed regime. Please refer to the Appendix in which we have summarized certain key areas in the Consultation Paper that are of particular concern by the practitioners together with suggestions to address the concern for the Exchange's further consideration.

Finally, we would like to reiterate our support for the Specialist Technology Companies listing framework proposed in the Consultation Paper and we are excited to envision its provision of another attractive route to listing in Hong Kong. We respectfully ask that the Exchange consider our comments set forth above as we believe they will help improve the attractiveness of the proposed regime while maintaining sufficient investor protections.

Please do not hesitate to contact our [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] if you have any questions regarding the foregoing.

Very truly yours,

[REDACTED]

Davis Polk & Wardwell  
Hong Kong Solicitors

**Appendix  
Key Areas of Concern**

Proposal(s) in consultation paper and relevant paragraph number	Issue(s) and Reasoning	Suggestion(s)
<u>Market Capitalization requirement</u>		
Applicants must demonstrate minimum market capitalization of HK\$8 billion for commercial companies and HK\$15 billion for pre-commercial companies at the time of listing. (Paragraph 120)	Taking into account the current market environment, we note that some of the stakeholders are concerned about the minimum market capitalization thresholds for both pre-commercial and commercial companies being too high to satisfy, which goes against the intention of Chapter 18C to encourage emerging companies of specialist technologies to list and raise capital to fund their further business development and growth.	The Exchange may consider lower the minimum market capitalization thresholds for each of pre-commercial and commercial companies.
<u>Revenue requirement</u>		
<p>Commercial companies must have revenue of at least HK\$250 million for the most recent audited financial year. (Paragraph 130)</p> <p>Commercial companies are expected to demonstrate year-on-year growth of revenue arising from the specialist technology business segment throughout the track record period, with allowance for temporary declines in revenue due to economic, market or industry-wide conditions. (Paragraph 135)</p>	<p>We note that another stakeholders' concern is that the revenue threshold of HK\$250 million from the most recent financial year is too high for emerging companies. Further, listing applicants with revenue of at least HK\$500 million for the most recent financial year may apply for listing under LR8.05. Accordingly, companies which generate revenue of over HK\$500 million for the most recent financial year, will choose to apply for listing under Chapter 8 with less stringent requirements (e.g. lower market capitalization threshold) instead of applying through Chapter 18C as a commercialized company. It may result in only companies with revenue generated from the most recent financial year of HK\$250 million to HK\$500 million will apply for listing under Chapter 18C.</p> <p>Apart from the minimum revenue requirement, they are required to</p>	<p>The Exchange may consider (i) lower the revenue threshold to HK\$150 million; (ii) change the requirement from having generated revenue of at least HK\$250 million for the most recent audited financial year to having generated total revenue of at least HK\$250 million during the track record period; and/or (iii) clarify whether there must be revenue each year during the track record period. It is very likely that a company does not have revenue in in the first year or the first two years during the track record period.</p>

	show year-on-year growth of revenue, potentially meaning that the applicant must have recorded an increasing trend of revenue generated from the first and second years in the track record period and reached HK\$250 million in the final year of the track record period.	
<b>R&amp;D investment cost requirement</b>		
Minimum total R&D investment (as a percentage of total operating expenditure) for each of the three financial years prior to listing of commercial companies and pre-commercial companies is 15% and 50%, respectively. (Paragraph 138)	Some stakeholders are concerned that the minimum total R&D investment threshold of 50% as the total operating expenditure for each of the three financial years prior to listing for pre-commercial companies is too high, and that the total R&D investment may fluctuate year over year during the track record period.	The Exchange may consider (i) lower the minimum total R&D investment threshold; (ii) adjust the formula of calculating the minimum total R&D investment threshold (for example, taking reference from STAR Market, whereby the minimum total R&D investment threshold is calculated as a percentage to operating revenue); and/or (iii) revise the rules to require the average of minimum total R&D investment during the three financial years prior to listing, in lieu of each of the three financial years prior to listing.
<b>Definition of Specialist Technology Industries</b>		
A new applicant seeking to list under the proposed regime must be “a company primarily engaged in the research and development of, and the commercialization and/or sales of, Specialist Technology Products within an acceptable sector of a Specialist Technology Industry”. (Paragraph 96)  Biotech company relying on a Regulated Product as the basis of	While the rationale behind limiting biotech companies to apply for listing under Chapter 18C can be understood, it should be clarified that Paragraph 98 intends to exclude only traditional biopharmaceutical or biotech companies, but not a high tech company that has a biotech related business or operates in the biotech field, or a biotech company that cannot meet the requirements under Chapter 18A.  For instance, some biotech companies may never meet eligibility requirements under Chapter 18A due to either of lack of qualified clinical trials (either not required by laws or never completed Phase I (as	The Exchange should consider to include biotech as one of the Specialist Technology Industries for companies in the biotech sector but nonetheless do not qualify to apply for listing under Chapter 18A. The Exchange could have discretion to determine eligibility of such biotech company on a case-by-case basis.  Paragraph 98 should be clarified that it intends to exclude only traditional biopharmaceutical companies or biotech

