



Hong Kong

October 2018

LISTING COMMITTEE REVIEW STRUCTURE UNDER CONSULTATION

The Hong Kong Stock Exchange (the **Exchange**) is consulting the public on proposed changes to the process and structure for reviewing decisions of the Exchange's Listing Committee.

The consultation's key proposals are:

- to permit only one level of review for Listing Committee decisions of "material significance" (including rejection of listing applications on suitability grounds and listing cancellation). The right to a further review of these decisions by the Listing Appeals Committee will be removed and that committee will cease to exist;
- to establish a new Listing Review Committee (**New LRC**) consisting entirely of outside market participants with no current Listing Committee members or representatives of Hong Kong Exchange and Clearing Limited (**HKEx**) or the Securities and Futures Commission (the **SFC**). This would replace the current Listing (Review) Committee and Listing (Disciplinary) Review Committee;
- routine publication of the New LRC's non-disciplinary decisions; and
- to codify the SFC's power to request a consideration or review of any matter or decision of the Listing Committee.

Details of the proposed changes are set out in the Consultation Paper on Review Structure in relation to Listing Committee

Decisions¹ (**Consultation Paper**) published on 10 August 2018. The consultation period will end on 12 October 2018.

Background

In June 2016, the SFC and HKEx published proposals² for a major revamp of the Exchange's decision-making structure which resulted in the establishment of the Listing Policy Panel to steer listing policy proposals and a greater role for the SFC in conducting enhanced published supervisory audits or reviews of the Exchange's performance of its listing function.

The June 2016 consultation also proposed a greater role for the SFC by including SFC representatives on two new committees of the Exchange: (i) one which would have been responsible (instead of the Listing Committee) for deciding listing applications involving questions of suitability or having broader policy implications; and (ii) a new listing review committee to replace the Listing Appeals Committee. Those proposals were not however adopted and it was decided that the listing review committee structure would be the subject of a separate consultation in 2018. That consultation is the subject of the Consultation Paper and this newsletter.

1 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>

2 SFC and HKEx. Joint Consultation Paper on Proposed Enhancements to the Stock Exchange of Hong Kong Limited's Decision-Making and Governance Structure for Listing Regulation. June 2016. <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/cp201606.pdf>

The Exchange's Current Decision-Making and Governance Structure

The Listing Committee

The Listing Committee is the 28-member review body for all decisions of the Listing Department. The Board of the Exchange delegated all its listing-related powers to the Listing Committee in order to separate the Exchange's commercial role from its regulatory role. Its main functions are to:

- oversee the Listing Department;
- provide policy advice to the Listing Department on listing matters and to approve amendments to the Listing Rules;
- take decisions of material significance for new applicants, listed issuers and individuals concerned (e.g. approving listing applications, listing cancellations and disciplinary matters); and
- act as a review body for decisions made by the Listing Department and by the Listing Committee.

According to the Consultation Paper, the Listing Committee acts as an independent administrator and advisory body for the Exchange. Its members include at least eight investor representatives, a balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants) and the Chief Executive of HKEx as an ex officio non-voting member. Regulatory decision making thus benefits from the broad market experience of the committee's members.

The Listing Review Committee and Listing (Disciplinary) Review Committee

Non-disciplinary matters can be referred to the Listing (Review) Committee for review, and disciplinary matters can be referred to the Listing (Disciplinary Review) Committee for review. Both committees consist of members of the Listing Committee who must not have participated in the initial decision or the first review by the Listing Committee.

Listing Appeals Committee

The Listing Appeals Committee is made up of the Chairman and two other members of the HKEx board of directors, and is the final review body for the decisions of the Listing Committee, Listing (Review) Committee and the Listing (Disciplinary Review) Committee concerning:

1. the termination of the role of an authorised representative of a listed issuer;
2. the rejection of an application for lifting the suspension of dealings in a listed issuer's securities, where the suspension has been in place for more than 30 consecutive days; and
3. **Matters of Material Significance**, which are:
 - the rejection of a new applicant's listing application solely on the basis of unsuitability for listing;
 - the cancellation of a listing; or
 - a decision imposing any of the following disciplinary sanctions:
 - a) a public statement involving criticism;
 - b) a public censure;
 - c) a ban on a professional adviser (or named individual employed by a professional adviser) from representing a specified party in relation to a stipulated matter before the Listing Division or Listing Committee for a stated period;
 - d) where a director of a listed issuer fails wilfully or persistently to discharge his responsibilities under the Listing Rules, a public statement that the Exchange is of the opinion that the director's retention of office is prejudicial to the interests of investors;
 - e) a suspension or cancellation of listing of a listed issuer's securities where the director remains in office after a statement pursuant to (d) above has been issued; or

- f) where a listed issuer fails wilfully or persistently to discharge his responsibilities under the Listing Rules, an order that the facilities of the market be denied to that issuer for a specified period, and a prohibition of dealers and financial advisers from acting for that issuer.

Proposal for a One-Level Review Structure

Most decisions of the Listing Committee are currently entitled to one level of review (by the Listing (Review) Committee or the Listing (Disciplinary Review) Committee), although decisions on Matters of Material Significance have a right to a further and final review by the Listing Appeals Committee. The Consultation Paper proposes that Listing Committee decisions on Matters of Material Significance will be subject to only one level of review by the new Listing Review Committee

The Consultation Paper presents the following main arguments for implementing only one level of review for all decisions:

1. the members of the Listing (Review) Committee and the Listing (Disciplinary Review) Committee are Listing Committee members. The Review Consultation Paper argues that a second level of review for Decisions on Matters of Material Significance would appear to contribute little to the decision-making process when the Listing Committee and Listing (Review) Committee or the Listing (Disciplinary Review) Committee have already found against the listing applicant or listed issuer;
2. with two levels of review, any matter of Material Significance must, in effect, be decided by three bodies making the same finding. The process is therefore weighted in favour of review applicants; and
3. subjecting decisions of Material Significance to two levels of review takes more time for decisions to become final.

Proposed Establishment of a new Listing Review Committee

The Exchange proposes to replace the Listing (Review) Committee, the Listing (Disciplinary Review) Committee and the Listing Appeals Committee (together the **Review Committees**) with just one review committee – the proposed new Listing Review Committee.

Given that the current Listing (Review) Committee and Listing (Disciplinary Review) Committee consist of members of the Listing Committee, and members of the Listing Appeals Committee are drawn from the Board of the HKEx, the Consultation Paper argues that there are potential concerns over the composition and independence of the Review Committees.

Independence of Current Review Committees

Although members of the Listing (Review) Committee and the Listing (Disciplinary Review) Committee are drawn from members of the Listing Committee, no member can participate in a review of a decision if he/she already participated in the initial decision or first review of that decision. However, it is possible for a member to participate in the decision of one case, and then participate in the review of a decision on a separate but similar case. Further, members who participate in a review must not have any conflict of interest in the case and a committee member will be disqualified if there appears to be a real possibility of bias on the part of that member.

Nevertheless, the Consultation Paper argues that the fact that two of the Review Committees comprise Listing Committee members, may create the perception that those Review Committees are not as independent as they could be. As for the Listing Appeals Committee, the Consultation Paper argues that the fact that its members are all members of the Board of HKEx may appear to defeat the purpose of the Exchange's delegation of its listing application approval function to the Listing Committee to address potential conflicts of interests. Allowing a body composed of HKEx board members to veto the Listing Committee's rejection of listing applications would appear to defeat the purpose of that delegation.

The Composition of Review Committees

The selection of members who participate in a decision or review of a decision could be said to be arbitrary in that it does not take into account members' knowledge, experience or specialisation. Members of the Listing (Review) Committee and the Listing (Disciplinary Review) Committee are therefore not necessarily more senior or experienced. This may result in the perception that a Review Committee that is reviewing a decision is less qualified than the body that made that decision in the first instance.

Composition of the New Listing Review Committee

To address the above concerns, the Exchange proposes to establish a new Listing Review Committee made up of at least fifteen individuals who are not current members of the Listing Committee or representatives of HKEx. Its members will be former members of the Listing Committee, although others with experience and expertise in Listing Rule matters will be eligible for appointment to the new committee. It is intended that the new Listing Review Committee should comprise at least four investor representatives and the remaining members should represent a balance of representatives of listed issuers and market practitioners. The Listing Review Committee would be nominated by the Listing Nominating Committee and would need a quorum of five members present. Their term of appointment will normally be approximately twelve months, although the term of office of the first Listing Committee Review Committee is expected to be fifteen months. The maximum period of office would be six consecutive years. Members would be compensated with an honorarium for attending and preparing for review hearings. It is proposed that members should be provided with regular briefings on the latest policy and approach of the Listing Committee.

Proposals for New Listing Review Committee

The proposals relating to the new Listing Review Committee (as a replacement for the current Listing (Review) Committee and Listing (Disciplinary Review) Committee) are as follows:

1. *Pooling arrangement*

A pooling arrangement will be put in place so that when a Listing Committee decision is to be reviewed, members from the new Listing Review Committee will be drawn to hear the review.

2. *Chairmanship*

Review hearings of the new Listing Review Committee will normally be chaired by a member of a pool of chairmen appointed from the members of the new Listing Review Committee (and nominated by the Nominating Committee).

3. *Decisions*

Like the Review Committees it replaces, decisions of the new Listing Review Committee will not be binding on it or on any other committees.

4. *Hearings*

Cases will be heard and decided afresh after all previously submitted evidence and arguments and any additional evidence and information have been considered.

