

Submitted via Qualtrics

**Fangda Partners
Company / Organisation
Law Firm**

Question 1

Do you agree with the proposed definitions of “Specialist Technology Company”, “Specialist Technology Products” and “Specialist Technology”?

Yes

Please give reasons for your views. If your answer is “No”, please provide alternative suggestions.

Question 2

Do you agree with the list of Specialist Technology Industries and the respective acceptable sectors set out in paragraph 4 of the Draft Guidance Letter (Appendix V to the Consultation Paper)?

Yes

Please give reasons for your views. If your answer is “No”, please provide alternative suggestions.

Question 3

Do you agree that the Exchange should take into account the factors set out in paragraph 107 of the Consultation Paper to determine whether a company is “primarily engaged” in the relevant business as referred to in the definition of “Specialist Technology Company”?

Yes

Please give reasons for your views.

Question 4

Do you agree that the Exchange should retain the discretion to reject an application for listing from an applicant within an acceptable sector if it displays attributes inconsistent with the principles referred to in paragraph 101 of the Consultation Paper?

Yes

Please give reasons for your views.

Question 5

Do you agree that the Specialist Technology Regime should accommodate the listings of both Commercial Companies and Pre-Commercial Companies?

Yes

Please give reasons for your views.

Companies engaging in specialist technology development are capital intensive. They require long-term investment and have a long R&D cycle. Significant amount of resources needs to be spent on R&D to develop and commercialize the requisite technologies, knowhow or innovations. Hence such companies by nature do not generate meaningful revenue or operating cash flow early. However, the technologies or innovations being developed are hard to duplicate and imitate, creating a high entry barrier for intended entrants and can thus generate massive return for their investors.

Without Pre-Commercial Companies path, a number of specialist technology companies with promising prospects will be left out, undermining the original objective of this new listing regime.

Accommodating the listings of Pre-Commercial Companies would enable the new regime to more accurately capture the characteristics of companies engaging in the development of specialist technology, effectively address the needs of these companies, and allow a larger number of promising specialist technology unicorns to have access to the Hong Kong capital markets.

This is important given that international Exchanges have devised eligibility criteria specifically tailored for companies engaging in the development of specialist technologies, recognizing and accommodating the low or nil revenue characteristics of these companies, enabling these companies to have access to the capital markets when they are most in need of capital to achieve meaningful commercialization of their products or service offerings.

Question 6

Do you agree with the proposed approach to apply more stringent requirements to Pre-Commercial Companies?

Yes

Please give reasons for your views.

Question 7

Do you agree with the proposal that all investors, including retail investors, should be allowed to subscribe for, and trade in, the securities of Pre-Commercial Companies?

Yes

Please give reasons for your views.

Question 8

Do you agree that a Commercial Company applicant must have a minimum expected market capitalisation of HK\$8 billion?

Yes

Please give reasons for your views.

Question 9

Do you agree that a Pre-Commercial Company applicant must have a minimum expected market capitalisation of HK\$15 billion at listing?

Yes

Please give reasons for your views.

Question 10

Do you agree that a Commercial Company must have revenue of at least HK\$250 million for the most recent audited financial year?

Yes

Please give reasons for your views.

Question 11

Do you agree that only the revenue arising from the applicant's Specialist Technology business segment(s) (excluding any inter-segmental revenue from other business

segments of the applicant), and not items of revenue and gains that arise incidentally, or from other businesses, should be recognised for the purpose of the Commercialisation Revenue Threshold?

Yes

Please give reasons for your views.

Question 12(a)

Do you agree that a Commercial Company must demonstrate year-on-year growth of revenue derived from the sales of Specialist Technology Product(s) throughout the track record period, with allowance for temporary declines in revenue due to economic, market or industry-wide conditions?

Yes

Please give reasons for your views.

Question 12(b)

Do you agree that the reasons for, and remedial steps taken (or to be taken) to address, any downward trend in a Commercial Company's annual revenue must be explained to the Exchange's satisfaction and disclosed in the Listing Document?

Yes

Please give reasons for your views.

Question 13

Do you agree that a Specialist Technology Company listing applicant must have been engaged in R&D of its Specialist Technology Product(s) for a minimum of three financial years prior to listing?

Yes

Please give reasons for your views.

Question 14(a)

Do you agree that, for a Commercial Company, its total amount of R&D investment must constitute at least 15% of its total operating expenditure for each of its three financial

years prior to listing?

