HK SFC Consults on Proposed Amendments to HK Securities and Futures (Stock Market Listing) Rules

The Securities and Futures Commission (**SFC**) of Hong Kong released a comprehensive SFC Consultation Paper on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules (**SFC Consultation Paper**) on 28 March 2025 setting out its proposed amendments to the Securities and Futures (Stock Market Listing) Rules (Chapter 571V of the Laws of Hong Kong) (**SMLR**). The overarching aims of the amendments are to allow the SFC to intervene early to deal with abusive practices and to improve transparency through stricter disclosure rules for companies applying for listing (**HKEX-listing applicants**) and companies listed on the Stock Exchange of Hong Kong Limited (the **HKEX**) (**HKEX-listed companies**). The SFC sees these amendments as necessary to address gaps and operational restrictions under the SMLR to improve operational efficiency. The main changes include:

- a provision explicitly allowing the SFC to impose ongoing requirements on listing applicants after HKEX-listing so that the SFC can allow the listing application to proceed, subject to a condition that the HKEX-listed company complies with specific obligations after listing;
- a provision expressly allowing the SFC to impose post-listing conditions on HKEX-listed companies as an alternative to suspending trading in their shares;
- streamlining the procedures for the resumption of dealings to shorten trading suspension periods; and
- granting HKEX-listed companies a right to a full merits review by the Securities and Futures Appeals Tribunal (**SFAT**) of SFC decisions to impose conditions on HKEX-listed companies, suspend trading in their shares or cancel their listing.

According to the Consultation Paper, the proposed amendments target serious misconduct to prevent financial harm. The SFC thus expects these amendments to have minimal impact on HKEX-listed companies that comply with their disclosure obligations.

The cut-off date for responding to the consultation is 23 May 2025. Comments can be submitted online via this link.

Securities and Futures (Stock Market Listing) Rules (Chapter. 571V of the Laws of Hong Kong) (SMLR)

The SMLR came into effect on 1 April 2003 and gives the SFC various tools to deal with false or misleading disclosures by HKEX-listing applicants and HKEX-listed companies that the SFC views as being potentially detrimental to the investing public or public interest. The SMLR complement the non-statutory Rules Governing the Listing of Securities on the HKEX (the **HKEX Listing Rules**) under Hong Kong's listing regime.

The SFC and HKEX play separate and distinct roles in regulating initial public offerings (**IPOs**) and the conduct of HKEX-listed companies. The SFC has statutory powers under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the **SFO**) to investigate, intervene in and enforce instances of fraud and serious misconduct which align with its principal role, which is to protect investors' interests and ensure market efficiency. The HKEX, on the other hand, is the primary front-line regulator of HKEX-listed companies and is responsible for enforcing the HKEX Listing Rules and taking disciplinary actions where the HKEX Listing Rules are breached.

In 2017, the SFC adopted what it called a "front-loaded approach" to regulation, which involves using its powers under the SMLR to intervene at an early stage in what the SFC regards as serious cases. Its aim in doing so is to prevent or minimise imminent financial harm to investors. It applies this approach when, in the view of the SFC, there is a clear indication of potential financial loss due to suspected fraud or misconduct. If financial loss has already occurred, the SFC generally takes enforcement action under the SFO, which may include actions under the SMLR.

The SFC considers that early intervention helps to minimise potential investor losses and enhance market integrity and investor confidence. In the past, the SFC has intervened in numerous post-IPO transactions, leading to terminations or material restructurings that the SFC considered to be more favourable to public investors. In cases where transactions were terminated, the HKEX-listed companies or HKEX-listing applicants concerned had failed to provide satisfactory responses to the SFC's inquiries. Between April 2017 and March 2024, the value of listing applications and corporate transactions that did not proceed or were restructured was approximately HK$48 billion, which the SFC considers to equate to the potential financial loss the investing public would have suffered, if the SFC had not intervened.

In August 2023, the Hong Kong Government established the Task Force on Enhancing Stock Market Liquidity (the **Task Force**) to review factors affecting stock market liquidity and propose improvements. The Task Force directed the SFC to conduct a review of the SMLR to determine the existing rules' adequacy in effectively safeguarding the interests of public investors and to identify gaps and limitations that may negatively impact the SFC's efficiency and transparency in tackling misconduct.

Current SMLR and the SFC's Proposed Amendments

1. HKEX IPOs

The SFC reviews all Hong Kong IPO applications to identify any concerns under the SMLR and/or the SFO and ensure the adequacy of HKEX-listing applicants' disclosures to enable investors to understand their businesses and make informed investment decisions. In vetting a listing application, the SFC can ask the HKEX listing applicant for additional information under section 6(1) of the SMLR, and if, after considering the information provided in response to that request, the SFC identifies potential grounds for objecting to the applicant's listing under section 6(2) of the SMLR, it can ask for further information and clarification from the HKEX listing applicant. If the applicant satisfactorily addresses the concerns, the SFC will indicate that it has no further comments. Otherwise, the SFC may object to the listing under section 6(2) if:

- the listing application does not comply with the HKEX Listing Rules or applicable laws;
- the application is false or misleading as to a material fact (including through the omission of a material fact);
- the listing applicant has failed to comply with an SFC request for more information made under section 6(1); or
- it would not be in the public interest for the relevant securities to be listed.

Section 6(3)(b) of the SMLR also allows the SFC to impose conditions on a listing application, but does not explicitly provide for these conditions to continue post-listing.

An example provided in the SFC Consultation Paper relates to an HKEX listing applicant whose former management were major pre-IPO shareholders who had been convicted of financial crimes but continued to influence the company post-listing by virtue of their relationships with its management, despite conditions imposed pre-listing. The SFC noted in the Consultation Paper that even if it imposed a condition under section 6(3)(b) of the SMLR to restrict the company's former management from participating in its affairs prior to listing, there was nothing to prevent the company from appointing members of its former management as directors after listing.

The SFC also noted that there had been a number of cases where the SFC had identified concerns at the listing application vetting stage that later became the subject of SFC enforcement actions. These cases included, for example, a lack of a robust and bona fide share placement and price discovery processes and/or unusually high commissions paid to underwriters and placing intermediaries relative to the funds raised. In some of these cases, it was subsequently discovered that a portion of the underwriting commission, listing proceeds or listing expenses, was used to partially finance arrangements intended to artificially satisfy the initial listing requirements under the HKEX Listing Rules regarding sufficient investor interest, minimum market capitalisation and adequate spread of shareholders, or to perpetrate ramp and dump schemes.

The SFC and HKEX issued a Joint Statement on IPO-related Misconduct in 2021 on their approach to addressing these issues. According to the SFC, these issues are often not detected because no immediate and targeted disclosure is required until the HKEX-listed company publishes its first full audited financial statements. By that stage, however, investors' funds are already involved and will inevitably be lost if the misconduct is not uncovered until the annual report's publication.

Proposed Express Provision Allowing Imposition of Continuing Conditions Applicable Post-listing (Section 6(3)(b) SMLR and New Section 6(3B) SMLR)

The SFC proposes adding a new section 6(3B) to explicitly allow the SFC to impose conditions to require enhanced disclosure by HKEX-listing applicants under section 6(3)(b) SMLR which apply on listing and continue to apply post-listing. The rationale is that these conditions could address concerns that warrant regulatory attention but would not constitute statutory grounds for the SFC to object to the listing application. If imposed, the listing application would be allowed to proceed on the condition that, after listing, the HKEX-listed company will be required to comply with certain obligations or undertakings imposed on the HKEX-listing applicant. If the HKEX-listed company breaches any of these conditions post-listing, the SFC would be entitled to take action against it.

According to the SFC Consultation Paper, the SFC anticipates that continuing conditions would generally be disclosure-based. For example, an HKEX-listing applicant might be required to: confirm that no undisclosed side agreements or arrangements have been or will be entered into between the HKEX-listing applicant or their controllers and capital market intermediaries; make timely announcements of any subsequent transactions between relevant parties; or disclose confirmations and transaction details of relevant subsequent transactions between the parties in the annual report for the first full financial year post-listing.

If the SFC intends to impose continuing conditions under section 6(3)(b) of the SMLR, it will be required to notify the HKEX-listing applicant of the SFC's concerns, request further information and allow the HKEX-listing applicant to address these concerns. The SFC would also be bound by the duty to act reasonably and proportionately when exercising its powers to impose continuing conditions.

In the SFC's opinion, this power could help improve public investor disclosures, and the SFC predicts that it may reduce vetting time for some applications, and also ensure that breaches of conditions after trading commences are actionable by the SFC.

2. Withdrawal of SFC Objection Notice under Section 6(2) SMLR

Proposed Introduction of New Section 6(2A) SMLR

Currently, the SFC cannot withdraw an objection to a listing notice issued under section 6(2) of the SMLR, which means that an HKEX listing applicant that has satisfactorily addressed concerns raised by the SFC has to reapply for listing. To remove the inefficiency caused by this situation and save costs for HKEX-listing applicants, the SFC is therefore proposing to introduce a new section 6(2A) to the SMLR which will allow the SFC to withdraw an objection notice issued under section 6(2) by giving notice to the HKEX listing applicant and the HKEX. The HKEX-listing applicant will then be able to simply proceed with its original listing application.

3. Post-IPO Matters

Under section 8(1) of the SMLR, the SFC has the right to direct the HKEX to suspend the listing of an HKEX-listed company's shares if it believes that any of the following situations exist:

- materially false, incomplete or misleading information has been included in any document issued in connection with a listing of securities on the HKEX or in any document issued by an HKEX-listed company;
- a trading suspension is:
    - o necessary or expedient to ensure the orderliness and fairness of HKEX's securities market; or
    - o in the interest of the investing public or the public interest, or appropriate for the protection of HKEX investors ; or
- an HKEX-listed company has breached any condition imposed by the SFC to allow it to resume trading after a suspension of trading under section 9(3)(c) of the SMLR.

The SFC notes in the Consultation Paper that it typically suspends trading in the shares of a problematic company only when it considers it necessary to protect investors from imminent financial loss. It seeks to balance the respective interests of the investing public and existing shareholders, to minimise the duration of the suspension, and to allow trading to resume as soon as the underlying issues are resolved.

When the SFC identifies a proposed corporate transaction that may require prompt intervention based on the criteria outlined under section 8(1) of the SMLR, it can ask the HKEX-listed company to respond to its initial concerns. This request typically includes asking for relevant records or documents and an explanation of those materials. The HKEX-listed company has the chance to address the SFC's concerns and submit any supporting documentation or clarification.

If the HKEX-listed company resolves the SFC's concerns to SFC's satisfaction, it can move forward with the transaction. However, if it proceeds without properly addressing the issues raised by the SFC, the SFC can take action under the SMLR. This could include ordering the HKEX to suspend trading in the company's shares under section 8(1) of the SMLR.

Proposed Introduction of New Section 7A SMLR to allow the SFC to Impose Post-listing Conditions instead of a Trading Suspension

The SFC proposes to introduce new section 7A to the SMLR to allow it to impose conditions on HKEX-listed companies which they must comply with if trading in their listed securities is to continue. The proposed section 7A would allow the SFC to impose conditions on an HKEX-listed company if the SFC believes that:

- some or all of the shareholders have not been given the information relating to the HKEX-listed company's business or affairs that is required for them to make informed investment decisions;
- the conduct of the HKEX-listed company's business has involved misconduct or dishonourable or improper practices towards the HKEX-listed company or all of any of its shareholders; or
- it is in the interest of the investing public or the public, or is appropriate for the protection of investors generally or of investors in HKEX-listed securities.

The SFC expects that the conditions it would impose post-listing would typically be disclosure-based. For example, the SFC might impose a condition requiring an independent valuation report to be produced where the SFC believes that an HKEX-listed company has not provided sufficient information regarding a proposed material transaction, or about its or the target's financial position or business, or believes that it has not conducted sufficient due diligence. The SFC might additionally require the HKEX-listed company to include all relevant information in a statement or circular to put shareholders in a position to make informed investment decisions.

