

Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Via e-mail: response@hkex.com.hk

18 December 2022

Dear Sir/Madam,

Re: Response to the October 2022 Consultation Paper on Listing Regime for Specialist Technology Companies (the "Consultation Paper") by The Stock Exchange of Hong Kong Limited (the "Exchange" or the "HKEX")

On behalf of the Financial Markets Committee of the British Chamber of Commerce in Hong Kong, we would like to respond to the October 2022 Consultation Paper on Listing Regime for Specialist Technology Companies. As previously stated by this Chamber in response to consultations, as a business chamber in Hong Kong we are supportive of measures that enhance the position of Hong Kong as a leading global financial centre. This is good for Hong Kong and good for our members as a part of the business community there.

From the perspective of the competitiveness of Hong Kong, we note the background stated in the Consultation Paper that despite the improved diversification of Hong Kong's markets following the 2018 Listing Reforms, Hong Kong still lags behind the US and Mainland China in terms of listing of companies in the five identified industries: (a) next-generation information technology; (b) advanced hardware; (c) advanced materials; (d) new energy and environmental protection; and (e) new food and agriculture technologies.

From the perspective of Specialist Technology Companies, we note the background stated in the Consultation Paper that such companies face difficulties listing in Hong Kong because they often cannot meet the profit, revenue or cash flow requirements of the HK Stock Exchange's Main Board Eligibility Tests. We also note that it is stated that many of them are still engaged in R&D to bring their products and/or services to commercialisation and those that have commercialised are not able to meet the HK Stock Exchange's tests because of the nature of their businesses

We further note that it is acknowledged that the nature of Specialist Technology Companies means that they pose particular regulatory issues, and that as a result a number of measures are proposed to address these. These measures would balance the imperative of market integrity against the benefits of market development.

Against this background, we wish to express our view that we are fully supportive of the introduction of a listing regime for Specialist Technology Companies in order to maintain Hong Kong's position as an international financial centre.

Whilst our responses to the Consultation Paper are set out in Appendix 1, we would specifically highlight two points:

- **Specialist Technology Industries and Acceptable Sectors**

Although paragraph 102 of the Consultation Paper states that the Exchange may add new industries or sectors to the list of Specialist Technology Industries after consultation with the SFC, and paragraph 95 says that it is intended to publish a guidance letter on the acceptable industries and sectors that would fall within that definition in order to give flexibility, it is unclear what the process and timeline for adding to the list would be and whether the Exchange would begin processing an application prior to any change to the list being promulgated. This may significantly undermine the flexibility of the new regime notwithstanding, as stated in paragraph 95 of the Consultation Paper, the ever-evolving nature of technology. In turn this may affect the competitiveness of the Hong Kong market. Further guidance on this would be welcomed.

Additionally, we note that it is actually not entirely clear whether a Specialist Technology Company will be required to fall within one of the specified sectors or whether it is merely necessary for it to fall within one of the five Specialist Technology Industries as box 1 on page 30 of the Consultation Paper lists the "acceptable sectors" for each of the Specialist Technology Industries after the word "including" – which as a matter of plain English means that the list is not all-inclusive.

- **Market Capitalisation Requirement for Commercial and Pre-Commercial Companies**

As noted above we fully acknowledge the need to balance market integrity on the one hand against market development and the need to meet the objectives driving the introduction of the proposed new regime on the other. Having regard to the need for a balance to be struck, we query whether the proposed minimum market capitalisation requirements, which are stated in paragraph 116 to be referenced to what would be considered within the investment industry to be "unicorns" (which the Consultation Paper defines as companies with a valuation over US\$1 billion), is too high a bar. We would suggest further consideration be given to whether the market capitalisation requirements for Commercial and Pre-Commercial Companies should be revised down to HK\$4 billion and HK\$8 billion respectively (i.e. only Pre-Commercial Companies are required to be unicorn-like in their valuations whilst Commercial Companies must still meet the market cap required for the market capitalisation/revenue test under LR8.05(3), being the larger of the two large market capitalisation tests).

Yours sincerely,

[REDACTED]

[REDACTED],

The British Chamber of Commerce in Hong Kong

QUESTIONNAIRE

Question 1: Do you agree with the proposed definitions of “Specialist Technology Company”, “Specialist Technology Products” and “Specialist Technology”?

