



THE
LAW SOCIETY
OF HONG KONG
香港律師會

115th
ANNIVERSARY

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref : COM/7034024
Your Ref :
Direct Line :

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BY EMAIL ONLY

20 December 2022

Hong Kong Exchanges and Clearing Limited,
8/F, Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong

Dear Sirs,

Consultation Paper on Listing Regime for Specialist Technology Companies

We refer to the captioned consultation, and enclose the Law Society's submissions on the subject matter for your attention.

We thank you for your time extension for us to reply.

Yours faithfully,

[Redacted signature block]

Encl.



Consultation Paper on Listing Regime for Specialist Technology Companies

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the “Exchange”) issued a consultation paper on “Listing Regime for Specialist Technology Companies” on 19 October 2022 (“Consultation Paper”). In response, the Law Society provides the following submissions on the questions posed.

The same abbreviations and definitions appearing in the Consultation Paper are used in this paper.

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

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

Law Society's response:

Not agreed.

Please see our response to Question 2 below regarding how quickly the Exchange will be able to update the list of Specialist Technology Industries in response to pre-IPO enquiries. In addition, the reference to “within an acceptable sector of a Specialist Technology Industry” in the definition of “Specialist Technology Company” appears to be repetitious as it is already incorporated through the cross-reference to “Specialist Technology Product” (which in turn cross refers to the definition of “Specialist Technology”).

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with the list of Specialist Technology Industries and the respective acceptable sectors set out in paragraph 4 of the Draft Guidance Letter (Appendix V to the Consultation Paper)?*

Law Society's response:

Not agreed. We do not agree with the requirement under proposed paragraph 107(a).

Paragraph 107(a) requires a substantial portion of an applicant's operating expenditure and senior management resources to have been dedicated to "*the research and development of, and the commercialisation and/or sales of*" (emphasis added) its Specialist Technology Products for at least three years prior to listing.

We question why a three-year track record period is proposed for Specialist Technology Companies (both Commercial and Pre-Commercial Companies), when pre-revenue Biotech Companies can be listed with a two-year track record (Listing Rule 18A.03(3)). The proposed requirement will also prevent the listing of extremely high growth companies which are able to complete R&D and commercialise their products within one or two years. We suggest shortening the required track record period to two years. The proposed requirement will also bar the listing of companies which complete R&D before the start of the track record period and which seek to raise IPO funds to finance production and commercialisation. The problem posed by the proposed requirement could be addressed by revising the wording of paragraph (a) to require a substantial portion of operating expenditure and senior management resources to have applied to "*the research and development of, and/or the commercialisation and/or sales of*" Specialist Technology Products during the track record period.

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?*

Please give reasons for your views.

Law Society's response:

Not agreed.

We do not agree with having highly subjective criteria – such as whether an applicant has "*high growth potential*" – included as grounds for rejecting a listing applicant. Further, given that the proposed Specialist Technology Companies will include "*relatively mature technologies*" (as stated at paragraph 92 of the Consultation Paper), such as semiconductors, hydropower and solar and wind power, it is questionable whether certain of the permitted industries are, and will remain, high growth industries.

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

Please give reasons for your views

Law Society's response:

Yes.

The Exchange should be opened to as wide a range of companies as possible.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

The approach is consistent with the requirements for pre-revenue Biotech Companies.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

Allowing retail investment should assist liquidity.

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

Please give reasons for your views.

Law Society's response:

Not agreed.

The proposed minimum expected market capitalisation for Commercial Companies is too high, particularly in light of the HK\$1.5 billion expected market capitalisation requirement for pre-revenue Biotech Companies and equivalent regimes in other major exchanges such as the New York Stock Exchange and NASDAQ. An overly high market capitalisation requirement will deter many applicants with good

development potential and will make the Hong Kong market highly unattractive when compared to other exchanges.

Question 9 *Do you agree that a Pre-Commercial Company applicant must have a minimum expected market capitalisation of HK\$15 billion at listing?*

Please give reasons for your views.

Law Society's response:

Not agreed.

See our response to question 8 above. A lower market capitalisation requirement would allow companies to list at an earlier stage and potentially offer investors greater opportunities to participate in their returns.

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?*

Please give reasons for your views.

Law Society's response:

No.

The minimum revenue requirement should apply to a longer period – either the entire track record period or the period commencing from commercialisation.

Question 11 *Do you agree that only the revenue arising from the applicant's Specialist Technology business segment(s) (excluding any intersegmental 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?*

Please give reasons for your views.

Law Society's response:

Yes.

Question 12 *Do you agree that (a) 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; and (b) 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?

Please give reasons for your views.

Law Society's response:

Not agreed.

The requirement for year-on-year revenue growth might prevent the listing of companies with “lumpy” revenues which result, for example, from the nature of a company's technology (e.g. space exploration technology). These companies may make sales of multi-million dollar multi-year projects such that their annual revenue will depend more on when revenue is recognised than the level of companies' activity over the track record period.

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?*

Please give reasons for your views.

Law Society's response:

Not agreed.

Please see our response to Question 3 above. We suggest shortening the required track record period to two years and allowing R&D to have been completed before the start of the track record period.

Question 14 *Do you agree that, (a) 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; and (b) 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?*

Please give reasons for your views.

Law Society's response:

Not agreed to (a) and (b).

We would prefer to see a minimum amount of accumulated R&D investment over a two-year track record period and the possibility of including R&D investment before the start of that period.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

Please give reasons for your views.

Law Society's response:

Yes, subject to reducing the required track record to two financial years.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

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)?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

Please give reasons for your views.

Law Society's response:

Not agreed.

The illustrative examples at paragraph 160 do not reflect the reality of the Hong Kong market in which family offices and private individuals are significant investors.

We suggest adding a further example based on the illustrative example at paragraph 3.2(g)(i)(4) of Guidance Letter 92-18 of Sophisticated Investors in Chapter 18A Biotech Companies, as follows:

“an investor or investment fund with assets under management or an investment portfolio of at least HK\$ 1 billion.”

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?*

Please give reasons for your views.

Law Society's response:

We consider that a minimum of six-month investment period prior to the listing application should suffice.

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?*

Please give reasons for your views.

Law Society's response:

Yes, but subject to our comment that the minimum expected market capitalisation of an issuer should be lowered.

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?*

Please give reasons for your views.

Law Society's response:

Yes. However, for consistency with the rationale stated in our response to Question 3, we suggest revising the above wording as follows: “a Pre-Commercial Company applicant must have as its primary reason for listing the raising of funds for the R&D of, and/or the manufacturing and/or sales and marketing of, its Specialist Technology Product(s) to bring them to commercialisation and achieving the Commercialisation Revenue Threshold.”

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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?

Please give reasons for your views.

Law Society's response:

Not agreed.

Alternative ways of demonstrating a credible path to achieving the Commercialisation Revenue Threshold (e.g. qualitative description) should be provided to cater for Pre-Commercial Companies that do not have binding contracts or non-binding framework agreements in place, for example companies that will market their products directly to the retail market. As regards the definition of “highly reputable customer”, the definition will not be applicable to companies marketing directly to retail customers.

Question 26 *Do you agree that a Pre-Commercial Company applicant must: (a) explain and disclose, in detail, the timeframe for, and impediments to, achieving the Commercialisation Revenue Threshold; and (b) 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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

Please give reasons for your views.

Law Society's response:

Not agreed.

In the absence of evidence that this assists in ensuring “a robust price discovery process”, some members query the reason for a minimum allocation requirement as Independent Institutional Investors wanting to ensure they receive a meaningful allocation have the option of participating as cornerstone investors.

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.

Law Society's response:

Not agreed.

