

Response to the HKEX Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors

The Financial Services Development Council (FSDC) welcomes the prompt publication of the Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors (Consultation Paper) following the Consultation Conclusions on New Board Concept Paper (Concept Conclusions) on which it is based. The FSDC believes this is an important step in the right direction and the market will benefit from the opportunity to engage with the Stock Exchange of Hong Kong (“SEHK”) in materialising the proposals.

The FSDC considers that it is important to ensure that the Listing Rules and guidance put in place in furtherance of the Concept Conclusions will place Hong Kong in a position of enhanced competitiveness vis-a-vis the other leading global exchanges. To this end we cannot lose sight of factors that would detract from the attractiveness of the Hong Kong market. With that in mind, the FSDC has the following observations on the draft rules:

1. Corporate WVR beneficiaries

We note the SEHK’s commitment to study the possibility of allowing corporate WVR beneficiaries within three months after the roll-out of the new rules. We are much encouraged by this, but would stress that there is not a moment to lose if we are to reap the full benefits of the current exercise.

To us, the key question is whether limiting WVR beneficiaries to individuals who are directors would potentially cause the market to diminish in attractiveness to some otherwise suitable candidates.

Oftentimes high quality new economy enterprises have good reasons to have corporate WVR shareholders – for example to enable a corporate shareholder to maintain control over the company notwithstanding dilution as a result of listing, thereby allowing such company to continue to stay

within the ecosystem of the corporate shareholder and enjoy the benefits therefrom. Most of the factors specified in para. 122 of the Consultation Paper as grounds for requiring WVR beneficiaries to be directors (apart from the reference to personal competence) could, in our view, apply equally to corporate WVR beneficiaries. A lot of the “unicorns” in the TMT space, for example, could attribute a big part of their successes to the fact that their corporate parent was able to accelerate their growth by providing them with strategic guidance, channeling users and sharing other synergistic benefits. Disallowing a corporate parent from holding WVRs so as to maintain control could, in our view, abruptly lift a company from the ecosystem which is instrumental to its performance.

Our concern is that the exclusion of corporate WVR beneficiaries is very likely to render Hong Kong significantly less friendly to new economy enterprises compared to other major markets and as such, would not be desirable. While it is true that Hong Kong need not be unduly influenced by other markets and should design its rules to suit its own circumstances, it is equally important to bear in mind that the current initiative has one chief goal: to increase Hong Kong’s competitiveness. For this reason we are strongly in favour of expanding flexibility in this regard.

We note that the SEHK plans to study this topic with minimum delay after roll-out of the new rules. Again, speed and dispatch are what we counsel. Hong Kong simply cannot afford to drag its feet while other markets are clearly gathering speed – note, for example, recent reports about forthcoming measures in the Chinese market specifically to attract the “unicorns”. In fact, limiting WVR beneficiaries to natural persons in this first instance is already likely to cause Hong Kong to lose out to other markets in the next few months, when some important enterprises may already decide to list elsewhere.

The prospect of competition with other markets is very real and we cannot stress strongly enough that time is of the essence in the race to win the best candidates. In view of this, we would urge the Exchange to adopt a flexible approach with respect to suitable enterprises that may be approaching our market pending the corporate WVR beneficiaries consultation – for example,

by exercising its discretion under the Listing Rules to give waivers and dispensations in appropriate cases.

2. Return of certain companies to Hong Kong by way of secondary listing

Based on the current timetable, the new rules may be introduced and the first IPO applications received early in the second half of this year. The corporate WVR beneficiary issue will be the subject matter of a separate consultation which will be launched in the third quarter. Given the current relatively optimistic market conditions, some good quality enterprises with corporate WVR shareholders may choose to list elsewhere with a view to coming back to Hong Kong at an opportune moment by way of a secondary listing under the concessional route. Obviously, these enterprises cannot enjoy grandfathering under the Consultation Paper. The burdens imposed on these companies to comply fully with the primary-listing-equivalent WVR safeguards may ultimately prove to be insurmountable hurdles for their return to Hong Kong. This would be unfortunate not only for the companies but for our market. We suggest that the SEHKs should consider working into the future corporate WVR beneficiary regime some flexibilities (e.g. more grandfathering arrangements) to cater for these types of cases.

3. Holding by way of trust, partnership and corporate vehicles

The draft rules provide flexibility for holding of WVR beneficiary interest by way of a trust, partnership or corporate vehicle for estate and/or tax planning purposes, so long as the general transfer restriction is not circumvented. There is a concern however that, as currently drafted, the rules are not clear enough for listing candidates to determine if a specific type of holding (especially where a party such as a family member, a partner or a fellow shareholder is involved) would be acceptable to the SEHK. The market would benefit from more clarity in this aspect.

Again, the key concern here is that Hong Kong should not have rules so drastically different from other major markets of the world that we lose out to those markets in terms of flexibility.

4. Eligibility guidance

Whilst we have discovered no major issues in the Consultation Paper with respect to the listing eligibility requirements (e.g. the parameters of “innovative companies”) for either the WVR and the biotech listing regimes, we note that these issues will be not be governed by the Listing Rules but by relevant guidance. In the absence of exposure draft guidance letters, the market is at the moment unable to take full advantage of this preparatory stage to review what may be a significant pipeline in formation of listing hopefuls, or for such companies to “put their houses in order”. We would strongly urge the SEHK to expedite the work on the eligibility guidance so that we will not lose precious time waiting for the final product to come out.

Needless to say, in view of the novelty aspects of the biotech industry, we would urge the SEHK to engage actively with stakeholders with relevant expertise and knowledge in the field to work out a suitable and practical set of guidelines.

Conclusion

Finally, we are much encouraged by the speed and dedication with which the Securities and Futures Commission and the SEHK have pursued this project and look forward to the successful launch of the new regime.

Financial Services Development Council

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