- Yes
 No

Reasons:

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
 No

- Reasons: Whilst we agree generally, please see the point in our covering letter on **Specialist Technology Industries and Acceptable Sectors**

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
 No

Reasons: Whilst we agree generally, we do believe the market would find it very valuable indeed to have some guidance as to quantifiable thresholds around requirements such as “substantial portion of the total operating expenditure” and the term “primarily”.

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
 No

Question 5: Do you agree that the Specialist Technology Regime should accommodate the listings of both Commercial Companies and Pre-Commercial Companies?

- Yes
 No

Reasons:

Question 6: If your answer to Question 5 is “Yes”, do you agree with the proposed approach to apply more stringent requirements to Pre-Commercial Companies?

- Yes
 No

Reasons:

Question 7: If your answer to Question 5 is “Yes”, 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
 No

Reasons:

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

- Yes
 No

Reasons: Please see the point in our covering letter on **Market Capitalisation Requirement for Commercial and Pre-Commercial Companies**

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
 No

Reasons: Please see the point in our covering letter on **Market Capitalisation Requirement for Commercial and Pre-Commercial Companies**

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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?

- Yes
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

Question 19: If your answer to Question 18 is "Yes", 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
 No

Reasons:

Question 20: If your answer to Question 18 is "Yes", 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
 No

Reasons:

Question 21: If your answer to Question 18 is "Yes", 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
 No

Reasons: Provided a relevant Sophisticated Institutional Investor holds a 5% or more shareholding at the time a listing application is submitted, consideration should be given to permitting the 5% requirement to be met over the 12- month period on an average (say monthly) basis given that holdings close to the 5% level may temporarily dip under that level after different funding rounds but subsequently be topped back up.

Question 22: If your answer to Question 18 is “Yes”, 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
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

Question 25: If your answer to Question 24 is “Yes”, 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

No

Reasons:

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

No

Reasons:

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

No

Reasons:

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

No

Reasons:

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

No

Reasons:

Question 29: If your answer to Question 28 is "Yes", do you agree with the definition of Independent Institutional Investors as set out in paragraphs 201 to 202 of the Consultation Paper? Please give reasons for your views. Please provide any alternative definition you believe appropriate with reasons for your suggestions.

Yes

No

Reasons:

Question 30: If your answer to Question 28 is “Yes”, 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? Please give reasons for your views.

Yes
 No

Reasons: As is effectively acknowledged by the HK Stock Exchange when granting free float waivers, the size in dollar terms of the float is, in reality, more important than the per centage. We would suggest that the Exchange put consideration to adopting a sliding scale based on market capitalisation rather than using a one size fits all percentage.

Question 31: If your answer to Question 28 is “Yes”, 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? Please give reasons for your views.

Yes
 No

Reasons: See our response to Question 30 above.

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
 No

Reasons:

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?

Yes
 No

Reasons: We would urge the HK Stock Exchange to explore this issue generally for all listings in Hong Kong.

Question 34: If your answer to Question 33 is “Yes”, 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?

- Yes
 No

Reasons: We are unclear why the proposal is not more in line with typical clawback waivers that are currently already granted.

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”)?

- Yes
 No

Reasons: This would need to be aligned (i.e. reduced by half) with our responses on questions 8 and 9

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?

- Yes
 No

Reasons:

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
 No

Reasons:

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?

- Yes
 No

Reasons:

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
 No

Reasons:

Question 40: If your answer to Question 39 is “Yes”, 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

No

Reasons:

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

No

Reasons:

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?

Yes

No

Reasons:

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?

Yes

No

Reasons:

Question 43: If your answer to Question 42 is “Yes”, do you agree with the proposed lockup periods on the securities of such key persons and their close associates of (a) 12 months (for a Commercial Company) and (b) 24 months (for a Pre-Commercial Company)?

Yes

No

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

No

Reasons:

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?

- Yes
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

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?

- Yes
 No

Reasons:

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
 No

Reasons:

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
 No

Reasons:

Question 50: Do you agree that only Pre-Commercial Companies should be subject to the ongoing disclosure requirements referred to in Question 49?

- Yes
 No

Reasons:

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?

- Yes
 No

Reasons:

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
 No

Reasons:

Question 53: Do you agree that Pre-Commercial Companies must be prominently identified through a "PC" marker at the end of their stock names?

- Yes
 No

Reasons:

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
 No

Reasons:

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

No

Reasons: