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# Legal Commentary



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## Capital Market Law

### Hong Kong New Board – To Embrace the New Economy

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Recently, the Stock Exchange of Hong Kong Limited (“SEHK”) has published the New Board Concept Paper for the purpose of seeking market feedback on SEHK’s proposed establishment of a New Board. This newsletter is a brief introduction to the New Board Concept Paper.

#### Background: Ensuring Continued Success of Hong Kong’s IPO Market

Under the current listing framework, the Hong Kong security market has high industry concentrations and is underweight in high growth sectors, meaning that the competitiveness of HKEX as an IPO venue is facing challenge.

Companies from New Economy industries (such as Biotechnology, Health Care Technology, Internet & Direct Marketing Retail, Internet Software & Services, IT Services, Software, Technology Hardware, Storage & Peripherals) that have listed on Hong Kong market in the past ten years make up only 3% of Hong Kong’s total market capitalisation, as compared with 60%, 47% and 14% for NASDAQ, NYSE and LSE, respectively. Moreover, Hong Kong security market has minimal weightings in some of the fastest growing industries globally: Pharmaceuticals, Biotechnology & Life Sciences (1%) · Healthcare Equipment & Services (1%) and Software & Services (9%, or 1% if Tencent is excluded).

Meantime, the Mainland listing venues and regulator have pursued a series of measures to improve the attractiveness of Mainland venues for emerging and innovative companies to raise equity capital in recent years. Among these were the launch of ChiNext and NEEQ in 2009 and 2012. The Mainland listing venues and regulator have also released an announcement regarding a path to step-up from NEEQ to a listing on ChiNext and plan for registration-based reform to improve the listing process.

One major attraction of the US market for many such companies is that Weighted Voting Rights (“WVR”) structures are permitted there, whereas the Hong Kong market does not allow them. Moreover, 18 out of 33 (55%) US-listed Mainland Chinese companies with WVR structures, accounting for 84% of market capitalisation, are from precisely the information technology industry that the Hong Kong market is underweight in.

To complement and supplement the existing listing framework, open up to a more diverse range of issuers, broaden the capital market access in Hong Kong and ensure that only pre-profit companies with high growth potential or New Economy companies can apply to list in Hong Kong, SEHK proposes to establish a New Board, separate from the Main Board and the GEM.

### New Board PRO or New Board PREMIUM?

		New Board PRO	New Board PREMIUM
<b>Target Issuers</b>		Earlier stage companies that do not meet the financial or track record criteria for GEM or the Main Board	Companies that meet the existing financial and track record requirements of the Main Board, but which are currently ineligible to list in Hong Kong because they have non-standard governance structures
<b>Target Investors</b>		Open to professional investors only	Open to both retail and professional investors
<b>WVR structures (same share with different rights)</b>		<p>WVR structures are allowed.</p> <p>The SEHK proposes the following two approaches to regulate the companies with a listing on the New Board with a WVR structure.</p> <p>(a) Approach one: disclosure-based approach. Companies are required to disclose, in a prominent way, the WVR structures that they adopted and the risks associated with such structure.</p> <p>(b) Approach two: in addition to disclosure requirements, mandatory safeguards are imposed on the companies with WVR structures, subject to whether such a company will be listed on New Board Pro or New Board Premium.</p>	
<b>Listing Requirements</b>	Business/Financial Criteria	No track record or minimum financial criteria requirement, subject to a minimum market capitalisation at the time of listing of HK\$200 million.	Quantitative entry requirements equivalent to those of the Main Board, namely, an applicant must have a trading record of not less than three financial years and meet one of the three financial criteria (Profit Test, Market Cap/Revenue Test and Market Cap/Revenue/Cashflow Test).
	The Place of Applicants	The place of incorporation and place of central management and control of the applicants to the New Board are required to be in jurisdictions with regulatory cooperation measures in place with the SFC (including Hong Kong, the People's Republic of China, the Cayman Islands and Bermuda).	

