

Legal Commentary

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Listing Regime for Specialist Technology Companies in Hong Kong

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On March 24, 2023, The Stock Exchange of Hong Kong Limited (“**HKEX**”) published its consultation conclusions (“**Consultation Conclusions**”) regarding the proposed new listing regime for specialist technology companies. The new regime will be incorporated predominantly under the new Chapter 18C (“**Chapter 18C**”) of The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“**Listing Rules**”) and in the related new HKEX guidance letter (“**Guidance Letter**”), which will take effect on March 31, 2023. This article outlines the key rules and guidance provisions.

Definition of “Specialist Technology Companies”

“**Specialist Technology Company(ies)**” are those that are primarily engaged (whether directly or through its subsidiaries) in the research and development of, and the commercialisation and/or sales of, “**Specialist Technology Product(s)**”, meaning product(s) and/or service(s) that apply(ies) science and/or technology (“**Specialist Technology**”) within an acceptable sector of a Specialist Technology Industry (as defined below).

The Guidance Letter outlines a non-exhaustive list of acceptable industry sectors that count as “**Specialist Technology Industries**”, namely:

Industries	Acceptable sectors	
Next-generation information technology	<ul style="list-style-type: none"> ■ Cloud-based services 	<ul style="list-style-type: none"> ■ Artificial intelligence
Advanced hardware and software	<ul style="list-style-type: none"> ■ Robotics and automation ■ Advanced communication technology ■ Advanced transportation technology ■ Advanced manufacturing ■ Metaverse technology 	<ul style="list-style-type: none"> ■ Semiconductors ■ Electric and autonomous vehicles ■ Aerospace technology ■ Quantum information technology and computing
Advanced materials	<ul style="list-style-type: none"> ■ Synthetic biological materials ■ Advanced composite materials 	<ul style="list-style-type: none"> ■ Advanced inorganic materials ■ Nanomaterials
New energy and environmental protection	<ul style="list-style-type: none"> ■ New energy generation ■ New green technology 	<ul style="list-style-type: none"> ■ New energy storage and transmission technology
New food and agriculture technologies	<ul style="list-style-type: none"> ■ New food technology 	<ul style="list-style-type: none"> ■ New agriculture technology

The above list may be updated by the HKEX from time to time.

A listing applicant falling outside the list may still be considered under the Chapter 18C regime if it can demonstrate to the HKEX that:

- it has high growth potential;
- its success can be demonstrated to be attributable to the application, to its core business, of new technologies and/or the application of the relevant science and/or technology within that sector to a new business model, which differentiates it from traditional market participants serving similar consumers or end users; and
- research and development significantly contributes to its expected value and constitutes a major activity and expense.

Categorisation of Specialist Technology Companies

- Commercial Company: A company that has a revenue of at least HK\$250 million for its most recent audited financial year.
- Pre-Commercial Company: A company that has not met the abovementioned HK\$250 million revenue threshold.

Please see the table below for a summary of whether key Listing Rules requirements proposed were adopted or modified according to the Consultation Conclusions.

Key listing rules requirements adopted

Topic	Key proposals		Consultation conclusions takeaways
	Commercial companies	Pre-commercial companies	
I. Qualifications for listing			
Minimum expected market capitalisation at the time of listing	<ul style="list-style-type: none"> ■ HK\$8 billion 	<ul style="list-style-type: none"> ■ HK\$15 billion 	<p>Adopted as proposed with the following changes:</p> <p>HK\$6 billion for Commercial Companies</p> <p>HK\$10 billion for Pre-Commercial Companies</p>
Revenue threshold	<ul style="list-style-type: none"> ■ At least HK\$250 million arising from the company’s Specialist Technology business segment(s) for the most recent audited financial year 	No requirement	Adopted as proposed
Research and development (“R&D”) requirements	<ul style="list-style-type: none"> ■ Engaged in R&D for at least three financial years prior to listing 		<p>Adopted as proposed</p> <p>Additionally, if the HKEX accepts a shorter trading record, the minimum R&D period required will also be shortened to the same period</p>
	<ul style="list-style-type: none"> ■ R&D investment constitutes at least 15% of total operating expenditure for each of the three financial years prior to listing 	<ul style="list-style-type: none"> ■ R&D investment constitutes at least 50% of total operating expenditure for each of the three financial years prior to listing 	<p>Adopted as proposed with the following changes:</p>

Topic	Key proposals		Consultation conclusions takeaways
	Commercial companies	Pre-commercial companies	
			<p>(i) <u>R&D expenditure ratio for Pre-Commercial Companies</u></p> <ul style="list-style-type: none"> ■ 30% if revenue for the most recent audited financial year is at least HK\$150 million but less than HK\$250 million ■ 50% if revenue for the most recent audited financial year is less than HK\$150 million <p>(ii) <u>Period of application of the expenditure ratio</u></p> <p>Must meet the expenditure ratio requirement:</p> <ul style="list-style-type: none"> ■ on a yearly basis for at least two of the three financial years prior to listing; and ■ on an aggregate basis