Yes

Please give reasons for your views.

Question 14(b)

Do you agree that, for a Pre-Commercial Company, its total amount of R&D investment must constitute at least 50% of its total operating expenditure for each of its three financial years prior to listing?

No

Please give reasons for your views.

The current proposal requires all applicants under the Pre-Commercial path to have at least 50% of their total operating expenditure as R&D investment for each of the three financial years prior to listing (the “50% R&D Requirement”), without regard to the actual amount of revenue generated by the individual applicant in each of the three financial years. This is not ideal as it disregards the stage of development of the individual applicant and may have anomalous results for Pre-Commercial Companies that have already commenced generating revenue.

It would be more difficult for applicants having a revenue close to HK\$250 million to have 50% of their total operating expenditure as R&D investment than an applicant with nil revenue, as a higher level of revenue would almost certainly entail a higher level of sales and marketing expenses and administrative expenses, amongst others, therefore enlarging the total operating expenditure and reducing the ratio of R&D expenses to total operating expenditure. In other words, the 50% R&D Requirement does not give due consideration to the circumstances of more advanced Pre-Commercial Companies. It fails to justify why a Pre-Commercial Company having revenue of close to HK\$250 million (e.g. HK\$240 million) would be required to satisfy the 50% R&D Requirement, while a Commercial Company with revenue of HK\$250 million will only be required to have 15% of its total operating expenditure as R&D investment for each of the three financial years prior to listing.

It would be more fair and realistic to also have regard to the revenue attained by the applicant under the Pre-Commercial path in determining the percentage of R&D investment required from it. Instead of imposing a blanket 50% R&D Requirement to all Pre-Commercial Companies, the Exchange should consider adopting a scale of diminishing percentage of R&D expenditure required for varying levels of revenues. The percentage of R&D expenditure required should diminish with an increasing amount of revenue attained. Alternatively, the proposed 50% R&D Requirement should be modified to the effect that an applicant is required to have on average at

least 50% of the total operating expenditure as R&D investment for each of the three financial years prior to listing.

Question 15

Do you agree with the proposed method for determining the amount of qualifying R&D investment and the total operating expenditure as set out in paragraph 141 of the Consultation Paper?

Yes

Please give reasons for your views.

Question 16

Do you agree that a Specialist Technology Company listing applicant must have been in operation in its current line of business for at least three financial years prior to listing under substantially the same management?

Yes

Please give reasons for your views.

Question 17

Do you agree that there must be ownership continuity and control for a Specialist Technology Company listing applicant in the 12 months prior to the date of the listing application?

Yes

Please give reasons for your views.

Question 18

Do you agree that an applicant applying to list under the proposed regime must have received meaningful investment from Sophisticated Independent Investors (SIIs)?

Yes

Please give reasons for your views.

Question 19

Do you agree with the independence requirements for a Sophisticated Independent Investor as set out in paragraphs 155 to 157 of the Consultation Paper?

Yes

Please give reasons for your views.

Question 20

Do you agree with the proposed definition of a sophisticated investor (including the definition of investment portfolio) as set out in paragraphs 159 to 162 of the Consultation Paper?

Yes

Please give reasons for your views.

Under the current proposal, any investor which is a controlling shareholder of the applicant will not qualify as a Sophisticated Independent Investor. It is not uncommon for shareholders (including financial investors) to enter into acting in concert agreements or other arrangements with the founders or controlling shareholders of the applicant for listing purpose (e.g. to maintain control of the applicant after listing to uphold confidence of the investing public). Investors who have entered into such agreements or arrangements with the controlling shareholder may be considered part of the controlling shareholders group and hence may not be treated as Pathfinder Sophisticated Independent Investors, even though they may be (i) institutional investors who are globally recognized for their relevant investment experience, knowledge and expertise in the relevant fields, or the scale of their assets under management, and (ii) are still subject to the same level of economic risks despite the voting agreements or arrangements. This is anomalous. We think that the 'independence' of the Pathfinder Sophisticated Independent Investors should be assessed at the time when the investment was made, which is the most appropriate time to determine whether the validation of the applicant by the Pathfinder Sophisticated Independent Investors is genuine, barring any relationships subsequently developed between the applicant and the investor as a result of the investment.

Question 21

Do you agree that as an indicative benchmark for meaningful investment, an applicant should have received third party investment from at least two Sophisticated Independent Investors who have invested 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 listing application and throughout the pre-application 12-month period?