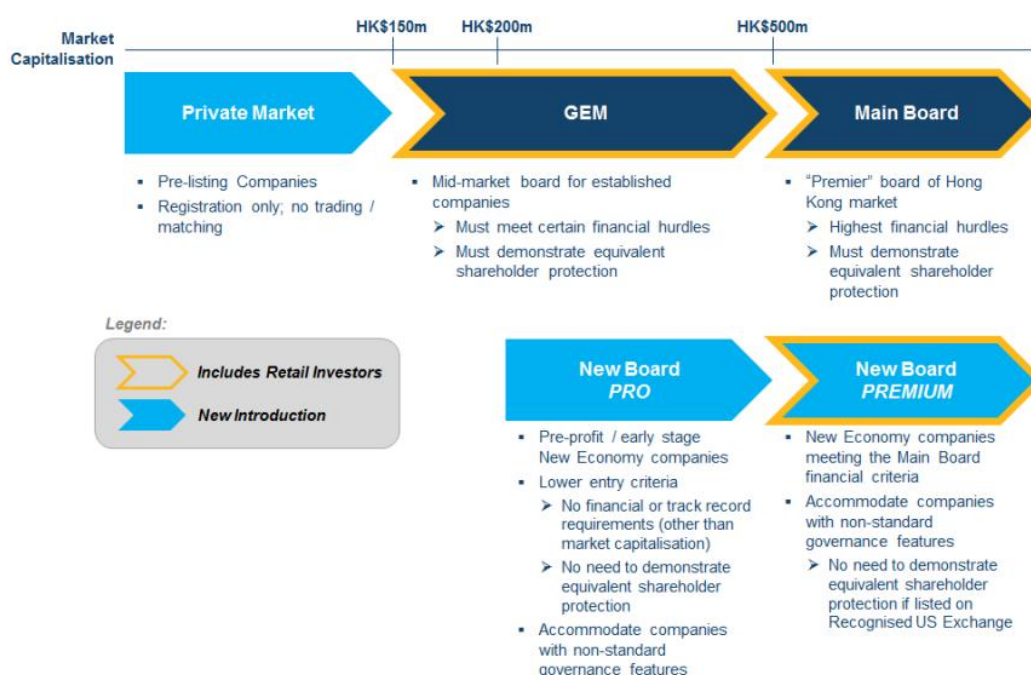
Open Market Requirements	A listing applicant shall have a minimum of 100 investors at the time of listing and a minimum public float at listing of 25%. Such requirements are the same as those that currently apply for GEM issuers at the point of listing.	To follow the Main Board open market requirements in force from time to time. Such requirements include (i) the equity securities must be held by at least 300 holders with a public float requirement of 25% of the total number of issued shares; and (ii) the securities for which listing is sought held by the public must also have an expected market capitalisation at the time of listing of not less than HK\$500 million.
Secondary Listing of Chinese Companies	Companies with a “center of gravity” in Greater China are allowed to pursue a secondary listing in Hong Kong.	
Shareholder Protection Standards	Applicants for New Board PRO will not be required to provide shareholder protection standards equivalent to those in Hong Kong.	Applicants for New Board PREMIUM will be required to provide shareholder protection standards equivalent to those in Hong Kong.  In addition to the exemptions that may be granted by the Stock Exchange, with companies with unconventional governance features, including companies with WVR structures could list on either New Board PREMIUM or New Board PRO which are already listed on a recognised US Exchange (NYSE and NASDAQ) and demonstrated, to SEHK’s satisfaction, a good compliance record during that time.
Suitability Assessment	A “lighter touch” suitability assessment for new applicants to New Board PRO - not applying the existing suitability criteria set out in the relevant guidance letters. Factors set out under guidance letters for considering an applicant’s suitability include reliance upon a parent group/connected	A more stringent approach.