Topic	Key proposals				Consultation conclusions takeaways
	Commercial companies		Pre-commercial companies		
					over all three financial years prior to listing
Operational track record	<ul style="list-style-type: none"> At least three financial years of operation under substantially the same management prior to listing (the HKEX may accept a shorter trading record of at least two financial years in exceptional circumstances, though additional listing conditions may be imposed) 				Adopted as proposed
Third-party “meaningful investment”	<ul style="list-style-type: none"> <i>Pre-listing:</i> as at the date of listing application and throughout the period for at least 12 months prior to the date of the listing application (“12 Month Pre-application Period”), having received investment from at least two sophisticated independent investors (“SIIs”), each holding such amount of shares or securities convertible into shares (“Interest in Shares”) equivalent to 5% or more of the issued share capital of the listing applicant (“Pathfinder SIIs”); and <i>At the time of listing:</i> having received at least the following aggregate investment from all SII 				<p>Adopted as proposed with the following changes:</p> <ul style="list-style-type: none"> <i>More flexibility on the interpretation of pre-listing “meaningful investment”</i> <p>As at the date of the listing application and throughout the 12 Month Pre-application Period, having received investments from a group of two to five Pathfinder SIIs, among which:</p> <p>(i) at least two Pathfinder SIIs, each hold Interest in Shares equivalent to 3% or more of the issued share capital</p>
	Expected market cap. at the time of listing (HK\$)	Minimum total investment (as % of issued share capital) at time of listing	Expected market cap. at the time of listing (HK\$)	Minimum total investment (as % of issued share capital) at time of listing	
	≥ 8 <u>6</u> bn to <20 <u>15</u> bn	20%	≥ 15 <u>10</u> bn to <20 <u>15</u> bn	25%	
	≥ 20 <u>15</u> bn to <40 <u>30</u> bn	15%	≥ 20 <u>15</u> bn to <40 <u>30</u> bn	20%	
	≥ 40 <u>30</u> bn	10%	≥ 40 <u>30</u> bn	15%	

Topic	Key proposals		Consultation conclusions takeaways
	Commercial companies	Pre-commercial companies	
			<p>of the listing applicant; or each have otherwise invested at least HK\$450 million in Interest in Shares of the listing applicant; <u>AND</u></p> <p>(ii) at most five Pathfinder Slls, in aggregate, hold Interest in Shares equivalent to 10% or more of the issued share capital of the listing applicant; or invested an aggregate sum of at least HK\$1.5 billion in Interest in Shares of the listing applicant, excluding any subsequent divestments made on or before the date of the listing application</p> <p>■ <i>Adjusting the</i></p>

Topic	Key proposals		Consultation conclusions takeaways
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			<p><i>aggregate investment benchmark from all SIIIs at the time of listing</i></p> <p>Changes are indicated by blacklines as set out in the table on the left</p>
Additional qualification requirements	Not applicable	<ul style="list-style-type: none"> ■ Demonstrate a credible path to achieving the proposed minimum revenue threshold for a Commercial Company, being HK\$250 million for the most recent audited financial year arising from the company’s Specialist Technology business segment (“Commercialisation Revenue Threshold”) ■ Disclose the above pathway in the listing document ■ Have available working capital (including the expected IPO proceeds) to cover at least 125% of its group’s costs (which must substantially consist of general, administrative and operating costs and research and development costs) for at least the next 12 months 	Adopted as proposed

Topic	Key proposals		Consultation conclusions takeaways								
	Commercial companies	Pre-commercial companies									
II. Initial public offering (“IPO”) requirements											
More robust price discovery process	<ul style="list-style-type: none"> At least 50% of the total shares offered in IPO (before over-allotment option) to be placed to “Independent Institutional Investors”, which are defined as Institutional Professional Investors (i.e. persons falling under paragraphs (a) to (i) of the definition of “professional investor” in Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance) that participate in the placing tranche of an IPO (whether as cornerstone investor or otherwise) but excluding corporate professional investors, individual professional investors, existing shareholders and any of their close associates, and core connected persons of the applicant 		<p>Adopted as proposed with the following changes:</p> <p>At least 50% allocation to “<u>Independent Price Setting Investors</u>” (instead of “Independent Institutional Investors”), which comprise: (a) independent Institutional Professional Investors (see definition in the left column); and (b) other types of independent investors with assets under management (AUM), fund size or investment portfolio size of at least HK\$1 billion</p>								
	<ul style="list-style-type: none"> Revised initial allocation and clawback mechanism as follows: <table border="1" data-bbox="439 1235 1733 1437"> <thead> <tr> <th></th> <th>Initial</th> <th colspan="2">No. of times (x) of over-subscription in the public offering</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td>≥ 10x to < 50x</td> <td>≥ 50x</td> </tr> </tbody> </table>			Initial	No. of times (x) of over-subscription in the public offering				≥ 10x to < 50x	≥ 50x	<p>Adopted as proposed</p>
	Initial	No. of times (x) of over-subscription in the public offering									
		≥ 10x to < 50x	≥ 50x								