We oppose the imposition of a minimum allocation to Independent Institutional Investors. If, however, the Exchange decides to proceed with this requirement, the definition of “Independent Institutional Investors” should be broadened to include corporate and individual professional investors within the professional investor definitions of the SFO PI Rules. Otherwise it will exclude family office and private individual investors which play a significant role in the Hong Kong market.

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.

Law Society's response:

Not agreed.

Please see the responses to Questions 28 and 29 above.

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.

Law Society's response:

Not agreed.

Please see our responses to Questions 28 to 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)?*

Law Society's response:

Yes.

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.

Law Society's response:

Not agreed.

We do not agree with proposals that could reduce retail participation in the IPOs of Specialist Technology Companies.

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?*

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

Law Society's response:

Not agreed.

Specialist Technology Companies should be subject to the same allocation and clawback mechanism as all other companies listed on the Main Board since greater retail participation is likely to improve liquidity in their shares.

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”)?*

Please give reasons for your views.

Law Society's response:

Please refer to our response to Question 8 above. If the initial market capitalisation of a Specialist Technology Company is reduced, then the minimum free float requirement should be scaled down.

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.

Law Society's response:

Not agreed.

We consider that the proposed assured allocation of 50% of the IPO offer shares to Independent Institutional Investors and the initial allocation and clawback mechanism proposed in paragraph 205 present the greatest risk of restricting post-listing liquidity. If these proposals are dropped, there should be no need for the Exchange to have the ability to deny approval based on the offer size. In any event, the Exchange always has the discretion to not approve a listing application.

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?

Please give reasons for your views.

Law Society's response:

Yes.

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.

Law Society's response:

No. We have no other suggestions.

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)?

Please give reasons for your views.

Law Society's response:

Yes.

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?

Please give reasons for your views.

Law Society's response:

Yes.

Question 41 Do you agree that the controlling shareholders of a Specialist Technology Company should be subject to a lock-up period of (a) 12 months (for a Commercial Company) and (b) 24 months (for a Pre-Commercial Company)?

Please give reasons for your views.

Law Society's response:

Not agreed.

The lock-up period for controlling shareholders of Pre-Commercial Companies should be longer than the 24-month period applicable to GEM issuers, which at least have HK\$30 million in cash flow. We suggest 36 months.

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.

Law Society's response:

Yes.

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)?

Please give reasons for your views.

Law Society's response:

Yes.

Question 44 Do you agree with the proposed lock-up period on the securities of Pathfinders SIIs of (a) six months (for a Commercial Company) and (b) 12 months (for a Pre-Commercial Company)?

Please give reasons for your views.

Law Society's response:

Yes.

***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?*

Please give reasons for your views.

Law Society's response:

Yes.

***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?*

Please give reasons for your views.

Law Society's response:

Yes.

***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?*

Please give reasons for your views.

Law Society's response:

Yes.

***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 lockup 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?*

Please give reasons for your views.

Law Society's response:

Yes.

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?*

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

Law Society's response:

Not agreed.

We do not agree with the proposed requirement under paragraph 262(b) for the inclusion of “*updates on the amount of contract value realised and/or realisable in respect of the agreements with customers*”. As noted in our response to Question 25, alternative means of demonstrating Pre-Commercial Companies’ path to meeting the Commercialisation Revenue Threshold should be allowed to cater for companies that do not have binding contracts or non-binding framework agreements. This could be by way of a qualitative description.

We also suggest that Pre-Commercial Companies should be required to include in their interim reports the disclosure regarding use of IPO proceeds that they are required to include in their annual reports under paragraph 11(8) of Appendix 16 to the Main Board Listing Rules.

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

Please give reasons for your views.

Law Society's response:

Yes.

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.

Law Society's response:

Yes.

This is consistent with the provision for Biotech Companies listed under Chapter 18A.

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?

Please give reasons for your views.

Law Society's response:

Yes.

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.

Law Society's response:

Yes.

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?

Please give reasons for your views.

Law Society's response:

Yes.

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)?

Please give reasons for your views.

Law Society's response:

Yes.

**The Law Society of Hong Kong
20 December 2022**