		person/major customer and the sustainability of the applicant's business model.	
<b>Listing Documents</b>		The prospectus requirements would not apply to New Board PRO. Given the professionals-only nature of New Board PRO, it is proposed that an applicant would only be expected to ensure that it produces a listing document that provided accurate information sufficient to enable professional investors to make an informed investment decision.	Since New Board PREMIUM includes retail investors and issuers would be expected to conduct a public offering, a listing applicant would have to adhere to the Prospectus requirements of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32. of the Laws of Hong Kong) and also existing Main Board requirements for a Prospectus.
<b>Sponsor</b>		The existing sponsor regime would not apply. An applicant only needs to appoint a financial adviser (a licensed corporation licensed for Type 6 regulated activity (advising on corporate finance)).	The existing sponsor regime would apply.
<b>Role of the Listing Committee</b>		Listing applications would be vetted and approved by the Listing Department under delegated authority from the Listing Committee, which is in line with the current GEM listing applications approval arrangement.	Listing applications would be presented to the Listing Committee for approval following vetting by the Listing Department, which is in line with the current Main Board listing application approval arrangement.
		The Listing Committee would make decisions on the cancellation of listings, disciplinary matters and be responsible for hearing appeals for both New Board segments.	
<b>Continuous Listing and Corporate Governance Obligations</b>		Companies listed on the New Board would be expected to comply with the standards applicable to Main Board-listed companies in respect of: <ul style="list-style-type: none"> <li>- timely disclosure of material information;</li> <li>- publication of financial statements under prescribed accounting standards;</li> <li>- notifiable and connected party transaction rules;</li> </ul>	

	<ul style="list-style-type: none"> <li>- directors' suitability and independent non-executive directors' representation;</li> <li>- requirement to appoint a company secretary;</li> <li>- general meetings;</li> <li>- super-majority voting on certain fundamental matters; and</li> <li>- pre-emption rights for existing shareholders.</li> </ul>	
<b>Fast-track Migration Mechanism</b>	<p>There would be no fast-track migration mechanism between the New Board and the Main Board or GEM, or from New Board PRO to New Board PREMIUM. For a listed company on New Board PRO wishing to list on these platforms to attract retail investors, it would have to meet all the admission criteria and other listing requirements of the relevant board (e.g. issuing a prospectus). A requirement to raise additional capital via a public offer may also be imposed.</p>	
<b>Suspension</b>	<p>SEHK would suspend a New Board-listed company's securities for a material breach of the New Board Listing Rules.</p>	
<b>Delisting</b>	<p>The listing of a company listed on the New Board PRO would be immediately cancelled if it had been suspended for a continuous period of 90 calendar days.</p>	<p>SEHK can cancel the listing of a company listed on the New Board PREMIUM if it had been suspended for a continuous period of 6 months.</p>
	<p>SEHK would retain the right to cancel the listing of a New Board-listed company before the expiration of the above prescribed periods and the right to cancel a listing without an intervening suspension period if SEHK considers the listed company or its business is no longer suitable for listing.</p>	

## Vision for Hong Kong’s Future Listing Framework

- The Main Board would be positioned as a “premier board” with an increased minimum market capitalisation requirement of HK\$500 million (raised from HK\$200 million), along with existing financial and track record criteria.
- GEM would serve the needs of small and mid-sized issuers that meet its financial and track record criteria and desire to attract retail as well as professional investors.
- The New Board would fill the gaps in Hong Kong’s current listing framework, so that the needs of New Economy and early-stage companies could be accommodated while maintaining appropriate regulatory and shareholder protection standards.



## Proposed Corresponding Reform of and Changes to the GEM and Main Board

- The SEHK proposes removing the “stepping stone” concept (GEM as a stepping stone to the Main Board) and the streamlined process for transfers from GEM to the Main Board. This means that GEM Transfer applicants will be required to appoint a sponsor and issue a “prospectus-standard” listing document.
- All GEM Transfer applicants shall have published and distributed at least two full financial years of financial statements after their GEM listings before they can be considered for a GEM Transfer.
- The initial listing requirements in GEM Board will be raised (including increasing minimum market capitalisation requirement from HK\$100 million to HK\$150 million, increasing minimum cash flow requirement from HK\$20 million to HK\$30 million and extending the lock-up on

controlling shareholders upon listing from one year to two years).

- d. The initial listing requirements in Main Board will be raised (including increasing minimum market capitalisation requirement from HK\$200 million to HK\$500 million, increasing the minimum public float value from HK\$50 million to HK\$125 million and extending the lock-up on controlling shareholders upon listing from one year to two years).

For further details, please see the Consultation Paper on Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules which is available at the following link:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017062.pdf>.

## ● **Important Announcement**

This article has been prepared by Miao & Co. in association with Han Kun Law Offices. It is for general reference purposes only and should not be relied on as legal advice or regarded as a substitute for detailed advice in individual cases.

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