



Hong Kong

September 2017

JOINT CONSULTATION CONCLUSIONS ON PROPOSED CHANGES TO HONG KONG LISTING REGULATION RELEASED

On 15 September 2017, the Securities and Futures Commission (**SFC**) and The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), released their Joint Consultation Conclusions on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation¹ (**Consultation Conclusions**). The Joint Consultation Paper² (**Consultation Paper**) was issued in June 2016. For a detailed summary of the Consultation Paper's proposals, please see Charltons' June 2016 newsletter³. Charltons submitted its response to the Consultation Paper⁴ in November 2016. For a discussion of Charltons' response, please see Charltons' November 2016 newsletter⁵.

Key Changes to the Hong Kong Listing Regime

After considering submissions from the public⁶, the SFC and the Exchange published their Consultation Conclusions. A new Listing Policy Panel will be established (instead of the proposed Listing Policy Committee) as an advisory,

consultative and steering body on listing policy with broader regulatory or market implications. The role of the Listing Committee under the Listing Rules will not change, and the Listing Regulatory Committee proposed in the Consultation Paper will not be established. The SFC, as part of its statutory oversight function, will conduct an enhanced, published supervisory audit or review of the Exchange's performance of its listing function. The Exchange will conduct a separate consultation in 2018 on the review of listing decisions.

Policy Development of the Hong Kong Existing Regime

In the Consultation Paper, there was a proposal to establish a Listing Policy Committee to decide on listing policy, replacing the Listing Committee as the oversight body of the listing function.

Market respondents raised concerns regarding the proposed Listing Policy Committee. In particular, there was a major concern that the SFC's participation in the Listing Policy Committee would merge the roles of the SFC and the Exchange. It was suggested in the Consultation Conclusions that such a body would enable a more efficient process for establishing policy proposals at an earlier stage thereby ensuring consensus between the SFC and the Exchange on policy decisions.

The Listing Policy Committee proposals in the Consultation Paper will be adopted with amendments. The body will be retitled the Listing Policy Panel which will be established as an advisory, consultative and steering body on listing policy with

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- <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201606.pdf>
- <https://www.charltonslaw.com/joint-consultation-paper-issued-on-proposed-changes-to-hong-kong-listing-regulation/>
- https://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/June2016/Documents/cp201606r_S1003.pdf
- <https://www.charltonslaw.com/hkex-sfc-joint-consultation-proposed-enhancements-to-the-stock-exchange-of-hong-kong-limiteds-decision-making-and-governance-structure-for-listing-regulation/>
- <https://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/June2016/cp201606r.htm>

broader regulatory or market implications. The Listing Policy Panel will be constituted by memorandum of understanding arrangements, rather than being a formal committee under the Exchange or the SFC. The terms of reference of the Listing Policy Panel will set out administrative arrangements concerning the convening and conduct of meetings, and their frequency.

The Listing Policy Panel will meet regularly, serving as a focal point for discussions of listing policy with broader regulatory or market issues. Most importantly, the Listing Policy Panel will have no rule-making powers, so that its advice or recommendations will have no binding effect on the organisations represented on the panel.

Any member of the Listing Policy Panel may suggest agenda items for discussion by the panel. Agenda issues may include matters affecting the functions of the constituent organisations, including the SFC, the Exchange (through the Listing Committee) and the HKEX. Prior to a Listing Policy Panel meeting, its secretariat will discuss the proposed agenda with the SFC and the Listing Committee Chairperson and Deputy Chairpersons. The Listing Policy Panel may request the Listing Department to provide a detailed proposal on any of those agenda items.

It is expected that the Listing Department will consult with the Listing Policy Panel from an early stage on any proposed Listing Rule amendments or other policy proposals. Although the Listing Policy Panel's recommendations are not binding, it is expected that the Listing Department will give such recommendations due consideration. The Listing Committee Chairperson will consult with the Listing Committee as a whole so as to represent their views at Listing Policy Panel meetings. The chairperson will communicate the content of Listing Policy Panel discussions to the Listing Committee.

In the case of sufficiently advanced proposals which are likely to be of interest to the Listing Policy Panel, approval will be first sought from the Listing Committee, and where necessary, approval by the Exchange's board, and followed by approval by the SFC's board. There will be a written record of views, advice or recommendations of Listing Policy Panel members, which will be communicated to the Listing Committee, the Exchange's board and the SFC's board.

Listing Policy Panel members will attend meetings as representatives of their respective organisations.

