

INNOVATION

HKEX Publishes Consultation Conclusions on New Listing Regime for Specialist Technology Companies

On 24 March 2023, the Stock Exchange of Hong Kong Limited (HKEX) published [Consultation Conclusions](#) on its proposals to expand Hong Kong's listing framework for the listings of Specialist Technology Companies. For a summary of the original Consultation Paper, please see Charltons' [October 2022 newsletter](#).

During the consultation period, the HKEX received 90 submissions from various stakeholders and, after reviewing the feedback, the HKEX has decided to implement the proposals as set out in the Consultation Paper, with some amendments and clarifications. Specifically, the HKEX has lowered the market capitalisation thresholds for all Specialist Technology Companies and reduced the minimum Research and Development (R&D) Expenditure Ratio requirement for specific Pre-Commercial Companies within a certain revenue range. The changes to the Rules Governing the Listing of Securities on the HKEX (the HKEX Listing Rules) will take effect on 31 March 2023.

This is the first of two Charltons' newsletters of the Consultation Conclusions on the New Listing Regime for Specialist Technology Companies, in which the overview of the key listing requirements for Specialist Technology Companies is provided. A more detailed analysis will follow in the second newsletter to be published shortly.

Defining Specialist Technology Companies

Under the HKEX Listing Rules, a "Specialist Technology Company" is primarily engaged in the research and development of, and the commercialisation and/or sales of, products and/or services that apply science and/or technology within an acceptable sector of a "Specialist Technology Industry" (Specialist Technology Products).

The Specialist Technology Industries and acceptable sectors are listed in the guidance letter (see [Appendix V](#) to the Consultation Conclusions) and include (among others):

- Next-generation information technology – (e.g. cloud-based services and AI);
- Advanced hardware and software – (e.g. robotics and automation, semiconductors, advanced communication and transportation technology, aerospace technology, advanced manufacturing, electric and autonomous vehicles, quantum information technology and computing, and metaverse technology);
- Advanced materials – (e.g. synthetic biological materials, advanced inorganic materials and nanomaterials);
- New energy and environmental protection – (e.g. new energy generation, storage and transmission technology and new green technology); and

- New food and agriculture technologies – (e.g. agricultural synthetic biology, agricultural biotechnology and crop efficiency technology, and farming technology).

Commercial and Pre-Commercial Specialist Technology Companies

Under the HKEX Listing Rules, there are two categories of Specialist Technology Companies, with more stringent requirements for Pre-Commercial Companies given their risk profile:

- Commercial Company: A Specialist Technology Company that has revenue of at least HK\$250 million for its most recent audited financial year (Commercialisation Revenue Threshold).
- Pre-Commercial Company: A Specialist Technology Company that has not yet met the Commercialisation Revenue Threshold at the time of listing.

Qualifications for Listing on the HKEX

Market Capitalisation

The expected market capitalisation for Commercial Companies will be at least HK\$ 6 billion at the time of listing.

Pre-Commercial Companies will be required to have a market capitalisation of at least HK\$ 10 billion at the time of listing.

Revenue Requirements

Commercial Companies will be required to have revenue of at least HK\$ 250 million for the most recent audited financial year. There will be no revenue requirement for Pre-Commercial Companies.

Research and Development (R&D) Expenditure Ratio¹

For Commercial Companies, R&D investment must constitute at least 15% of total operating expenditure.

For Pre-Commercial Companies with less than HK\$150 million revenue for the most recent audited financial year, R&D investment must constitute at least 50% of total operating expenditure.

For Pre-Commercial Companies with revenue of between HK\$150 million and HK\$250 million for the most recent audited financial year, R&D investment must constitute at least 30% of total operating expenditure.

All Specialist Technology Companies will be required to meet the ratio:

- on a yearly basis for at least two of the three financial years prior to listing; and
- on an aggregate basis over all three financial years prior to listing.

Track Record, Management and Ownership Continuity

In line with the criteria applicable to other Main Board listing applicants, Specialist Technology Companies are required to demonstrate a minimum of three financial years of operation in their current line of business under substantially the same management. In exceptional cases, the HKEX may consider a shorter trading period of at least two financial years. Specialist Technology Companies will also require ownership continuity and control for at least 12 months before listing, and up until the time immediately before the offering and/or placing becomes unconditional.

Requirement for Third Party Investment

There is a requirement that a Specialist Technology Company must have received meaningful investment from a group of two to five sophisticated independent investors (Pathfinder SIs), each having invested in the applicant at least 12 months before the date of the listing application and meet the following criteria:

- in aggregate hold such amount of shares or securities convertible into shares equivalent to 10% or more of the listing applicant's issued share capital as at the date of listing application and throughout the pre-application 12-month period; or
- have invested an aggregate sum of at least HK\$1.5 billion in the shares or securities convertible into shares of the applicant at least 12 months prior to the date of the listing application (excluding any subsequent divestments made on or before the date of the listing application).