Yes

Please give reasons for your views.

However, the proposals do not specify whether the interest of the Sophisticated Independent Investors in the applicant must be a direct interest. An investor's holding structure in an applicant can vary. For example, an investor may be holding the shares of an applicant indirectly with other investors (or even the controlling shareholders) through a common special purpose vehicle. We think that substance should prevail over form, and an indirect interest in the applicant held by the investor should still count for the requirement of having received 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 listing application and throughout the pre-application 12-month period. It is advisable that the Exchange should provide further clarification in this regard.

Question 22

Do you agree that as an indicative benchmark for meaningful investment, the aggregate investment from all Sophisticated Independent Investors should result in them holding such amount of shares or securities convertible into shares equivalent to at least such percentage of the issued share capital of the applicant at the time of listing as set out in Table 4 and paragraph 168 of the Consultation Paper?

Yes

Please give reasons for your views.

Question 23

Do you agree that a Pre-Commercial Company applicant must have as its primary reason for listing the raising of funds for the R&D of, and the manufacturing and/or sales and marketing of, its Specialist Technology Product(s) to bring them to commercialisation and achieving the Commercialisation Revenue Threshold?

Yes

Please give reasons for your views.

Question 24

Do you agree that a Pre-Commercial Company applicant must demonstrate to the Exchange, and disclose in its Listing Document, a credible path to the commercialisation of its Specialist Technology Products, appropriate to the relevant Specialist Technology Industry, that will result in it achieving the Commercialisation Revenue Threshold?

Yes

Please give reasons for your views.

Question 25

Do you agree with the examples proposed in paragraphs 176 to 179 (including the definition of “highly reputable customer”) of the Consultation Paper that a Pre-Commercial Company applicant could use to demonstrate a credible path to achieving the Commercialisation Revenue Threshold?

Yes

Please give reasons for your views.

Question 26(a)

Do you agree that a Pre-Commercial Company applicant must explain and disclose, in detail, the timeframe for, and impediments to, achieving the Commercialisation Revenue Threshold?

Yes

Please give reasons for your views.

Question 26(b)

Do you agree that a Pre-Commercial Company applicant must, if its working capital (after taking into account the listing proceeds) is insufficient to meet its needs before it achieves the Commercialisation Revenue Threshold, describe the potential funding gap and how it plans to further finance its path to achieving the Commercialisation Revenue Threshold after listing?

Yes

Please give reasons for your views.

Question 27

Do you agree that a Pre-Commercial Company applicant must have available working capital to cover at least 125% of its group’s costs for at least the next 12 months (after taking into account the IPO proceeds of the applicant), and these costs must substantially consist of the following: (a) general, administrative and operating costs; and (b) R&D costs?

Yes

Please give reasons for your views.

Question 28

Do you agree that Independent Institutional Investors should be given a minimum allocation of offer shares in the IPO of Specialist Technology Companies to help ensure a robust price discovery process?

Yes

Please give reasons for your views.

Question 29

Do you agree with the definition of Independent Institutional Investors as set out in paragraphs 201 to 202 of the Consultation Paper?

Yes

Please give reasons for your views. Please provide any alternative definition you believe appropriate with reasons for your suggestions.

Question 30

Do you agree that a Specialist Technology Company 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 initial public offering (excluding any shares to be issued pursuant to the exercise of any over-allotment option) must be taken up by Independent Institutional Investors?

Yes

Please give reasons for your views.

Question 31

Do you agree that in the case where a Specialist Technology Company is listed by way of a De-SPAC Transaction, at least 50% of the total number of shares issued by the Successor Company as part of the De-SPAC Transaction (excluding any shares issued to the existing shareholders of the De-SPAC Target as consideration for acquiring the De-SPAC Target) must be taken up by Independent Institutional Investors?

Yes

Please give reasons for your views.

Question 32

Do you agree that in the case of a Specialist Technology Company seeking to list by introduction, the Exchange will consider granting waivers, on a case-by-case basis, from the requirement for the minimum allocation of offer shares to Independent Institutional Investors, if the applicant is able to demonstrate that it is expected to meet the applicable minimum market capitalisation at the time of listing (see paragraph 120 of the Consultation Paper), having regard to its historical trading price (for at least a six-month period) on a Recognised Stock Exchange with sufficient liquidity and a large investor base (a substantial portion of which are independent Institutional Professional Investors)?

