

The Hong Kong Chartered Governance Institute

Online Submission:

Hong Kong Exchanges and Clearing Limited (HKEX) Consultation Paper on Listing Regime for Specialist Technology Companies

The Hong Kong Chartered Governance Institute 香港公司治理公會

(Incorporated in Hong Kong with limited liability by guarantee)

3/F, Hong Kong Diamond Exchange Building, 8 Duddell Street, Central, Hong Kong

Tel: (852) 2881 6177 E: ask@hkcgi.org.hk W: hkcgi.org.hk

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HKEX Consultation Paper on Listing Regime for Specialist Technology Companies (Consultation Paper)

About HKCGI

The Hong Kong Chartered Governance Institute (Institute/HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries, is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with more than 40,000 members and students worldwide. The Institute is one of the fastest growing divisions of CGI, with a current membership of over 7,000, 300 graduates and 3,000 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

General support for proposals

We support, in general, the proposals under the Consultation Paper. We agree connecting capital with opportunities will elevate Hong Kong's position as the listing venue of choice for innovative companies from around the world important for the preservation of the status of Hong Kong as an International Financial Centre. We also agree, in general, that the proposals strike the right balance between upholding market quality and creating a commercially viable chapter of the Listing Rules.

Specifically, we have no issue, subject to market consensus, with:

- The Commercialisation Revenue Threshold of at least HK\$250 million revenue of a listing applicant from the Specialist Technology business segment for the most recent audited financial year.

- The Minimum expected market capitalisation on listing at HK\$8 billion for Commercial Companies and HK\$15 billion for Pre-Commercial Companies.
- Research and Development of at least 15 per cent of total operating expenditure for Commercial Companies and 50 per cent for Pre-Commercial Companies.
- Minimum third-party investment from Sophisticated Independent Investors with indicative benchmarks of meaningful investment from at least two Pathfinder Sophisticated Independent Investors with large investments at least 12 months before the listing application date.
- The aggregate investment from all Sophisticated Independent Investors ranging from 10-20% (Commercial Company) or 15-25% (Pre-Commercial Company), dependent on expected market capitalisation at listing.
- For a Pre-Commercial Company, a credible path to commercialisation: is disclosed in its listing document.
- For pre-IPO. An optimised price discovery process, with a minimum free float of at least HK\$600 million upon listing, and disclosures on pre-IPO investment obtained, commercialisation status and prospects, and appropriate warning statements.
- Also, post -IPO requirements of controlling shareholders, key persons and Pathfinder Sophisticated Independent Investors' lock-ups.

From the applied governance point of view, we support additional continuing obligations for Pre-Commercial Companies, including additional disclosures in interim and annual reports on the progress towards achieving the Commercialisation Revenue Threshold and updates on any business and financial estimates provided in the Listing Document.

Consultation Paper Questions

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.

We have no issue with adopting STAR industry sectors and 'new food and agriculture technologies to address global food security issues, as stated under para 99 of the Consultation Paper.

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)? Please give reasons for your views. If your answer is "No", please provide alternative suggestions.

We have no issue. Also, concerning the open-ended nature and potential update of the categories taking into account principles set out under para 101 of the Consultation Paper.

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”? Please give reasons for your views.

We have no issue. The factors make logical sense.

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.

We view this as being in good governance. The Exchange must exercise discretion in accordance with the principles set out under para 101 of the Consultation Paper.

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.

We have no issue, and the Exchange will no doubt be gatekeeping to ensure appropriate disclosures are made as part of applied good governance practice.

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.

We agree that given the risk profile is different, there should be enhanced investor protection concerns for good governance.

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.

We also strongly suggest the need for investor education on the risk they are buying into.

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.

We have no particular issue and will leave this for market consensus.

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.

We have no particular issue and will leave this for market consensus.

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.

We have no particular issue and will leave this for market consensus.

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 Commercialisation Revenue Threshold? Please give reasons for your views.

Please consider if any ringfencing arrangements for the intersegmental business will be required.

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.

We have no particular issue, and it is up to the Exchange to fulfil its gatekeeping function.

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.

We have no particular issue, and this appears to be a reasonable timeline contributing to market integrity, a governance issue.

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.

We have no particular issue, and this appears to be reasonable, as R&D would be important regarding the nature of these potential IPO candidates.

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.

We have no particular issue, but please note that there might be different treatment between IFRS and US GAAP on certain items (especially when considering whether an item is capitalised or expensed, including in-process R&D). Please consider this issue when finalising the proposals.

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.

We have no particular issue, and this appears to be a reasonable timeline contributing to market integrity, a governance issue.

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.

We have no particular issue, and this appears to be a reasonable timeline contributing to market integrity, a governance issue.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue, including the approach under paragraph 158 of the Consultation Paper.

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.

We have no particular issue, and it appears to be a reasonable approach to only allow substantial parties and to retain the ad hoc discretion for the Exchange. These contribute to market integrity, a governance issue.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue, and this appears to be a reasonable approach to demonstrate these parties’ commitment to the success of the IPO.

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.

We have no particular issue, and these appear to be a reasonable approach and contribution to commercialisation.

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.

We have no particular issue. This is important for market integrity.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We agree. The thoughts revolve around the concepts of disclosure and transparency are in good governance.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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)?

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We agree. We view the gatekeeping function of the Exchange as necessary for market integrity and investor protection.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue for now. In due course, with further market development, there could be additional guidance developed.

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.

We have no particular issue. This appears to be a reasonable approach.

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.

We have no particular issue.

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.

We have no particular issue. It is important that there is a lock-up period, and please take in market views as to the length of the proposed lock-up period.

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.

We agree. These persons must have longer-term commitments.

Question 43 If your answer to Question 42 is "Yes", do you agree with the proposed lock-up 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.

We have no particular issue. It is important that there is a lock-up period, and please take in market views as to the length of the proposed lock-up period.

Question 44 Do you agree with the proposed lock-up period on the securities of Pathfinders SIIIs of (a) six months (for a Commercial Company) and (b) 12 months (for a Pre-Commercial Company)? Please give reasons for your views.

We have no particular issue. It is important that there is a lock-up period, and please take in market views as to the length of the proposed lock-up period.

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.

We have no particular issue, and this appears to be a balanced position where some economic benefits are returned to the SIIIs.

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.

We agree as this will facilitate the company to raise further capital.

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.

We have no particular issue.

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? Please give reasons for your views.

We agree with measures to enhance transparency which are in good governance.

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.

We have no particular issue.

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.

We agree with measures to enhance transparency which are in good governance.

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.

We agree. There should be a grace period to allow for remedial action to be taken to redress the situation for the benefit of shareholders.

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.

We agree as investors should know what they are buying into at IPO, and after that, the information should be updated on a timely basis in the interest of good governance.

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.

We agree with the measure to enhance transparency which is in good governance.

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.

We agree as the company is no longer a PC.

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.

We agree with measures to reflect the position of the company concerned.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute



Ernest Lee FCG HKFCG(PE)
President