

SEHK's new listing framework for Specialist Technology Companies

Introduction

The Stock Exchange of Hong Kong Limited (the **SEHK**) launched a public consultation on the new listing regime for Specialist Technology Companies (**STCs**) in October 2022. Under the consultation, SEHK seeks to allow listing of STCs, which cannot meet the profit, revenue and cashflow requirements under the traditional listing path. They are usually still in the stage of research and development (**R&D**), yet to commercialise their products or services, or are otherwise unable to meet the tests under the traditional listing regime due to the nature of their businesses. It is believed that STCs would be an attractive option for investors in Hong Kong due to their high growth potential¹.

The consultation conclusion was published by SEHK on 24 March 2023. While majority of the consultation proposals have been adopted, some key changes have been made to take into account market responses. These include market capitalisation, R&D expenditure ratios, a benchmark on meaningful investments from Pathfinder Sophisticated Independent Investors and the required allocation of shares to independent price setting investors.

The new listing regime for STCs will be regulated under a new Chapter 18C (**Ch 18C**) of SEHK's Main Board Listing Rules (**MBLR**) and its Guidance Letter on Specialist Technology Companies² (**Guidance Letter** or **GL**), which took effect on 31 March 2023. STCs and their sponsors can now submit formal pre-IPO enquires as well as filing listing applications under this new listing framework³.

This article gives you an analysis of the listing and post-listing requirements under this new regulatory framework adopted by SEHK for STCs.

Key Takeaways

- STCs which cannot meet the profit, market capitalisation, revenue, cashflow requirements under the existing IPO regime can apply for listing on to the Mainboard of SEHK if they fulfil the requirements of Ch 18C of MBLR.
- STCs will be categorised into "Commercial Companies" and "Pre-Commercial Companies". A revenue threshold in the amount of HK\$250 million for the most recent audited financial year from Specialist Technology business segment(s) (**Commercialisation Revenue Threshold**) has been adopted as the "bright line test" for differentiating between the two categories.

¹ SEHK Consultation Paper on Listing Regime For Specialist Technology Companies dated October 2022 (**Consultation Paper**), paragraph 6

² GL115-23

³ SEHK Consultation Conclusions on Listing Regime For Specialist Technology Companies dated March 2023 (**Consultation Conclusion**), paragraph 7

- STCs have to operate within the Specialised Technology Industries set out under the Guidance Letter. This currently contains 5 industries and different sectors within each industry. The Guidance Letter will be updated by SEHK from time to time to capture changing new technology trends.
- Taking into account market responses, SEHK has reduced the required market capitalisation at the time of listing to HK\$6 billion or more for listing of Commercial Companies, and HK\$10 billion or more for Pre-Commercial Companies. This contrasts with the market capitalisation requirement of HK\$2 billion to HK\$4 billion under the existing IPO regime pursuant to MBLR8.05(2) and (3).
- Unlike Commercial Companies, Pre-Commercial Companies are subject to additional obligations to address the higher investment risks associated with their earlier stage of development⁴ in product and business cycles. These include a larger minimum market capitalisation at listing, higher third party investment thresholds, a requirement to demonstrate a credible path to Commercialisation Revenue Threshold, extra working capital requirements, additional disclosure obligations in any prospectus, annual and interim reports and longer lock-up periods.
- There are additional IPO and post-IPO requirements under Ch 18C compared to the traditional IPO regime. These include a larger market capitalisation at the time of the IPO, R&D track records, investments from Sophisticated Independent Investors, additional disclosure obligations both at IPO in the prospectus at the IPO stage and post-IPO in annual and interim reports, longer lock-up periods and lock-up requirements being applicable to wider group beyond controlling shareholders and share allocation restrictions.