In cases of serious corporate misconduct, the SFC may impose stricter conditions. For example:

- if an HKEX-listed company secretly invests IPO proceeds in an undisclosed wealth management product (contrary to the prospectus), the SFC may require it to publicly explain the discrepancy and justify the undisclosed investment;

- if a major shareholder has a recent criminal conviction (e.g., for theft or financial fraud), the SFC may:
    - o require disclosure of the criminal record if the individual is appointed to the board or senior management; or
    - o ban the individual from taking up management roles for a specified period.

According to the SFC, these measures are aimed at enhancing transparency and helping investors make informed decisions.

Consistent with its existing procedures, if the SFC identifies a potential corporate transaction that may require early regulatory action, the HKEX-listed company will be given an opportunity to respond to the SFC's concerns and submit relevant supporting documentation. The SFC will evaluate the HKEX-listed company's response to determine whether its concerns have been sufficiently addressed. If the HKEX-listed company fails to resolve the SFC's concerns, the SFC can impose conditions under Section 7A(1) of the SMLR. Additionally, SFC decisions made under this new provision will be subject to review by the SFAT.

Once these changes are implemented, the SFC plans to issue an explanatory note to clarify the circumstances in which it will be able to exercise its powers under sections 6(3)(b) and 7A(1) of the SMLR. A draft of the explanatory note is set out in Appendix 2 to the Consultation Paper and outlines examples of the types of conditions the SFC will be able to impose in different situations.

The Consultation Paper gives examples of cases of where the SFC may be minded to impose post-listing conditions, which include where the HKEX-listed company secretly entered into an undisclosed investment agreement with a capital market intermediary involved in its IPO and the agreement directed the full amount of placing proceeds into a wealth management product issued by the intermediary's affiliate—contrary to the stated use of funds in the prospectus. This lack of disclosure and misuse of IPO proceeds would raise serious transparency concerns and the SFC could impose conditions requiring the HKEX-listed company and its board to disclose the reasons for the investment decision and explain why the investment was not disclosed in the prospectus.

Under the proposed section 7A(1)(b), the SFC may impose post-listing conditions on an HKEX-listed company whose securities have already been suspended from trading. As stated in the SFC Consultation Paper, the SFC anticipates that most post-listing conditions will focus on disclosure, such as requiring the disclosure of independent valuation reports or additional information in statements or circulars with the stated aim of aiding shareholders in the decision-making process. The SFC also affirmed that HKEX-listed companies will be allowed to address concerns and provide supporting documents before the SFC decides to impose any post-listing conditions under the proposed section 7A(1). The SFC also proposes to allow decisions made under the new section 7A(1) to be reviewable by SFAT.

The SFC views the new section 7A as providing a more disclosure-based and less disruptive way to intervene in cases of suspected misconduct as compared to suspending trading. The SFC believes this will facilitate more informed investor decisions and minimise market disruption.

4. Amendment, Revocation and Imposition of Conditions

In relation to the above proposals, the SFC proposes to introduce sections 6(3A)(a), 7A(3) and 9(2)(a) to the SMLR to give the SFC the discretion to amend or revoke conditions related to HKEX-listing applications, post-listing matters and resumption of dealing. Additionally, new sections 6(3A)(b), 7A(4) and 9(2)(b) would allow the SFC to impose new conditions on HKEX-listing applicants and HKEX-listed companies as necessary.[1]

In the SFC Consultation Paper, the SFC asserts that this discretion will allow modifications to be made to conditions in the light of subsequent changes and developments. The SFC also encourages HKEX-listed companies to maintain dialogue with the SFC to promptly address the SFC's concerns. Applications for condition variations or revocations will need to be submitted in writing.

5. Requisition of Information from HKEX-listed Companies

1 Consequential amendments are also proposed under other subsections of section 6 and other sections under the SMLR to include situations where the conditions are imposed as per section 6(3A)(b) or amended or revoked under section 6(3A)(a), 7A and 9(2) (as the case may be).