Yes

Please give reasons for your views.

Question 33

Do you agree that there should be a new initial retail allocation and clawback mechanism for Specialist Technology Companies to help ensure a robust price discovery process?

Please give reasons for your views.

Question 34

Do you agree with the proposed initial allocation and clawback mechanism for Specialist Technology Companies as set out in paragraph 205 of the Consultation Paper?

Please give reasons for your views. If your answer is “No”, please provide alternative suggestions and provide reasons for your suggestions.

Question 35

Do you agree that a Specialist Technology Company seeking an initial listing must ensure that a portion of its issued shares with a market capitalisation of at least HK\$600 million is free from any disposal restrictions (whether under: contract; the Listing Rules;

applicable laws; or otherwise) upon listing (referred to as its “free float”)?

No

Please give reasons for your views.

Question 36

Do you agree that the Exchange should reserve the right not to approve the listing of a Specialist Technology Company if it believes the company’s offer size is not significant enough to facilitate post-listing liquidity, or may otherwise give rise to orderly market concerns?

Please give reasons for your views.

Question 37

Do you agree that a Specialist Technology Company applicant’s Listing Document must include the additional information set out in paragraph 32 of the Draft Guidance Letter (Appendix V of the Consultation Paper) due to it being a Specialist Technology Company?

Yes

Please give reasons for your views.

Question 38

Do you have any other suggestions for additional information that a Specialist Technology Company should include in its Listing Document in order to allow an investor to properly assess and value the company?

If so, please provide your suggestion.

Question 39

Do you agree that existing shareholders should be allowed to participate in the IPO of a Specialist Technology Company provided that the company complies with the existing public float requirement under Rule 8.08(1), the requirement for minimum allocation to

Independent Institutional Investors (see paragraph 200 of the Consultation Paper) and the minimum free float requirement (see paragraph 207 of the Consultation Paper)?

Yes

Please give reasons for your views.

Question 40

Do you agree with the proposals set out in paragraph 225 of the Consultation Paper regarding the conditions for existing shareholders subscribing for shares in an IPO?

Yes

Please give reasons for your views.

Question 41(a)

Do you agree that the controlling shareholders of a Commercial Company should be subject to a lock-up period of 12 months?

Yes

Please give reasons for your views.

Question 41(b)

Do you agree that the controlling shareholders of a Pre-Commercial Company should be subject to a lock-up period of 24 months?

No

Please give reasons for your views.

Due to its intensive capital needs, a Specialist Technology Company may have undergone many rounds of equity capital raising before it embarks on a Chapter 18C listing process. Before listing on the Exchange, the founder may still retain control of voting rights in the Specialist Technology Company through a weighted voting rights arrangement despite the significant dilution of his share capital in the company. However, such weighted voting rights structure will need to be unwound upon listing unless the company can satisfy the stringent requirements (including a market capitalization of HK\$40 billion (if the company does not have a revenue of at least HK\$1 billion)) of Chapter 8A of the Listing Rules. Upon unwinding of the weighted voting rights structure, the founders may no longer be the controlling shareholder. The controlling shareholder may be a financial investor, who has provided important financing support to the

applicant, but is not otherwise involved in its operations. The financial investor controlling shareholder has its own investment horizon and exit timeline governed by their own fund mandate. The 24 month lock up period for a Pre-Commercial Company may be impracticable for such financial investor controlling shareholder, and may discourage certain Specialist Technology Companies to list through Chapter 18C.

Question 42

Do you agree with the scope of key persons (as described in paragraph 242 of the Consultation Paper) that should be subject to a restriction on the disposal of their holdings after listing?

Please give reasons for your views.

Question 43(a)

Do you agree with the proposed lock-up periods on the securities of such key persons and their close associates of 12 months for a Commercial Company?

Please give reasons for your views.

Question 43(b)

Do you agree with the proposed lock-up periods on the securities of such key persons and their close associates of 24 months for a Pre-Commercial Company?

Please give reasons for your views.

Question 44(a)

Do you agree with the proposed lock-up period on the securities of Pathfinders SIIIs of six months for a Commercial Company?

Yes

Please give reasons for your views.