The Listing Policy Panel will comprise ten persons representing the bodies currently involved in policy-related decisions: the Chairperson and two Deputy Chairpersons of the Listing Committee, the Chief Executive of the HKEX, the Chairperson of the Takeovers Panel, the Chief Executive Officer (**CEO**) of the SFC, the Executive Director of the SFC's Corporate Finance Division and another senior executive nominated by that Executive Director, two non-executive Directors from the HKEX's board and two non-executive Directors from the SFC's board.

The views of the Listing Committee (including any differing views among Listing Committee members) will be represented by the Listing Committee Chairperson and Deputy Chairpersons, whilst the broader interests of the HKEX will be represented by the non-executive Directors of HKEX and the HKEX Chief Executive. The views of the SFC (including contributions from various SFC divisions) will be represented by the non-executive Directors and CEO of the SFC.

The Listing Policy Panel will meet regularly and on an ad hoc basis as required. The CEO of the SFC and the Listing Committee Chairperson will take turns to serve as chairperson of Listing Policy Panel meetings. The Head of Listing will function as the secretariat for the Listing Policy Panel and will attend Listing Policy Panel meetings.

A summary of the Listing Policy Panel's policy work and recommendations will be made publicly available on the individual websites of the SFC and the Exchange.

The formation of the Listing Policy Panel will not limit the SFC's powers to direct the Exchange to make or amend Listing Rules pursuant to section 23 of the Securities and Futures Ordinance (Cap. 571) (**SFO**), and to issue statutory rules concerning listing matters under section 36 of the SFO, after consulting with the Financial Secretary and the Exchange. Nor will the creation of the new Listing Policy Panel affect the Exchange's power to make Listing Rules in accordance with section 23 of the SFO, subject to the SFC's approval under section 24. Further, the Listing Committee will continue with its current role under the Listing Rules.

Listing Decisions

In the Consultation Paper, there was a proposal to establish a Listing Regulatory Committee to decide on matters in relation to initial public offerings (**IPOs**) and post-IPO matters that have suitability concerns or broader policy implications. Following

the consultation process, the SFC and the Exchange have decided not to establish the Listing Regulatory Committee. Instead:

- the SFC will engage in targeted intervention at an early stage in more serious listing matters that fall within the scope of the Securities and Futures (Stock Market Listing) Rules (Cap. 571V) (**SMLR**) or under the SFO more generally;
- the Exchange will continue to make decisions under its Listing Rules, including decisions on suitability for listing; and
- the SFC will focus its manpower on listing applications that are most applicable to its statutory goals. The Exchange will act the primary front-line regulator and will continue to be the primary contact point for all listing applications excluding where concerns are raised by the SFC under the SMLR. The SFC, in discharging its supervisory function, will assess the Exchange's overall performance in carrying out this aspect of its listing function (see 'Oversight of the Listing Function' below).

Hong Kong IPO Applications

The existing procedures will continue to apply to Hong Kong IPO applications which will be received by the Exchange and filed with the SFC. The Exchange will process and vet such applications under the usual procedures.

An important development is that in vetting Hong Kong IPO applications, the SFC will no longer review and comment on a listing application once it is determined that the case does not raise concerns under the SMLR.

In all cases where a "letter of mindedness to object" (**LOM**) is or is likely to be issued, the SFC will discuss its concerns directly with the applicant and its advisers.

Where the SFC is of the opinion that it is more likely than not that, given the known facts and circumstances, an objection would be raised under the SMLR, it will promptly issue the applicant an LOM, including detailed reasons for the SFC's concerns. Before issuing an LOM, the SFC will canvass with the applicant its concerns and potential grounds for issuing an LOM, and may require further clarification from the applicant. The SMLR specifies various time periods in which the SFC may make requests for information, LOMs and objection notices.

The SFC and the Exchange will coordinate and cooperate in the listing process by keeping each other informed of their respective comments and queries on a listing application and their discussions with the applicant and its advisers, including supplying each other with all relevant correspondence.

The SFC will notify the Listing Department as soon as practicable of their intention to issue an LOM, including the relevant grounds. Similarly, the Listing Department will notify the SFC as soon as practicable where there are potential grounds for rejecting a listing application.

The SFC will notify the Listing Department and the applicant as soon as practicable where issues raised in an LOM have been addressed satisfactorily. Similarly, the Listing Department will notify the SFC as soon as practicable where potential issues that may lead them to reject a listing application have been addressed satisfactorily.