As noted above, section 6(1) of the SMLR allows the SFC to request for information from HKEX-listing applicants where necessary, but this power is limited to matters concerning a current listing application. The SFC is required to use section 179 of the SFO to request HKEX-listed companies to provide documents in relation to post-IPO matters.

The SFC is proposing to introduce a new section 7B to the SMLR to allow the SFC to require HKEX-listed companies to provide it with information relating to post-listing matters. According to the SFC Consultation Paper, the stated aim of section 7B is to enhance communication between HKEX-listed companies and the SFC and allow HKEX-listed companies to respond to inquiries and address concerns before the SFC decides on further regulatory actions, such as imposing conditions under the proposed section 7A(1).

6. Resumption of Dealings

As regards the resumption of trading after trading has been suspended under section 8(1) of the SMLR, section 9(3) currently allows the SFC to permit trading to recommence subject to whatever conditions it considers necessary, or to direct the HKEX to cancel the listing of the relevant shares. Section 9(6) of the SMLR requires that decision to be made in a meeting of the "SFC Board"[2] and delegations are not allowed. According to the statistics provided by the SFC in the SFC Consultation Paper, since 2012, of the 31 cases involving trading suspensions, just 7 resulted in trading being resumed following their consideration by the SFC Board. The existing procedures for resumption of trading are extensive and time-consuming, partly because of the need for written and oral representations.

The SFC proposes to simplify the procedures under sections 9 and 10 to avoid delays in the resumption of trading. Under the proposed simplified section 9 procedures, an HKEX-listed company will generally be required to address the SFC's concerns through rectification or mitigation actions. If the SFC's concerns are addressed to its satisfaction, the responsible Division (normally the Corporate Finance or Enforcement Division) will be able to recommend to the SFC Board that trading should resume, either with or without further conditions. The SFC also proposes to revise section 9 to clarify that the SFC can initiate resumption procedures either upon an HKEX-listed company's request or on its own initiative and consider whether to withdraw a suspension direction, direct the HKEX to cancel a listing, or refuse a resumption request.

Under the proposed revisions to section 9, the SFC Board will also review the documents and adjudicate cases presented by the responsible Division, and the relevant HKEX-listed company will be given a reasonable opportunity of being heard before the SFC Board makes a final decision. Although it is proposed to allow the SFC Board to delegate the making of resumption decisions in uncontroversial cases to other personnel within the SFC, for example the Executive Director or an Executive Committee, decisions that may be detrimental to HKEX-listed companies, such as a rejection of a request to resume trading, will generally have to be made by the SFC Board.

Generally, the SFC expects this proposed amendment to improve efficiency and potentially reduce suspension times.

7. Review of SFC's Decisions

The current review process for SFC decisions made under the SMLR involves different procedures depending on the decision type. Decisions on lifting a suspension of trading are made by the SFC Board under section 9(6), while HKEX-listing applicants must apply to the SFAT to review decisions related to listing objections or conditions pursuant to sections 6(2) and 6(3)(b). Currently, the SFAT is responsible for reviewing an objection to a listing application under section 6(2) and the imposition of conditions where the SFC does not object to the listing application under section 6(3)(b).

Proposed Amendments to Review of SFC Decisions

The SFC proposes to designate the SFAT as the review body for the SFC's decisions under the SMLR. The SFC considers the SFAT to be an appropriate review body as it would provide an effective independent safeguard to ensure that regulatory decisions are reasonable, proportionate and fair. This would also align the review process for decisions made under different sections of the SMLR.

In addition to the decisions currently reviewable by the SFAT, the proposal also suggests allowing aggrieved HKEX-listed companies a full merits review by the SFAT for specific SFC decisions, including:

2 The meeting of the "SFC Board" referred to in the Consultation Paper means a meeting of the persons specified in section 1 of Part 1 of Schedule 2 to the SFO, which includes the chairman, a chief executive officer and such number of other executive directors and non-executive directors as is determined by the Chief Executive

- imposition of conditions under the new section 7A(1);
- directions to the HKEX to suspend dealings under section 8(1);
- imposition of resumption conditions under the new section 9(1)(a);
- directions to cancel listings under the new section 9(1)(c);
- refusal to permit resumption of dealings under the new section 9(1)(b); and
- amendments or revocations of conditions under new sections 6(3A)(a), 7A(3) and 9(2)(a), or imposition of new conditions under sections 6(3A)(b) and 9(2)(b).