1. What is a Specialist Technology Company?

Specialist Technology Company	Means a company primarily engaged (whether directly or through its subsidiaries) in the R&D of, and the commercialisation and/or sales of, Specialist Technology Products within an acceptable sector of a Specialist Technology Industry
Specialist Technology Product	Means a product and/or service (alone or together with other products or services) that applies Specialist Technology
Specialist Technology	Means a science and/or technology applied to products and/or services within an acceptable sector of a Specialist Technology Industry

2. What are the Specialist Technology Industries?

Guidance Letter

- What constitutes a latest technology trend or a newly emerging industry evolves over time. SEHK is prepared to embrace this dynamic nature by adopting a flexible approach to the scope of Specialist Technology Industry through the Guidance Letter⁵.

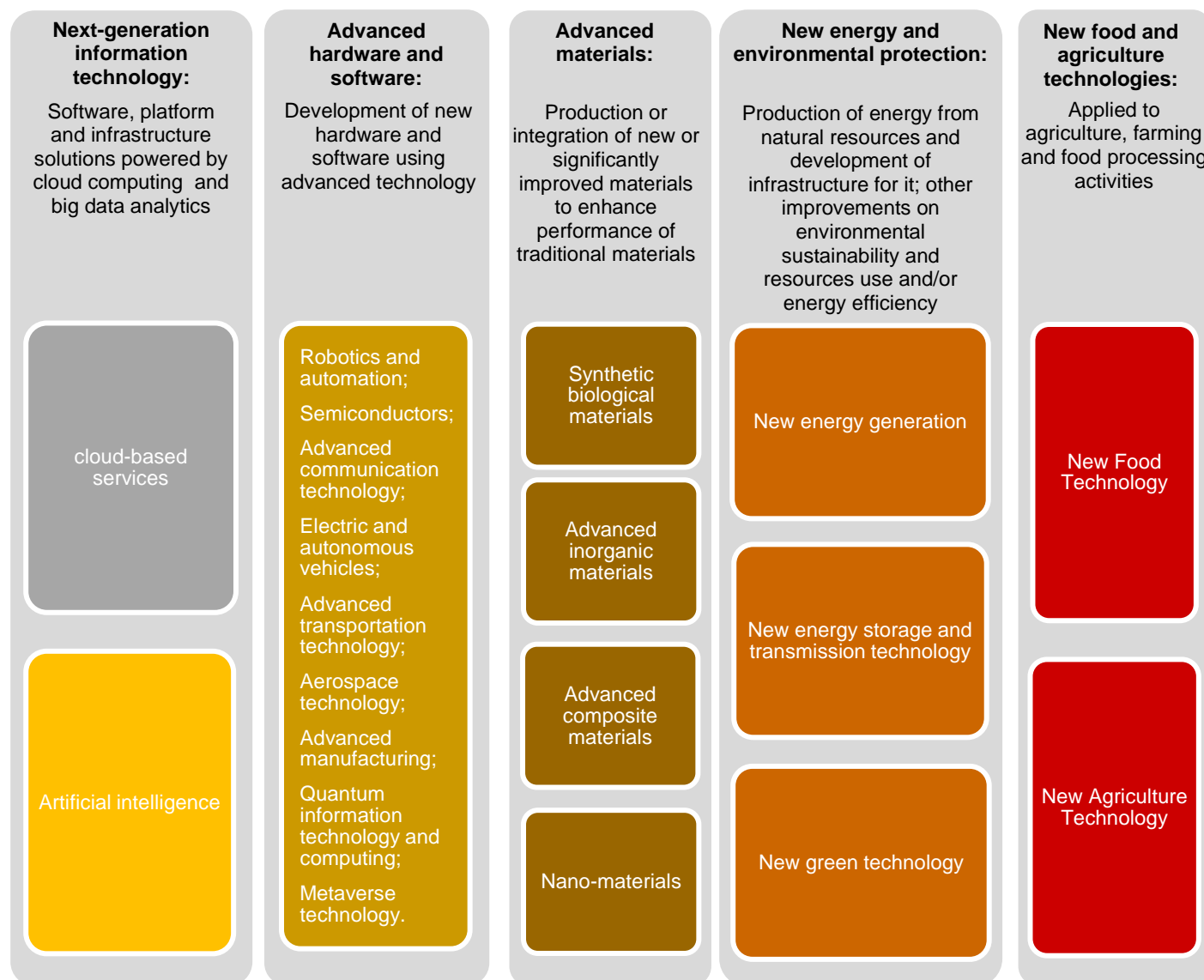
⁴ Consultation Conclusion paragraph 65

⁵ Consultation Paper paragraphs 95, 101

- The Guidance Letter sets out, among others, the acceptable industries and sectors for Specialist Technology Industry, which will be updated by SEHK from time to time with the approval of SFC⁶. This flexible approach allows SEHK to quickly react to the changing trends and incorporate them into the scope of the Specialist Technology regime⁷.

