

Listing of Pre-Revenue Biotech Companies soon to happen in Hong Kong

With a view to attracting well-established high growth companies from emerging and innovative sectors to list on the Main Board, The Stock Exchange of Hong Kong Limited (**HKSE**) has released, for consultation purpose, proposed new rules (the “**Proposal**”) to facilitate:

- i. listing of pre-revenue biotech companies;
- ii. listing of companies with weighted voting rights; and
- iii. secondary listing of issuers primary listed on The New York Stock Exchange, Nasdaq Stock Market or the Main Market of the London Stock Exchange.

We have discussed the proposed new rules on listing of companies with weighted voting rights (see our [Legal Update](#) of 1 March 2018). This article will touch on the changes in connection with the listing of pre-revenue biotech companies. The new secondary listing concessionary route will be discussed in our next Legal Update.

Listing of Pre-Revenue Biotech Companies

TARGET COMPANIES

The proposed new Chapter 18A (Biotech Companies) is designed to open a route to listing for early stage Biotech Companies that do not meet the financial eligibility requirements under the Listing Rules, including companies with no revenue or profits. “**Biotech Company**” is defined to mean a company primarily engaged in the research and development, application and commercialisation of Biotech Products (which mean products, processes or technologies involving the application of science and technology to produce commercial products with a medical or other biological application).

LISTING CRITERIA

- eligible and suitable for listing as a Biotech Company (see below);
- initial market capitalisation at listing of at least HK\$1.5 billion;
- in operation in its current line of business for at least two financial years prior to listing under substantially the same management; and
- has available sufficient working capital to cover at least 125% of the group’s costs for at least 12 months from the date of publication of its listing document (after taking into account the listing proceeds).

ELIGIBLE AND SUITABLE FOR LISTING

Instead of setting down in stone in the Listing Rules, HKSE will issue guidance on the factors that will be taken into account in determining an applicant’s eligibility and suitability, which include:

- the Biotech Company must have developed at least one core Biotech Product (**Core Product**) which is regulated by a **Competent Authority** (namely the US Food and Drug Administration, the China Food and Drug Administration or the European Medicines Agency) beyond the concept stage. HKSE would consider a Core Product to have been developed beyond the concept stage if it has met the developmental milestones specified for the relevant type of product (e.g. completed Phase I and received no objection from a Competent Authority to commence Phase II (or later) or human testing);
- it must have been primarily engaged in Research and Development (**R&D**) for the purposes of developing its Core Product(s);

- it must have been engaged with the R&D of its Core Product(s) for a minimum of 12 months prior to listing;
- it must have as its primary reason for listing the raising of finance for R&D to bring its Core Product(s) to commercialisation;
- it must have durable patent(s), registered patent(s), patent application(s) and/or intellectual property in relation to its Core Product(s);
- if the applicant is engaged in the R&D of pharmaceutical (small molecule drugs) products or biologic products, it must demonstrate that it has a pipeline of those potential products; and
- it must have previously received meaningful third-party investment from at least one investor, which HKSE considers to be sophisticated at least six months before listing (which must remain at IPO). Where the applicant is a spin-off from a parent company, the HKSE may not require compliance with this factor if the applicant is able to otherwise demonstrate to HKSE's satisfaction that a reasonable degree of market acceptance exists for its R&D and Biotech Product (for example, in the form of collaboration with other established R&D companies).

INVESTOR PROTECTION REQUIREMENTS

- stock marker “B” at the end of stock name
- no acquisition(s), disposal(s) or other transaction(s) or arrangement(s) that would result in a fundamental change to its principal business will be allowed without the HKSE's prior consent (which consent will normally be given if engaged in a legitimate business expansion or diversification that forms part of its business strategies).
- shorter remedial period if it fails to maintain sufficient operations or asset—HKSE may give no more than 12 months remedial period and listing will be cancelled if it still fails to re-comply with the requirement after the 12-month period. Otherwise, the existing delisting rules apply.
- enhanced disclosure—prominent warning statements and enhanced risk disclosure.

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