Where the SFC issues an LOM, the Exchange will continue to have the discretion to suspend, resume or continue its own vetting process irrespective of whether the SFC's concerns in the LOM have been addressed.

Where the SFC is of the opinion that an applicant's submission(s) in response to the LOM are inadequate, it will issue a final decision notice (**FDN**) under the SMLR, which is reviewable by the Securities and Futures Appeal Tribunal (**SFAT**).

Under the SFC's new approach to performing its dual-filing function, it will provide its concerns under the SMLR as well detailed reasons directly to the applicant.

Whereas the Exchange has sole responsibility for interpreting the Listing Rules, including the "suitability" requirement, it is the SFC that will deal with the grounds for objection under the SMLR.

FDNs issued pursuant to the SMLR will be routinely published by the SFC on its website. The SFC has the discretion to publish an FDN either on an anonymised basis or on a delayed basis where disclosure of the issuer's identity would be unduly prejudicial to its interests or the decision is price sensitive.

Although SFC staff may assist in pre-IPO enquires particularly in relation to potential concerns under the SMLR, this should not be a routine practice or otherwise it may create a parallel, duplicative application process.

Where a pre-IPO enquiry is directed to the SFC in relation to a Listing Rule issue, the SFC will refer the potential applicant to the Listing Department. Similarly, where a pre-IPO enquiry directed to the Exchange relates to an SMLR issue, the Listing Department will refer the potential applicant to the SFC.

The diagrams (sourced from the Consultation Conclusions) illustrating the SFC's previous and new practices in relation to the processing of IPO applications can be found on the following two pages.

Post-IPO Matters

Whereas the Exchange is a regulator for matters prescribed by the Listing Rules, which do not have statutory effect, the SFC performs its functions pursuant to the SFO and the SMLR, which have the force of law and a broader jurisdiction.

The Consultation Conclusions state that the SFC has been engaging in targeted, early intervention to carry out its statutory functions regarding post-IPO matters. The Consultation Conclusions further state that the SFC has a critical role in regulating directly listing matters that fall within the scope of the SMLR or the SFO. The SFC has a number of powers under the SFO, and may use its cooperation arrangements with the China Securities Regulatory Commission to procure regulatory assistance in the Mainland to carry out its statutory functions.

The Exchange has an ongoing responsibility for making decisions under its own Listing Rules in relation to post-IPO matters. The Exchange is responsible for administering, monitoring and taking action to enforce compliance by listed issuers and other relevant persons with its Listing Rules.

Review of Hong Kong Listing Decisions

It was proposed in the Consultation Paper that a proposed Listing Regulatory Committee would replace the Listing (Review) Committee as the review body of the Listing Committee's decisions, and a proposed Listing Regulatory (Review) Committee would replace the Listing Appeals Committee as the Exchange's final review body.

There will be a separate consultation in 2018 concerning a proposal to establish an independent committee(s) composed entirely of outside market participants to replace the Listing (Review) Committee and the Listing Appeals Committee. No current Listing Committee members, or SFC or HKEX representative would be members of such proposed

independent committees. Under the proposal, any newly established review committee would be independent from the underlying decision-making body.

In addition, there will be a separate consultation by the Exchange concerning the Listing Department's right to seek review of the Listing Committee's decision where the Listing Committee overturns, modifies or varies a Listing Department decision in relation to listed issuers.

In the meantime, the Listing (Review) Committee, the Listing Appeals Committee and other aspects of the current system for the review of listing decisions will remain unchanged.