Acceptable industries and sectors

- Under the current Guidance Letter, the **acceptable industries and non-exhaustive acceptable sectors** of Specialist Technology Industries are⁸:



Applicants not in Specialist Technology Industries and sectors

- Listing applicants falling outside of the list of Specialist Technology Industries and sectors can still be considered for listing under Ch 18C if they can demonstrate the below⁹ (**Key Principles**):
 - they have high growth potential;

⁶ Guidance Letter paragraph 14
⁷ Consultation Paper paragraphs 101
⁸ Guidance Letter paragraph 7
⁹ Guidance Letter paragraph 10

- their success is 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 differentiate them from traditional market participants serving similar consumers or end users; and
- R&D significantly contributes to their expected value and constitutes a major activity and expense.
- These applicants should make a **pre-IPO enquiry** with the SEHK to clarify its eligibility for listing under Ch18C before submission of listing applications¹⁰.
- It should be noted that whether or not an applicant satisfies all of the listing criteria under Ch 18C, SEHK **retains discretion to reject applications** if applicants display attributes inconsistent with the Key Principles¹¹.

Applicants with multiple business segments¹²

- Applicants with business segments in addition to Specialist Technology can also list under this regime if they are “primarily engaged” in Specialist Technology business.
- What does “primarily engaged” in Specialist Technology business mean?
 - a) The factors which SEHK will take into account include: (i) operating expenditure and staff resources spent in Specialist Technology Products; (ii) basis of valuation and market capitalisation; (iii) use of IPO proceeds; (iv) revenue generated by Specialist Technology business segment relative to total revenue; and (v) reasons of retaining non-Specialist Technology business segment(s).
 - b) SEHK will assess with a holistic approach. No “bright line” percentage thresholds will be adopted to measure the factors.¹³

3. Categorisation

- STCs will be categorised into **Commercial Companies** and **Pre-Commercial Companies**.
- The Commercialisation Revenue Threshold, which excludes inter-segmental and incidental revenue from other business segments¹⁴, is adopted as the “**bright line test**” to determine whether an applicant is a Pre-Commercial Company or a Commercial Company.
- “**Commercial Company**” is defined as a Specialist Technology Company that has met the Commercialisation Revenue Threshold at the time of listing. They have generally:¹⁵
 - have commercialised their Specialist Technology Products;
 - have generated meaningful revenue;
 - have a large expected market capitalization;
 - cannot meet financial eligibility thresholds under traditional IPO regime (profit, revenue, cashflow);
 - have achieved track record of revenue.

¹⁰ Guidance Letter paragraph 11

¹¹ Guidance Letter paragraph 15, Consultation Conclusion paragraph 56

¹² Guidance Letter paragraph 16 and 17

¹³ Consultation Conclusion paragraph 43; Guidance Letter paragraph 17

¹⁴ MBLR 18C.03(4)

¹⁵ MBLR 18C.01; Consultation Paper paragraph 109

- “**Pre-Commercial Company**” means a Specialist Technology Company that has not met the Commercialisation Revenue Threshold at the time of listing. Generally they:¹⁶
 - are primarily engaged in R&D;
 - are raising funds to further their R&D to commercialise their Specialist Technology Products and/or not yet generated meaningful revenue;
 - have heightened risks including: (i) may not be able to commercialise to achieve Commercialisation Revenue Threshold; (ii) lack of available funding to support their operations; (iii) share price volatility and trading illiquidity.
- Pre-commercial and Commercial Companies have **different listing and post-listing obligations**. It is because of these heightened risks that Pre-Commercial Companies have more stringent requirements (see Parts 4 to 6 below) to address the higher investments risks associated with their earlier stages of development outlined above.