If, however, the proposal to reduce the level of reviews of decisions on Matters of Material Significance to one does not proceed, the committee replacing the Listing Appeals Committee as the second review body would be:

1. made up of members drawn from the new Listing Review Committee provided they did not participate in the first review and have no conflict of interest; and
2. chaired by a member of a separate chairperson panel of at least three experienced professionals who are proposed to be persons who are retired from their profession.

The Consultation Paper also claims that the new Listing Review Committee would reduce the work burden on the members of the Listing Committee and allow them to better focus on listing policy matters and first instance decisions in relation to approving listing applications, cancelling listings and imposing disciplinary sanctions.

Listing Review Committee Decisions on Non-Disciplinary Matters will be Published

Reviews of non-disciplinary decisions are generally not published by the Exchange, although the listed issuers involved have to disclose decisions that may affect the price of their listed securities as inside information. The Exchange may publish listing decisions to highlight its interpretation of the Listing Rules in particular situations, but the parties involved and the decision-making body (which could be the Listing Department, Listing Committee or a Review Committee) would not be specified. Listing decisions are not binding on the Exchange. The Exchange publishes disciplinary matters in news releases only if public sanctions are imposed.

The Exchange proposes that the future Listing Review Committee would routinely publish its decisions on non-disciplinary matters. If the two-level review structure is retained, the decisions of both review bodies on such matters would be published after the second review is completed. The Consultation Paper states that published decisions would be detailed enough for readers to understand the underlying issues, but not as exhaustive as a legal judgement issued by a court of law. The Exchange proposes that review decisions

may be published on a “no-names” basis where disclosure of the relevant party’s identity may be unduly prejudicial to their interests. Publication could also be delayed if the review decision is price sensitive or contains price-sensitive information.

SFC Power to Request Review of Decisions to be Codified in Listing Rules

The Consultation Paper proposes to amend the Listing Rules to codify the SFC’s power to request a consideration or review of any matter, including decisions of the Listing Committee, which is currently provided by paragraph 10.6 of the Memorandum of Understanding signed by the Exchange and the SFC (**MOU**). That consideration or review would be conducted by the proposed new Listing Review Committee. However, the SFC will not request reviews of the Listing Review Committee’s decisions since that committee will be independent of the Listing Committee and will be the final review body of the Listing Committee’s decisions. An addendum to the MOU would reflect this arrangement. Reviews that are requested by the SFC would be heard afresh.

The Listing Rule provisions will include the following:

1. Written Reasons

The SFC will be able to request written reasons for any decision of the Listing Committee or new Listing Review Committee if no reasons were provided and the relevant party did not request written reasons within the time provided for in the Listing Rules. The SFC will be able to make that request within seven days after the time for the relevant party making a request for written reasons has expired. Written reasons requested by the relevant party or the SFC, will be provided to the relevant party, the SFC and the Listing Department.

2. Requesting a Review

The SFC will be able to request a review within seven business days of the decision being made or, if the SFC or the relevant party to the matter requested written reasons for the decision, within seven business days after those reasons are provided.

3. Written Submissions

The new Listing Rule provisions would allow the Listing Department, the SFC and the relevant party to make submissions to the review body making the decision.

4. Right to Further Review

A further and final review may be requested by the relevant party when a review requested by the SFC overturns, modifies or varies the original decision. Further reviews would be heard by a different group of members of the new Listing Review Committee who do not have a conflict of interests in the case and did not participate in the first review by the new Listing Review Committee.

5. Publication of Decisions

The published non-disciplinary decisions of the new Listing Review Committee will include reasons addressing any SFC submissions. Where the SFC requests a review of a Listing Committee decision on a non-disciplinary matter and the relevant party requests a further review, both the decision for the first review requested by the SFC and the decision for the further review requested by the relevant party would be published.

Responding to the Consultation

The Consultation Paper sets out the following questions for respondents to answer:

1. Do you agree to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review?
2. Do you agree with:
 - a) the proposal to establish a new independent review committee to replace the Listing (Review) Committee and the Listing (Disciplinary Review) Committee respectively and to hear reviews currently conducted by them?
 - b) the size and composition of the new independent review committee (including the mix of members’ representation)?

3. If the Exchange decides to retain two levels of review for decisions of Material Significance made by the Listing Committee, do you agree that the Listing Appeals Committee is to be replaced by a review committee with members being drawn from the proposed new independent review committee and chaired by a member of a separate chairperson panel? Are there any additional processes or safeguards that you would suggest to enhance this aspect of the review structure for such decisions of Material Significance?
4. Do you agree with the proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters on the basis described in the consultation paper?

Responses should be submitted by 12 October 2018 using one of the following methods:

Mail or hand delivery to Hong Kong Exchanges and Clearing Limited

10/F, One International Finance Centre

1 Harbour View Street

Central

Hong Kong

Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions

Fax to (852) 2524 0149

E-mail to response@hkex.com.hk

Please mark in the subject line:

Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions

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