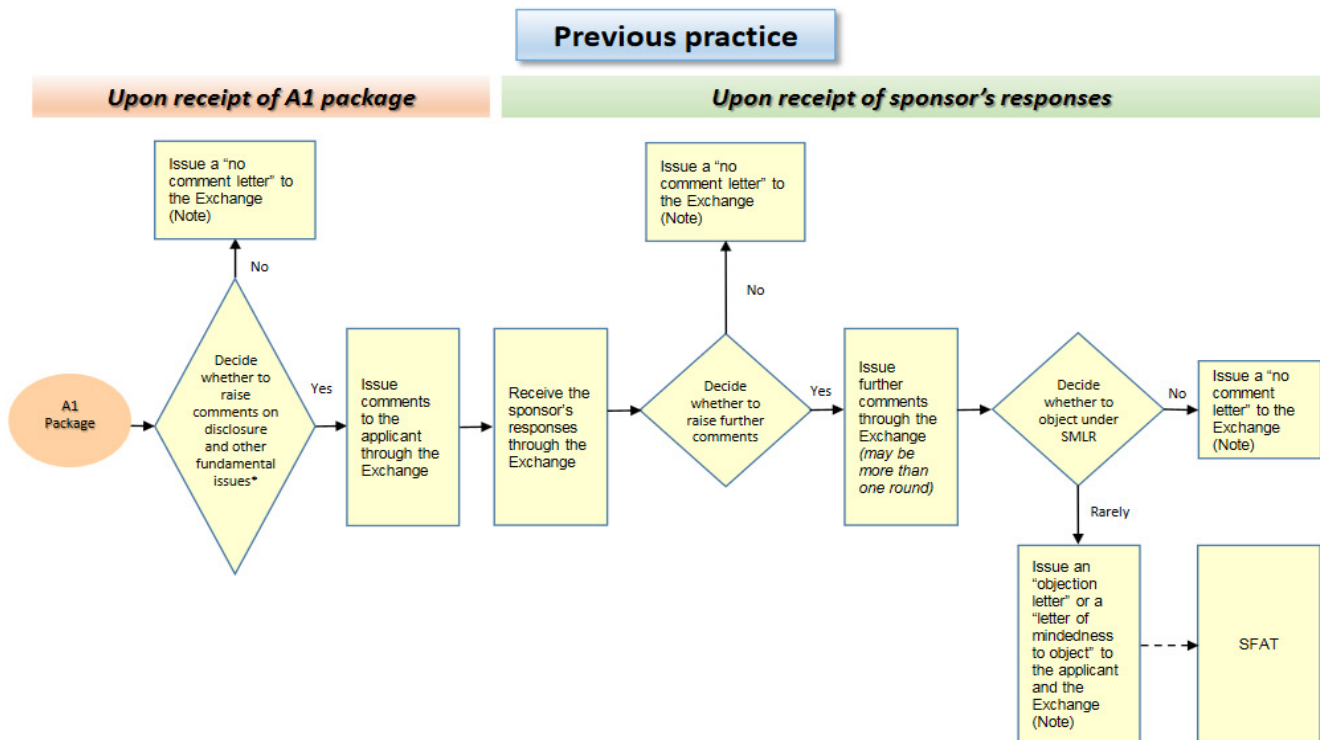
Oversight of the Hong Kong Listing Function

In the Consultation Paper, it was proposed that the Listing Policy Committee would replace the Listing Committee as the body responsible for overseeing the listing function and the Listing Department's performance in listing regulation, and that the Listing Policy Committee would have primary responsibility for the appraisal of the Listing Department's senior executives (although their compensation would continue to be determined by the HKEX's Remuneration Committee taking into account the Listing Policy Committee's assessment).

The SFC has an oversight function as the statutory regulator of The Stock Exchange of Hong Kong Limited (Exchange) and the Hong Kong Exchanges and Clearing Limited (HKEX). Under section 5(a)(b) of the SFO, it has a function to supervise, monitor and regulate the activities carried on by the Exchange (a recognized exchange company) and by the HKEX (a recognized exchange controller).

The SFC and the Exchange are of the view that it would be better for the SFC to enhance its supervisory function of auditing or reviewing the Exchange's performance of its listing function. There will be a focus on:

- whether the Exchange, in performing its listing regulatory function, has properly discharged its duties under the SFO, including an assessment of the Exchange's functions in relation to and enforcement of the Listing Rules;
- the adequacy of the Exchange's systems, processes, procedures and resources for carrying out its listing function; and