Topic	Key proposals				Consultation conclusions takeaways
	Commercial companies		Pre-commercial companies		
	Minimum allocation to retail investors as % of total shares offered in IPO	5%	10%	20%	
Free float (shares that are not subject to any lock up upon listing)	<ul style="list-style-type: none"> At least HK\$600 million upon listing 				Adopted as proposed
Offer size	<ul style="list-style-type: none"> The size of the offering (including both the placing tranche and the public subscription tranche) has to be meaningful The HKEX reserves the right not to approve the listing if the offer size is not significant enough to facilitate post-listing liquidity, or otherwise gives rise to orderly market concerns 				<p>Adopted as proposed with the following changes:</p> <p>The wording “to facilitate post-listing liquidity” is replaced with “<u>to facilitate price discovery</u>” in order to accurately reflect the main rationale of the offer size requirement; whether an offer size is meaningful will be assessed on a case-by-case basis</p>
III. Post-IPO requirements					
Post-IPO lock-up			Lock-up period		Adopted as proposed with the following clarification changes:
			Commercial Companies	Pre-Commercial Companies	

Topic	Key proposals			Consultation conclusions takeaways
	Commercial companies		Pre-commercial companies	
	Securities beneficially owned as disclosed in the listing document (excluding those sold under any offer for sale contained in the listing document):			If an applicant has more than the required number of SIIIs that meet the minimum investment benchmarks for Pathfinder SIIIs, the applicant would be free to decide, on a commercial basis, which of these investor(s) would be designated as Pathfinder SII(s), subject to lock-ups
	Controlling shareholders and key persons^(Note)	12 months from the date of listing	24 months from the date of listing	
	All Pathfinder SIIIs	6 months from the date of listing	12 months from the date of listing	
	Securities subscribed for in the IPO			
	Controlling shareholders, key persons^(Note), and all Pathfinder SIIIs	If an existing shareholder subscribes as a cornerstone investor, the lock-up period (generally at least six months) would apply for such cornerstone investment (including an existing shareholder holding 10% or more of shares in the issuer before the offering, who then subscribes for shares in the IPO; in such case the shareholder is required to subscribe as a cornerstone investor)		
<p><i>Note: Key persons include: (i) founders; (ii) weighted voting right beneficiaries; (iii) executive directors and senior management; and (iv) key personnel responsible for the technical operations and/or R&Ds.</i></p>				
Continuing obligations until achieving the commercialisation revenue threshold	Not applicable	<ul style="list-style-type: none"> Additional disclosure in the interim and annual reports including the timeframe for, and any progress made towards, the issuer achieving the Commercialisation Revenue Threshold (including <u>updates on the amount of contract value realised and/or realisable in respect of the agreements with customers</u> as previously disclosed); and updates on any revenue, profit and other business and financial estimates as 		<p>Adopted with the following changes: Replaced “updates on the amount of contract value realised and/or realisable in respect of the agreements with customers” with “<u>updates</u>”</p>

Topic	Key proposals		Consultation conclusions takeaways
	Commercial companies	Pre-commercial companies	
		provided in the listing document (and any subsequent updates to those estimates as published by the Pre-Commercial Company)	<u>on the information previously disclosed</u>
		<ul style="list-style-type: none"> Where the HKEX considers that a Pre-Commercial Company has failed to meet its continuing obligations to maintain sufficient operations or assets, the HKEX may give the issuer a period of up to 12 months (the usual remedial period imposed on other issuers is 18 months) to re-comply with the requirement. If the issuer fails to do so, the HKEX will terminate its listing 	Adopted as proposed
		<ul style="list-style-type: none"> Must not effect any transaction that will lead to a fundamental change to its principal business without the prior consent of the HKEX 	Adopted as proposed
		<ul style="list-style-type: none"> Prominently identified through a unique stock marker “PC” (i.e. being the short form of “pre-commercial”) at the end of their stock names 	Adopted with the following changes: The stock marker will be changed to “P”

The HKEX has in recent years opened up new avenues for specific types of companies to be listed in Hong Kong, such as through the introduction of a biotech companies listing regime under Chapter 18A of the Listing Rules in April 2018 and a special purpose acquisition companies (SPAC) listing regime under Chapter 18B of the Listing Rules in January 2022. The adoption of the new listing regime for Specialist Technology Companies as described in the Consultation Conclusions marks the HKEX’s next step in further facilitating access to the capital market in Hong Kong whilst upholding market order and assuring investor confidence.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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