CLIFFORD
CHANCE

CLIFFORD CHANCE
高偉紳律師行
27TH FLOOR
JARDINE HOUSE
ONE CONNAUGHT PLACE
HONG KONG
TEL +852 2825 8888
FAX +852 2825 8800
INTERCHANGE DX-009005 CENTRAL 1

www.cliffordchance.com

By E-mail

Your reference:
Our reference:

Policy and Secretariat Services Unit
Listing Division
The Stock Exchange of Hong Kong Limited
12/F, Two Exchange Square
8 Connaught Place
Central
Hong Kong

18 December 2022

Dear Sirs

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

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 welcome the Stock Exchange's initiative to expand and include Specialist Technology Companies for listing in Hong Kong and welcome the opportunity to comment on the Consultation Paper.

Our specific comments / observations

Q8 Do you agree that a Commercial Company applicant must have a minimum expected market capitalisation of HK$8 billion at listing?

Based on feedback from certain clients (who are relevant potential listing applicants) and discussions with investment banks and private equity firms, we suggest lowering the market capitalisation threshold for Commercial Company to a level between HK$8 billion and HK$4 billion (the market capitalisation threshold under LR8.05(3)). We understand that an implied historical price-to-sales (P/S) ratio of 32 times (by reference to the minimum revenue of HK$250 million) as reflected by the current proposal would be difficult for a Commerical Company in the Specialist Technology Industries within the ambit of this chapter to achieve.

Q13 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. In addition, we suggest the Stock Exchange clarifies the activities that would be accepted as engagement in R&D of Specialist Technology Product(s). For instance, instead of entirely relying on a home-grown R&D team for a certain Specialist Technology Product, a potential listing applicant pursuing a listing under Chapter 18C may acquire R&D talents and Specialist Technology Product(s) from third parties during its trading record period. It would be helpful if the Stock Exchange could provide guidance as to how "engagement in R&D" would be interpreted in such a scenario.

Q18 Do you agree that an applicant applying to list under the proposed regime must have received meaningful investment from Sophisticated Independent Investors (SIIs)?

We agree with the proposal and suggest further clarifications be provided as set out below.

Q21 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?

We suggest that more flexibility be allowed in respect of Pathfinder Sophisticated Independent Investors by requiring a listing applicant to have either (a) at least two

Sophisticated Independent Investors each having invested at least 12 months before the date of the listing application, 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 investment and not disposing any such shares thereafter; *or* (b) at least one Sophisticated Independent Investor having invested at least 12 months before the date of the listing application, holding such amount of shares or securities convertible into shares equivalent to 10% or more of the issued share capital of the listing applicant as at the date of investment and not having disposed of any such shares thereafter .

The reasons for the above suggestion are as follow:

(1) one SII only: Considering most of the Specialist Technology Companies would be pre-commercial/ at an early stage of commercialisation, it would be difficult for a listing applicant to have more than one independent sophisticated/prominent investors, each having a substantial stake in the listing applicant. In particular, there is often competition or conflict of interests among pre-IPO investors qualifying as an SII. The fact that one SII holds a substantial stake in a Specialist Technology Company may often limit the company's choices of having additional substantial pathfinder investors.

(2) 5% shareholding interests as at the date of investment and not having disposed of any shares thereafter: We agree with the Stock Exchange that 5% shareholding in the listing applicant is a meaningful investment. However, the investors are not in the position to control / limit the listing applicant in raising further capital through subsequent financing which would dilute their shareholding. Likewise, the listing applicant should not be penalised or restricted to raise further capital for their operation needs in order to keep the Sophisticated Independent Shareholders above the 5% shareholding level. We suggest that restricting the SII from disposing of its interests from the date of investment to the date of listing application would be sufficient to address the Stock Exchange's policy aim to ensure the listing applicant having independent third party institutional investment taking on significant investment risk and showing independent market support.

We further suggest the Stock Exchange clarifies in the draft Guidance Letter that the requirement under paragraph 23(a) of the draft Guidance Letter is non-exhaustive and potential listing applicants should seek guidance from the Stock Exchange by taking into account its own facts and circumstances.

Q24 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. We agree that such information would be relevant information for investors to make an informed investment decision.

Q28 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?

Q29 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?

Q30 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?

Q31 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?

Given the definition of Independent Institutional Investors is very narrow and that Specialist Technology Companies have actual operations at listing (which is more similar to pre-revenue/profit biotech companies and dissimilar to SPACs), we suggest lowering the 50% threshold to 15%.

Alternatively, the Stock Exchange may consider including corporate professional investors (such as sovereign wealth funds, family offices, etc.) in the scope of investors for reaching the specified minimum allocation. This is because corporate professional investors are very active participants in HKIPOs, highly sophisticated and have abundant experience in investing in HKIPOs, excluding them would limit the opportunities for these investors to invest in the IPOs of the Specialist Technology Companies (including through a De-SPAC Transaction).

Q39 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.

Q40 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.

Q42 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?

We are generally in support of the scope of key persons set out in paragraphs (a) to (c) of paragraph 242 of the Consultation Paper. With respect to the persons referred to in paragraph 242(d), it may be difficult to have a definitive scope of such key persons (for example, it would be too broad to include every person in the R&D team and it is equally difficult to nominate a few key personnel in the R&D team who should be subject to the strict lock-up requirement as compared with the other personnel in the R&D team). This may also give rise to the unintended effect that certain personnel do not wish to be named as a key person responsible for the Specialist Technology Company's technical operations and/or the R&D of its Specialist Technology Product(s). We think that such key personnel would in most cases be part of the senior management team, hence paragraph 242(c) would cover him/her already and there is no need to have an additional coverage as that provided in paragraph 242(d).

Q46 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 – there is no active or intentional disposal per se.

Q47 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?

We suggest that the lock-up period in force at the time of the removal of designation as a Pre-Commercial Company should be updated. If the removal of designation happens

within the first six months after listing, the lock-up restrictions should be commensurate with the lock-up restrictions for a Commercial Company. If the removal of designation occurs within the second six months after listing, the lock-up restrictions should expire 1 month after the designation becoming effective and such expiry should not be earlier than the expiry of the relevant lock-up restrictions assuming the listing applicant was listed as a Commercial Company. If the removal of designation occurs after 12 months from listing, the lock-up restrictions should expire 1 month after the designation becoming effective.

Relevant announcements should be made to inform the market and investors of the expiry of the lock-up restrictions.

Others

We suggest clarifications be provided as to whether a potential listing applicant shall submit a pre-A1 submission with the HKEx to demonstrate its eligibility for listing in particular with reference to Listing Rule 18C.03.

Yours faithfully,

[redacted]

Clifford Chance