4. Qualifications for Listing

In addition to satisfying the listing requirements under the traditional listing framework (i.e. MBLR Chapter 8, other than the profit, market capitalisation, revenue, cashflow requirements), a listing applicant applying to list under Ch 18C needs to demonstrate that it meets specific qualifications for listing summarised as follows:

		Commercial Companies	Pre Commercial Companies
STC ¹⁷	Primarily engaged in R&D of, and commercialisation and/or sale of Specialist Technology Products within acceptable sectors of Specialist Technology Industries, and it is both eligible and suitable for listing as either a Commercial Company or Pre-Commercial Company	Applicable	Applicable
Market Capitalisation ¹⁸	Minimum Expected Market Capitalisation at time of listing	HK\$6 billion	HK\$10 billion
Revenue ¹⁹	Minimum revenue requirement for the most recent audited financial year (FY)	HK\$250 million Generated only from Specialist Technology business Show year-on-year revenue growth from Specialist Technology business during track record period	No requirement

¹⁶ MBLR 18C.01; Consultation Paper paragraph 109

¹⁷ MBLR18C.03(1)

¹⁸ MBLR18C.03(3)

¹⁹ MBLR18C.03(4), GL para 19

		Commercial Companies	Pre Commercial Companies
R&D ²⁰	Minimum period of engagement in R&D of Specialist Technology Product(s)	3 FYs prior to listing	
	Minimum total R&D expenditure (as a percentage of total operating expenditure of the relevant period)	On yearly basis for 2 out of 3 FYs before listing AND On aggregate basis over 3 FYs before listing:	
		≥15%	Revenue in most recent FY is ≤HK\$150m: ≥50%
			Revenue in most recent FY is HK\$150m - HK\$250m : ≥30%
Operation Track Record ²¹	Operational track record & management continuity	3 financial years of operation in current line of business under substantially the same management prior to listing	
	Ownership continuity	12 months ownership continuity prior to listing application up to until listing is unconditional ²²	
3rd Party Investments: Meaningful investments from Sophisticated Independent Investors (SII) (Note 1) ²³	Investments from Pathfinder SII, who are: <ul style="list-style-type: none"> • 2-5 SII (Note 1) • Each invested into listing applicant for <u>at least 12 months before listing</u> application (Minimum Period) 	<ul style="list-style-type: none"> • Pathfinder SII <u>in aggregate</u> shall²⁴: <ol style="list-style-type: none"> (1) hold shares or convertible securities (to be converted at/before listing) ≥10% in applicant's issued share capital as at listing application date and throughout the Minimum Period; <u>or</u> (2) invested ≥HK\$1500m in shares or convertible securities in listing applicant for at least the Minimum Period (exclude divestments); AND • At least 2 of such Pathfinder SII shall <u>each</u>: <ol style="list-style-type: none"> (1) hold shares or convertible securities (to be converted at/before listing) ≥3% in applicant's issued share capital as at listing application date and throughout the Minimum Period; <u>or</u> (2) invested ≥HK\$450m in shares or convertible securities in listing applicant for at least the Minimum Period (exclude divestments) <p>(collectively, Minimum Investment Benchmarks)</p>	

²⁰ MBLR18C.04, GL paras 23, 24

²¹ MBLR18C.03(2), GL para 19(b)

²² Consultation Conclusion paragraph 176, GL para 19(b) : assessment of ownership continuity will be based on the guidance under traditional IPO regime.