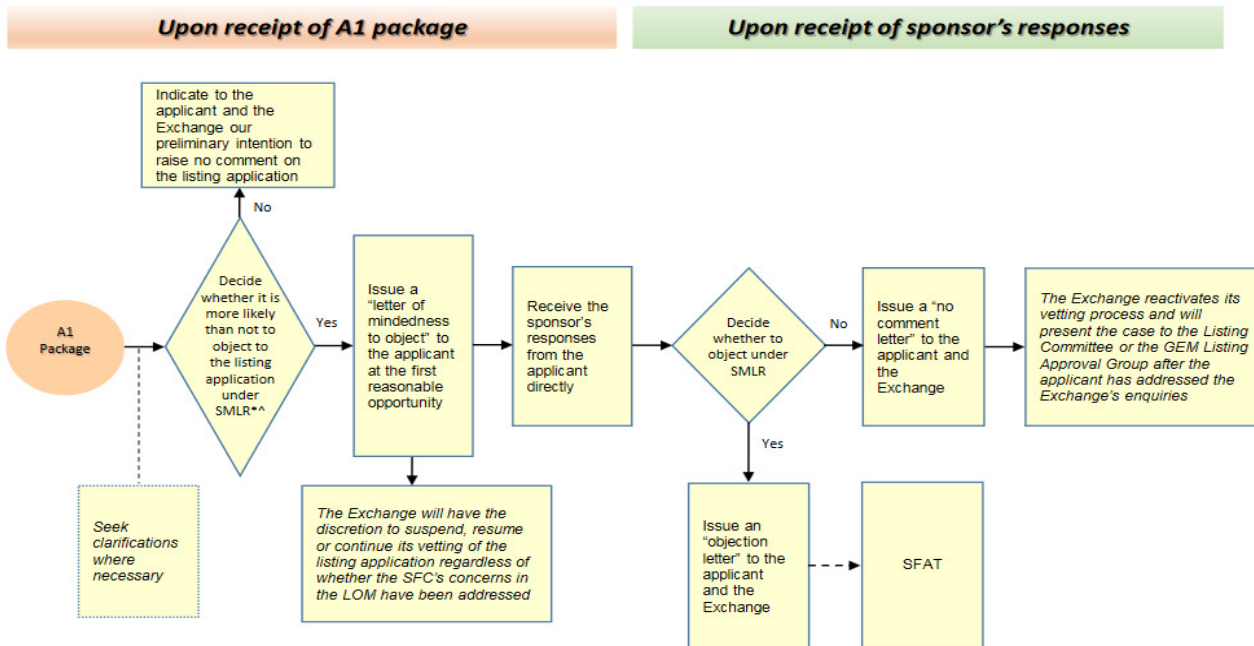


* The application proof should be substantially complete with sufficient information for an informed assessment.

Note: In general, the Exchange will not present a listing application to the Listing Committee or the GEM Listing Approval Group for approval until the SFC has issued a "no comment" letter.

Source: SFC and HKEX, Joint Consultation Conclusions on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation, September 2017 <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201606cc.pdf>.

New practice



* The application proof should be substantially complete with sufficient information for an informed assessment.
 ^ Prior to issuing an LOM, when the SFC staff see potential grounds for issuing a LOM but require further clarification from the applicant, they will directly ask the applicant for the necessary information.

Source: SFC and HKEX, Joint Consultation Conclusions on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation, September 2017 <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201606cc.pdf>.

- the effective management of conflicts of interest within the Exchange, arising from its dual capacity as a regulator and a for-profit organisation.

The SFC's supervisory audit or review reports will be published periodically.

Further Consultation

Publication of Hong Kong Listing Decisions

Under the separate consultation, the Exchange will propose that any new independent review committee(s') decisions, including their reasons, would be routinely published.

Disciplinary Matters

The Exchange will undertake a separate consultation on its disciplinary powers and sanctions. There has been an issue that for legal and technical reasons, the Exchange has not imposed severe sanctions. Both the SFC and the Exchange consider that the manner in which the Exchange's disciplinary proceedings are conducted should take into consideration the severity of the penalties that the Exchange could impose.

The proposed Listing Disciplinary Chairperson Group will not be established. The SFC will audit or review the Exchange's enforcement of compliance with the Listing Rules (see 'Oversight of the Listing Function' above).

Hong Kong Listing Committee Members: Composition and Tenure

The Listing Committee's role under the Listing Rules will remain unchanged. The HKEX Chief Executive will continue to be an ex officio member of the Listing Committee. It had been proposed in the Consultation Paper that the Chief Executive would cease to be a member and would instead become a member of the Listing Policy Committee.

In the future, the HKEX Chief Executive will attend Listing Committee meetings as a non-voting member where listing policy matters are reviewed (mainly quarterly policy meetings), but will not attend Listing Committee meetings concerning individual cases. The Listing Committee may invite the Listing Policy Panel to attend individual listing policy meetings.

In relation to an issue raised in a response to the Consultation Paper, namely the tenure of Listing Committee members, the SFC and the Exchange consider that there should be a more frequent rotation of Listing Committee members so as to enhance the system of governance.

Summary of the Main Consultation Proposals and Conclusions

The following table is a summary of the main consultation conclusions sourced from Appendix 1 of the Consultation Conclusions.