<p>its listing application must submit an application under Chapter 18A of the Listing Rules and not Chapter 18C. A Biotech Company relying on a Regulated Product as the basis of its listing application that fails to satisfy the requirements under Chapter 18A (and relevant guidance) is not permitted to submit an application under Chapter 18C. (Paragraph 98)</p>	<p>its business model is not to conduct or advance clinical trials by itself)) or lack of further R&amp;D required for its proposed core product under Chapter 18A (as the core product has been approved by a competent authority without any plan for further indication or market expansion). There are also tech companies that primarily engage in the business of providing drug discovery services to customers or partners while developing their internal drug pipeline.</p> <p>Accordingly, such biotech companies or companies with a biotech business should not be <i>per se</i> precluded from applying for listing under Chapter 18C.</p>	<p>companies. A Biotech Company relying on a Regulated Product as the basis of its listing application may submit an application under Chapter 18C as long as the purpose of submitting an application under Chapter 18C is not intended to evade submission under Chapter 18A.</p>
<p><u>Investors related issues</u></p>		
<p>The applicants must have received meaningful investment from Sophisticated Independent Investors (“SII”):</p> <p>(i) third party investment from at least two SIIs who have invested at least 12 months before the date of the listing application, each holding at least 5% of the issued share capital of the listing applicant as at the date of the listing application and throughout the pre-application 12-month period; and</p> <p>(ii) the investment from all SII should result in them holding, in</p>	<p>The definition of SII may be too narrow.</p> <p>The shareholdings of earlier round of investors could be easily diluted as a result of later round of investments, especially pre-IPO investment, which often happens within 12 months before the date of the listing application.</p> <p>Further, home-coming applicants have been listed in foreign exchanges for many years and investors who would otherwise qualify as SII may have already exited/disposed their positions to below the SII threshold at the time of the listing in Hong Kong. Accordingly, the qualification of SII should be determined at the time of the applicants’ first-time IPO rather than at the time of Hong Kong listing.</p> <p>Investors with 5% or more equity interest of the applicant often enter into acting-in-concert agreement with founders to support the</p>	<p>The Exchange may consider (i) lower the minimum investment requirement of 5% and may consider using “meaningful” investment standard from Chapter 18A to qualify the definition of SII; (ii) clarify that the “Independence” should be determined based on the facts and circumstances at such investors’ first investment in the Company, rather than at the time of the listing. As such, their independence will not be affected by virtue of the fact that such investors become a party to an acting-in-concert agreement with a controlling shareholder or become entitled to a board seat as a result of their investment.</p>

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<p>aggregate, a certain minimum amount of shareholdings depending on the expected market capitalization of the listing applicants. (Paragraph 167)</p>	<p>founders' management of the Company post-IPO. Moreover, it is very common that such investors have board representation, given their significant shareholding. Both facts will impact assessment of "independent" qualification of the definition of SII.</p>	
<p>An applicant must, in addition to meeting the existing requirements on public float, ensure that at least 50% of the total number of shares offered in the IPO must be taken up by Independent Institutional Investors. (Paragraph 200)</p>	<p>The threshold of at least 50% of the total number of shares offered in IPO must be offered to Independent Institutional Investors is too high.</p> <p>Further, Independent Institutional Investors here means Institutional Professional Investors that participate in the placing tranche of an IPO (whether as cornerstone investor or otherwise), which would exclude corporate professional investors and individual professional investors (i.e. the professional investors referred to in the SFO PI Rules). The suggested definition of Institutional Investors may be too narrow and difficult to meet.</p>	<p>The Exchange may consider (i) to remove or lower the minimum investment requirement of 50%; and/or revise the definition of Independent Institutional Investors to include corporate professional investors and individual professional investors to align with market reality.</p>