There may be more than two investors who have more than 5% equity interest in the applicant (together with other investors whose interests may only be slightly less than 5%) and are eligible

to be Pathfinders SIIIs. However, only two of them are required to be Pathfinders SIIIs and subject to the lock-up period, despite the fact that these investors may have invested in the applicant in the same financing series with the same valuation and having regard to the same level risk and prospects of the applicant. Therefore, the identification of two Pathfinders SIIIs may entail some degree of arbitrariness.

Question 44(b)

Do you agree with the proposed lock-up period on the securities of Pathfinders SIIIs of 12 months for a Pre-Commercial Company?

No

Please give reasons for your views.

The financial investor has its own investment horizon and exit timeline governed by their own fund mandate. The 12 month lock up period for a Pre-Commercial Company may be impracticable for such financial investor.

Question 45

Do you agree that controlling shareholders, key persons and Pathfinder SIIIs should be permitted (in accordance with current Rules and guidance) to sell their securities prior to an IPO and offer them for sale in the IPO, such that only the securities retained by them after listing would be subject to the lock-up restrictions?

Yes

Please give reasons for your views.

Controlling shareholders, key persons and Pathfinder SIIIs should be provided with the flexibility to sell their securities prior to an IPO and offer them for sale in the IPO, driven by their own financing needs or exit timeline governed by the fund mandates (in the case of financial investors), which should not be regarded as a detraction from their commitment or confidence in the Specialist Technology Company.

Question 46

Do you agree that any deemed disposal of securities by a person resulting from the allotment, grant or issue of new securities by a Specialist Technology Company during a lock-up period would not constitute a breach of the lock-up requirements?

Yes

Please give reasons for your views.

Question 47

Do you agree that a lock-up period in force at the time of the removal of designation as a Pre-Commercial Company should continue to apply unchanged?

No

Please give reasons for your views.

Question 48

Do you agree that a Specialist Technology Company must disclose in its Listing Document the total number of securities in the issuer held by the persons (as identified in the Listing Document) that are subject to the lock-up requirements under the Listing Rules, and that the same information must also be disclosed in the interim and annual reports of the Specialist Technology Company for so long as such persons remain as a shareholder?

Yes

Please give reasons for your views.

Question 49

Do you agree with the scope of the additional disclosure in the interim and annual reports of Pre-Commercial Companies as set out in paragraphs 262 and 263 of the Consultation Paper?

Yes

Please give reasons for your views. If your answer is “No”, please provide alternative suggestions and provide reasons for your suggestions.

Question 50

Do you agree that only Pre-Commercial Companies should be subject to the ongoing disclosure requirements referred to in Question 49?

No

Please give reasons for your views.

A Commercial Company and a Pre-Commercial Company may only have minimum difference in their financials (consider, for example, a Commercial Company with a revenue of HK\$250

million and a Pre-Commercial Company with a revenue of HK\$240 million), but the Pre-Commercial Company will have more sufficient equity capital after listing by virtue of the much larger market capitalization required of a Pre-Commercial Company.

There are no profitability requirements for both Pre-Commercial Companies and Commercial Companies alike. It is not likely for a Commercial Company to have attained profitability at the time when it is listed.

If sustainability of a Pre-Commercial Company is a cause of concern and hence ongoing disclosure is required, a Commercial Company should also be subject to a certain degree of ongoing disclosure regarding its long-term sustainability or profitability.

Question 51

Do you agree that Pre-Commercial Companies should be subject to a remedial period of 12 months to re-comply with the sufficiency of operations and assets requirement before delisting, in the event that the Exchange considers that a Pre-Commercial Company has failed to meet its continuing obligation to maintain sufficient operations or assets?

Please give reasons for your views.

Question 52

Do you agree that Pre-Commercial Companies must not effect any transaction that would result in a fundamental change to their principal business without the prior consent of the Exchange?

Yes

Please give reasons for your views.

Question 53

Do you agree that Pre-Commercial Companies must be prominently identified through a “PC” marker at the end of their stock names?

Please give reasons for your views.

Question 54

Do you agree that the continuing obligations for Pre-Commercial Companies no longer apply once a Pre-Commercial Company has met the requirements in paragraph 270 of the Consultation Paper and ceases to be regarded as a Pre-Commercial Company?

Yes

Please give reasons for your views.

Question 55

Do you agree with the proposed requirements for Pre-Commercial Companies to demonstrate to the Exchange that they should no longer be regarded as a Pre-Commercial Company (see paragraphs 269 to 272 of the Consultation Paper)?

Yes

Please give reasons for your views.