²³ MBLR18C.05, GL Part D

²⁴ GL paras 37 and 38

			Commercial Companies	Pre Commercial Companies
	Minimum amount of investment from all SIIs (Note 1)	Expected market capitalisation of STC at the time of listing:	Minimum total investment from all SIIs (Note 1) as a percentage of the issued share capital of listing applicant <u>at the time of listing</u> (Note 2) (before over-allotment)	
	(Aggregate Investment Benchmark) (Note 2)	HK\$ 6 billion - <HK\$15 billion (Commercial Companies)	20%	25%
		HK\$10 billion - <HK\$15 billion (Pre-Commercial Companies)		
		HK\$ 15 billion - <HK\$ 30 billion	15%	20%
		≥ HK\$30 billion	10%	15%
Additional requirements for Pre-Commercial Companies only ²⁵	Credible path to achieving the Commercialisation Revenue Threshold for its Specialist Technology business segment(s)		N/A	<p>Explain and disclose how it will be achieved:</p> <ul style="list-style-type: none"> including details on timeframe and impediments e.g. binding or non-binding contracts with independent customers, with substantial contract value realizable within 24 months <p>If working capital is insufficient, describe the potential funding gap and how it plans to further finance</p> <p>SEHK retains discretion in the assessment</p>
	Working capital requirement		N/A	<p>Available working capital to cover at least 125% of its group's costs for at least the next 12 months (including IPO proceeds)</p> <ul style="list-style-type: none"> Group's costs for R&D; general, administrative and operating expenses

²⁵ MBLR18C.06, 18C.07, GL Part E, para19(a)

		Commercial Companies	Pre Commercial Companies
	Use of proceeds & primary listing reasons	N/A	Primary reasons for listing must be raising funds for R&D, manufacturing and/or sales and marketing of Specialist Technology Products, and for achieving Commercial Revenue Threshold

Note 1: ²⁶

- “Independence requirement” is NOT satisfied if investors are: (i) core connected persons (except substantial shareholders who become one only because of its shareholdings in applicant); (ii) controlling shareholders; (iii) founders and their close associates; (iv) parties deemed by SEHK e.g. persons acting in concert with forgoing parties.
- “Sophisticated investors” – SEHK will assess whether an investor is sophisticated on a case-by-case basis depending on investment experience, knowledge, expertise, which could be demonstrated by net assets, assets under management, size of investment portfolio or investment track record.

Note 2:

- Aggregate Investment Benchmark can include : (i) investments by SIIs before listing and shares offered to SIIs at listing; and (ii) where insufficient to satisfy such benchmark requirements, offer shares to be placed to SIIs under placing tranche for SII of specified scale²⁷.
- For secondary listings or dual listings under Ch 18C, SEHK will not strictly apply the Aggregate Investment Benchmark and shall consider specific circumstances, including SIIs’ shareholdings before and after the overseas listings. ²⁸

5. IPO Requirements and Offer Arrangements

To facilitate robust price discovery and investors’ assessment of the applicant’s financial position and prospect, SEHK introduced additional allocation and disclosure requirements for listings under Ch 18C.

		Commercial Companies	Pre Commercial Companies
<p>More robust price discovery</p> <p>Sizeable allocation of shares to Independent Institutional Investors ensures robust price discovery by benefiting from the research and professional assessments of the independent price setting investors ^(Note 3)²⁹</p>	<p>Larger allocation of IPO shares to independent price setting investors ^(Note 3)</p>	<p>≥ 50% of total IPO shares (excluding over-allotment) to be taken by independent price setting investors^(Note 3) (as cornerstone investors or otherwise) in placing trench</p>	

²⁶ GL paragraphs 29, 31 and 35. Please also refer to the illustrative example under GL paragraph 32.