	Proposals	Adopt?	Way forward
Policy Development	1. Establishment of the Listing Policy Committee (LPC) as a new Exchange committee to initiate, steer and decide listing policy.	Yes, with modification	The Listing Policy Panel (LPP) will be established as an advisory, consultative and steering body on listing policy with broader regulatory or market implications. The LPP will be formed outside of the Exchange and the SFC through MOU arrangements.
	2. Composition of LPC to include Chair and two Deputy Chairs of the Listing Committee (LC); Chief Executive of HKEX; Chair of Takeovers Panel; CEO of the SFC; and two senior executives of the SFC.	Yes, with modification	The LPP will have the same composition as proposed for the LPC, plus two non-executive Directors from HKEX's board and two non-executive Directors from the SFC's board.
	3. Chief Executive of HKEX (HKEX CE) will be a member of the LPC and will cease to be a member of the LC.	Yes, with modification	HKEX CE will remain on the LC and will attend LC meetings as a non-voting member representing the HKEX's board only where listing policy matters are discussed (primarily quarterly policy meetings). HKEX CE will not attend LC meetings on individual cases.
Listing Decisions - IPO applications and Post-IPO matters	4. Establishment of the Listing Regulatory Committee (LRC) as a new Exchange committee to decide cases with suitability concerns or broader policy implications.	No	LRC will not be established. Instead: <ul style="list-style-type: none"> The SFC has been engaging and will continue to engage in targeted intervention at an early stage, which will increase its direct presence in more serious listing matters that fall within the scope of the SMLR¹ or the SFO more generally. The Exchange will continue to make all decisions under its Listing Rules (including decisions on suitability of listing).
	5. SFC will not issue a separate set of comments on IPO applications as a matter of routine.	Yes, with modification	SFC staff will cease to review and comment on a listing application once they determine that the case does not raise concerns under the SMLR.

Review of Listing Decisions	6. The Listing (Review) Committee will be replaced as the review body of LC's decisions; the Listing Appeals Committee (LAC) will be replaced as the final review body within the Exchange.	Subject to further consultation	The Exchange will conduct a separate consultation in 2018 to replace the Listing (Review) Committee and the LAC with independent committees solely comprising outside market participants with no current LC members or representatives of the SFC or HKEX.
	7. Establishment of the Listing Regulatory (Review) Committee (LRRC) as an Exchange committee.	No	LRRC will not be established.
	8. For matters involving listed issuers, if the LC overturns, modifies or varies the LD's decision, the LD will have the right to seek review of the LC's decision.	Subject to further consultation	The Exchange will conduct a separate consultation on the review system for decisions of the LC as described in the Conclusions Paper.
	9. The Listing Rules to be amended to codify paragraph 10.6 of the 2003 Listing MOU (i.e. among others, that the LC and the LAC shall, if requested by the SFC, consider and review any matter, including a decision by the respective committee itself) but the reference to the LAC shall be deleted.	Yes	Adopt as proposed.
Disciplinary matters	10. Proposals relating to disciplinary matters including the establishment, constitution and processes of the Listing Disciplinary Chairperson Group (LDCG), Listing (Disciplinary) Committee (LDC), Listing (Disciplinary Review) Committee (LDRC).	No	Proposed new disciplinary committees will not be established. The SFC's enhanced supervisory audit of the Exchange's performance in listing regulation will cover its enforcement of compliance with the Listing Rules. The Exchange will conduct a further consultation on its disciplinary powers and sanctions in due course.
Oversight of Exchange	11. LPC to be the body responsible and accountable for oversight of the listing function and for appraising senior executives of the LD in the performance of their regulatory responsibilities.	No	SFC will conduct an enhanced, published supervisory audit of the LC and LD, focusing on whether the Exchange, in performing its listing function, has discharged its statutory duties under the SFO.

Publication of Decision	12. Publication of reasoned decisions by LRC, LRRC, LDC and LDRC.	Subject to further consultation	The Exchange will, as part of a separate consultation, consult on whether decisions made by the proposed new review committees of the Exchange should be routinely published on a reasoned basis. The SFC will publish its final decision notices issued under the SMLR.
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1. The grounds for the SFC to raise objection to a listing application are set out in section 6(2) of the SMLR.

Source: SFC and HKEX, Joint Consultation Conclusions on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation, September 2017 <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201606cc.pdf>.

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