

JML's Views on the New Board Consultation Paper

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Background Information

The Hong Kong Stock Exchange (HKEX) issued a Consultation Paper for "New Board" in June 2017. The HKEX proposed the creation of a New Board independent of the Main Board and the GEM to attract a wider variety of companies. The HKEX is seeking responses to the proposed New Board framework from various professional parties. As a corporate finance focused law firm, we submitted our responses to the Consultation Paper and shared our views with the HKEX and other professional parties. Below please find some of our views and suggestions in relation to the proposed framework of the New Board.

JML's View on the New Board

1. What positive impact would the New Board bring to Hong Kong's ability to attract additional new economy issuers to the Hong Kong market?

JML's View: To maintain its status as an international financial center and to keep its competitiveness, Hong Kong ought to seek to attract a more diverse range of companies to list in Hong Kong. The companies from New Economy industries are likely to take a leading role in the whole world's finance and economy in the coming decades. Therefore, it is highly preferable that Hong Kong should start thinking of how attract such kind of companies. Depending on the requirements for listing and the potential investors, the New Board may have a positive impact on Hong Kong's ability to attract additional New Economy issuers to our market.

2. Whether the targeted companies should be segregated onto a new board rather than being included on the Main Board or GEM?

JML's View: If less stringent requirements are going to be imposed on the targeted companies, we are of the view that they should be segregated onto a New Board,

so as to protect the existing integrity of the Main Board and GEM.

3. If a New Board is adopted, whether the New Board shall be specifically restricted to particular industries e.g. restriction to certain types of investor, financial eligibility etc.?

JML's View: Given the proposed structure of New Board PRO and New Board Premium, we suggest to have the New Board Premium introduced first. If companies that do not meet basic financial or track record criteria are allowed to be listed (i.e. the New Board PRO), it is suitable that it is only open to professional/institutional investors as these companies are at high risk and the general public may not be able to understand the risks behind for investing in this kind of companies. However, without the public or an appropriate sector of the public investing, it might be inconsistent with the true concept of a listed company. The New Board PRO could provide a platform for start-up companies and institutional investors to "pair up". If it is for this main purpose, the suggested creation of the Private Market would likely serve the purpose.

The New Board may be specifically restricted to particular industries of the New Economy to give it a clearer delineation from the existing boards.

4. If the New Board is adopted, what should be the proposed roles of GEM and the Main Board in the context of the proposed overall listing framework?

JML's View: The Main Board would be for the prominent and well-established companies with the commensurate requirements for listing. With lower listing requirements, GEM would be focusing on the medium-sized companies with good potential to grow. The New Board would be for those which have sound financial position but with non-standard governance structures (with adequate regulatory safeguards).

5. Whether the proposed criteria for moving from New Board PRO to the other boards are appropriate? Whether a public offer requirement be imposed for companies moving from New Board PRO to one of the other boards is appropriate?

JML's View: As mentioned above, we do not suggest to having the New Board PRO at this stage. Those companies could raise funds from private markets and eventually apply for listing on Main Board/GEM/New Board based on established criteria.

6. Whether the proposed financial and track record requirements which would apply to issuers on New Board PRO and New Board PREMIUM are appropriate? Whether the proposed admission criteria are appropriate considering the targeted investors for each segment?

JML's View: As mentioned above, we do not suggest introducing the New Board PRO as proposed at this stage. We agree with the proposed financial and track record requirements for New Board Premium as they are basically the same as those of the Main Board.

7. Whether companies listed on a Recognized US Exchange that apply to list on the New Board should be exempted from the requirement to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong?

JML's View: Companies listed on a Recognized US

Exchange that apply to list on the New Board can be exempted from the requirement to demonstrate that they are subject to shareholder protection standards equivalent to those of Hong Kong provided that certain basic safeguards are in place (such as core requirements enshrined in the joint policy statement regarding the listing of overseas companies issued by the SFC and HKEX on 27 September 2013). Companies listed elsewhere should also be similarly exempted so long as they maintain and make full and frank disclosure of their shareholder protection policy up to similar standards.

8. If you believe that the Exchange should impose mandatory safeguards for companies that list on the New Board with a WVR structure, what safeguards should be applied?

JML's View: The Exchange should impose additional safeguards, such as requiring listing applicants to set a limit to directors' and senior management's remuneration per year and to have elevated supervision by INEDs / independent shareholders over specific governance matters. Depending on each case of the companies and the relevant WVR structure, the Exchange may impose restrictions on the types of persons (e.g. directors and senior management) that can hold WVR, restrictions on the transfer of WVR to other persons, restrictions on voting on certain matters by the WVR, and dividing the voting of WVR and non-WVR into two groups and requiring majority voting in both groups for important matters.

***Jeffrey Mak Law Firm | J M L is a corporate finance law firm
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