²⁷ GL paragraphs 32 and 43

²⁸ GL paragraphs 43 to 45

²⁹ Consultation Paper paragraph 199, MBLR18C.08, 18C.09, GL Part F

		Commercial Companies	Pre Commercial Companies	
	Retail allocation and clawback mechanism in case there are placing tranche and public subscription tranche		Initial allocation	Over subscription in public tranche
				10 times - <50 times
				≥50 times
		Minimum retail allocation to public as % of total offer shares	5% of total offer shares	10% of total offer shares
				20% of total offer shares
Free float and offer size Meaningful offer size is more likely to lead to robust price discovery ³⁰	Minimum free float	Listed shares with market capital of at least HK\$600m would be free from lock-up or disposal restrictions at the time of listing		
	Offer size	Meaningful offer size (what constitutes “meaningful” will be assessed on a case-by-case basis ³¹) SEHK reserves right not to approve if offer size not significant enough to facilitate price discovery, and fair and orderly trading		
Additional prospectus disclosure requirements Applications may be returned in case of incomplete disclosure ³²	Pre IPO investments & Cash-flow related	Implied valuation for each pre-IPO investment round, reasons for its material fluctuations Cash burn rate and cash operating costs etc.		
	Products and commercialisation status and prospects	For the Specialist Technology Products: (i) what are the key products; (ii) technical capabilities & commercial viabilities of key technology applied; (iii) existing stage and development timetable; (iv) an overview of the commercialisation status and plan; (v) for key products: elaborate on such status and plan, substantiate such plan with details, as well as the origin, licensing and other intellectual property arrangements		
	Addressable market, market share and Industry Overview	For each key Specialist Technology Product: (i) current and expected addressable markets: define it by specific customer pool rather than overall market; competitive landscape; (ii) current and expected market share: basis of determination, expected market share should cover a reasonable period with risks, impediments and assumptions disclosed		

³⁰ MBLR18C.10, 18C.11, GL Part G

³¹ Consultation Conclusion paragraph 390

³² MBLR18C.12, GL Part H

		Commercial Companies	Pre Commercial Companies
Additional prospectus disclosure requirements Applications may be returned in case of incomplete disclosure (continue)	Business model based disclosure	Key aspects of business models e.g. subscription or transaction based models. For key Specialist Technology Products which have recorded sales, disclose key metrics e.g. total number of subscribers or customers, customer retention rate, average transaction value	
	R&D	R&D activities including (i) detail breakdown of expenses, (ii) experience of R&D team; (iii) IPO proceeds to be applied to R&D; (iv) stage of R&D for key Specialist Technology Products in pipeline; (v) STC's R&D experience in relevant industry/sector	
		N/A	Stage of R&D for each Specialist Technology Product
	Industry specific information	Industry specific standards, definitions, classifications, and regulatory approvals required; and whether the key Specialist Technology Products have attained such standards and approvals. Material communications with competent authorities Material safety data on its Specialist Technology Products	
	Intellectual properties (IP)	(i) Material IP rights for and respective significance to each key Specialist Technology Product; (ii) licencing or ownership arrangements of material IP rights, and their tenure and material payment obligations; (iii) IP rights infringements and the relevant risks.	
	Risks	Any dependence on key individuals and impact on their departure (e.g. technical staff) If relevant, project risks of STC from environmental, social, and health and safety issues	
		N/A	Risks associated with commercialisation for each key Specialist Technology Products
	Warning statement	In SEHK's prescribed wordings to the effect that the applicant is a Specialist Technology Company and investments in its shares carry additional risks.	
N/A		Additional prescribed warning statement to the effect that it cannot meet revenue requirement and hence heightened the risk of failure	

		Commercial Companies	Pre Commercial Companies
Additional prospectus disclosure requirements Applications may be returned in case of incomplete disclosure (continue)	Profit Forecast	<u>NOT</u> required	
	Development details by key stages and milestone of key Specialist Technology Products to achieving Commercialisation Revenue Threshold	N/A	Disclosure to be made with reference to industry specific standards, definitions or classifications, and relevant regulatory approvals
	Potential earlier expiration of lock-up periods	N/A	Potential earlier expiration of lock up requirements to relevant shareholders in case of removal of designation as Pre-commercial Specialist Technology Company
Subscription by existing shareholders & core connected persons provided that the public float, free float and share allocation requirements under MBLR8.08(1), 18C.08 and 18C.10 are satisfied ³³	Exiting Shareholder holding <10% shares	Can either be cornerstone or placee tranche. Applicant, sponsor and overall coordinator to confirm no preferential treatment has been given to such existing shareholders (except guaranteed entitlement at IPO price in case of cornerstone investment)	
	Existing Shareholder holding ≥10% shares	Only cornerstone tranche	
	Core connected person	Permissible for listing under Ch 18C, which would otherwise be prohibited under MBLR9.09. Waiver will need to be sought, which will usually be granted by SEHK	

Note 3:³⁴

- **“independent price setting investors”** means (i) Institutional Professional Investors and (ii) other investors with asset under management or investment portfolio size of ≥HK\$1 billion, but excludes (a) existing shareholders and their close associates; and (b) core connected persons.
- **“Institutional Professional Investors”** means “professional investors” under Securities and Futures Ordinance (Cap.571 of the Laws of Hong Kong) (SFO), except the persons falling under paragraph (j) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the SFO.