At least two Pathfinder SII's must meet either of these conditions:

(a) each holds such amount of shares or securities convertible into shares equivalent to 3% or more of the applicant's issued share capital as at the date of listing application and throughout the pre-application 12-month period; or

(b) each has invested at least HK\$450 million in the shares or securities convertible into shares of the applicant at least 12 months prior to the date of the listing application (excluding any subsequent divestments made on or before the date of the listing application).

The Specialist Technology Company must also have an aggregate investment from all SII's meeting a prescribed minimum percentage of the applicant's issued share capital (before exercise of any overallotment option) at the time of listing. Depending on the Specialist Technology Company's expected market capitalisation at listing, the minimum percentage ranges from 10% to 20% for Commercial Companies and 15% to 25% for Pre-Commercial Companies.

Path to Achieving the Commercialisation Revenue Threshold

Pre-Commercial Companies will be required to demonstrate to the HKEX, and disclose in their listing documents, a credible path to achieving the Commercialisation Revenue Threshold which means a credible path to achieving the commercialisation of their Specialist Technology Product(s) such that they achieve revenue of at least HK\$ 250 million from their Specialist Technology business segment for the relevant audited financial year.

They will also be required to have available working capital (inclusive of expected IPO proceeds) to cover at least 125% of their group costs (which should substantially consist of general, administrative and operating costs, and R&D costs) for at least the next 12 months to mitigate the risk of insufficient funding for operations.

Pre-Commercial Companies must be cautious when disclosing timeframes and paths to achieving the Commercialisation Revenue Threshold, ensuring clear disclosure of risks, impediments, and material assumptions involved in making such statements to avoid misleading information.

A credible path to achieving the Commercialisation Revenue Threshold may be demonstrated, for example, by binding contracts or non-binding framework agreements, and details of the timeframe and milestones for commercialisation of the applicant's Specialist Technology Product(s). If the illustrative examples set out in the Consultation Paper do not suit a Pre-Commercial Company's circumstances, it may demonstrate its path to commercialisation through other means with alternative evidence to support its credibility.

IPO Requirements

Specialist Technology Companies will be required to:

- allocate at least 50% of the total number of shares offered in the IPO (excluding shares to be issued on the exercise of any over-allotment option) to Independent Price Setting Investors;²
- have a free float of at least HK\$ 600 million upon listing; and
- to include additional disclosures in their listing documents on pre-IPO investments, products and commercialisation status and prospects, R&D expenditure, intellectual property, and a specified warning statement.

Post-IPO Lock-ups

The proposed listing regime will impose post-IPO lock-ups on:

- controlling shareholders;
- key persons (including the founders, the beneficiaries of weighted voting rights, executive directors and senior management, and key personnel responsible for the technical operations and/or R&D of the Specialist Technology Company) (Key Persons); and
- the Pathfinder SII's.

It is proposed that:

- Controlling shareholders of a Commercial Company will be subject to a 12-month lock-up period, while the controlling shareholders of a Pre-Commercial Company will be subject to a 24-month lock-up period;

- Key Persons of a Commercial Company and their associates will be subject to a 12-month lock-up period, while Key Persons of a Pre-Commercial Company will be subject to a 24-month lock-up period; and
- Pathfinder SIIIs will be subject to a 6-month lock-up period (for a Commercial Company) or a 12-month lock-up period (for a Pre-Commercial Company).

Listing Applications and Enquiries

Specialist Technology Companies and their respective sponsors may now submit official pre-IPO enquiries in relation to the interpretation of the Rules and their application to the prospective listing applicant's circumstances. Formal applications for listing under the new regime will be accepted on or after 31 March 2023.

[1] The R&D expenditure ratio is calculated as the total amount of an applicant's expenditure on the R&D of its Specialist Technology Product(s) incurred for the relevant period, divided by its total operating expenditure for the same period.

[2] Independent Price Setting Investors include independent Institutional Professional Investors (as contemplated in the Consultation Paper) and other types of independent investors with AUM, fund size, or investment portfolio size of at least HK\$1 billion.

This newsletter is for information purposes only

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases. Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser. Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

CHARLTONS
易周律師行

Hong Kong Office

Dominion Centre 12th Floor
43-59 Queen's Road East Hong Kong

enquiries@charltonslaw.com

www.charltonslaw.com
Tel: + (852) 2905 7888
Fax: + (852) 2854 9596