³³ GL Part I

³⁴ GL paragraphs 55 and 56

6. Post IPO Requirements

STCs will be subject to additional post-IPO requirements, which are summarised as follows:

			Commercial Companies	Pre Commercial Companies
Lock up Restriction on disposal of shares ³⁵	Controlling shareholders & Key persons : (i) Founders; (ii) executive directors, senior management; (iii) key personnel for technical operations and/or R&D; (iv) beneficiaries of weighted voting rights (WVR) under WVR structure; and (v) associates of above persons	Shares beneficially owned as disclosed in prospectus	12 months from date of listing	24 months from date of listing Upon removal of "Pre-commercial" designation, the lock-up expires on later of: (i) date of lock up expiry had it applied to be listed as Commercial Company; and (ii) the 30 th day after the removal of "Pre-commercial" designation had been announced
		Shares subscribed at IPO	If subscribe as cornerstone investors, lock up of 6-month from date of listing applies (same as other IPOs)	
	Pathfinder SII's being accounted for towards the Minimum Investment Benchmarks (see Part 4)	Shares beneficially owned as disclosed in prospectus	6 months from date of listing	12 months from date of listing Early expiry of lock-ups for controlling shareholders or key persons also applies to Pathfinder SII's
Disclosure obligations ³⁶	Interim Reports and Annual Reports		Total no. of shares held by each persons that are subject to lock-up for so long as such persons remain as shareholders, and whether such persons are employees of the issuer	
			N/A	Disclose R&D and commercialization activities, including : (i) development progress of products; (ii) timeframe and progress towards attaining Commercialisation Revenue Threshold; (iii) updates on financial estimates; (iv) R&D expenditures;

³⁵ MBLR10.07, 18C.13, 18C.14, 18C.23 Note 2, GL Part K

³⁶ MBLR18C.18, 18C.19, GL paras 82, 83

		Commercial Companies	Pre Commercial Companies
			(v) warning statement that it may not achieve revenue requirement
Other obligations ³⁷	Failure to maintain sufficient operations or assets	Suspend or Cancel listing within 18 months (same as other issuers)	Suspend or cancel listing within 12 months
	No material change of business: STCs shall not enter into transactions that would fundamentally change its principal business	12 months from listing (same as other issuers)	Applies so long as the company remains as Pre-commercial Company

7. Conclusion

- STCs, by their nature, bear characteristics that are different from other issuers. These include difficulties in reaching consensus on valuation given they usually operate in new markets that are in their early stages of development, or lack competent authorities to set external milestones and standards as a frame of reference. Viability of their products may also be a concern because the technologies STCs apply may be novel, and the deficiencies of capabilities may only be revealed later. This is particularly true for Pre-Commercial Companies.³⁸
- As a result, STCs present risks to public investors that do not apply, or do not apply to the same extent, to other issuers. The SEHK therefore seeks to mitigate the relevant risks with this separate listing regime under Ch 18C, which imposes additional listing and post-listing obligations on STC issuers.³⁹ With the introduction of Ch 18C, SEHK has opened up listing opportunities for a new category of companies in new technology and innovative sectors.
- NRF is named as the **FinTech and Digital Assets Firm of the Year** at The Asia Legal Awards 2023. With our well-recognised experience, we advise a wide range of clients on FinTech related legal matters. Please feel free to contact us if you have any queries on this new listing regime for STCs.

³⁷ MBLR13.24, 14.89, 18C.21

³⁸ Consultation Paper paragraphs 69 to 74, 79 to 84.

³⁹ Consultation Conclusion paragraph 29

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