Amendments to Schedule 8 of the SFO will be required to be made by the Chief Executive in Council to include the additional items set out above to the list of specified decisions that are within the ambit of the SFAT's jurisdiction.

8. Pre-emptive Pro Rata Issues and Employee Share Option Schemes under Section 4 SMLR

Section 3 of the SMLR defines a "listing application" as an application for the listing of any securities issued or to be issued by an applicant. This includes listing applications by both new HKEX-listing applicants and existing HKEX-listed companies. Section 4 of the SMLR excludes certain circumstances from being considered a "listing application" including:

- a listing of securities offered on a pre-emptive pro rata basis to existing shareholders (e.g., rights issues or open offers); and
- a listing of shares issued or allotted to existing employees pursuant to the exercise of options granted under an employee share option scheme as part of the employees' remuneration.

These exclusions were codified on the basis that pro rata share offers give all shareholders an equal opportunity to subscribe for shares, and share option schemes, which are approved by shareholders, pose less risks compared with other types of share issues. However, the SFC notes in the Consultation Paper that a number of majority-held companies have recently undertaken capital-raising activities (e.g., rights issues/open offers) that unfairly disadvantaged minority shareholders. The SFC's investigations revealed that the offerings featured excessively dilutive terms and/or involved frequent capital-raising activities within a short timeframe. Notably, many of these rights issues appeared to lack either a clear commercial justification or an urgent need for financing that would warrant the substantial discounts and/or share dilution involved.

The SFC also identified questionable practices in employee share option schemes, including the early exercise of deeply out-of-the-money options followed by rapid share transfers to connected parties and indications of pre-arranged transactions and possible nominee arrangements for share accumulation purposes.

Proposed Removal of Circumstances under sections 4(b) and 4(d) SMLR

Given the potential for abuse, the SFC proposes removing the automatic exemptions in sections 4(b) and 4(d) of the SMLR for pre-emptive pro rata issues and employee share option issues. This means that the SFC will be able to intervene, require information, or use other powers to prevent or minimise imminent financial harm to the investing public. The SFC will not normally intervene in typical pre-emptive pro rata issues and employee share option schemes, but will use its powers in egregious cases where the SFC sees potential for harm to shareholders' interests. The SFC also clarified that the amendments will not require additional disclosures or actions by HKEX-listed companies.

The SFC gives examples of situations in which it may intervene, which include offers that lack a commercial rationale and need for funding to justify the costs and effect of the rights issue (e.g., where the amount raised is insignificant compared to the HKEX-listed company's cash position) and heavily dilute the interests of non-subscribing minority shareholders. These situations also include where employee share options are exercised shortly after its grant despite the options being deeply out-of-the-money and the shares are subsequently transferred to connected parties. The SFC considers removing these exemptions will deter questionable activities, including dubious fund-raising transactions and abusive share option schemes.

9. Other Minor Proposed Amendments

The SFC is also proposing other minor amendments to the SMLR which include repealing existing section 20 on transitional arrangements in relation to the already repealed Securities (Stock Exchange Listing) Rules and adding a new section 20A for transitional arrangements related to the exercise of powers under sections 8(1), 9 or 10 of the SMLR.

10. New Explanatory Note – Appendix 2 to the SFC Consultation Paper

As noted above, the SFC will issue an explanatory note to clarify the circumstances in which the SFC can exercise its powers under the proposed new sections 6(3)(b) and 7A of the SMLR. The draft explanatory note set out in Appendix 2 to the SFC Consultation Paper sets out illustrative examples of situations where the SFC will be minded to impose continuing conditions for HKEX-listing applications under the new section 6(3)(b) or post-listing conditions on HKEX-listed companies under section 7A with examples of the conditions that may be imposed. The draft explanatory note also explains in detail the procedures for the SFC to impose conditions on HKEX-listing applicants and HKEX-listed companies. The draft explanatory note also sets out the disclosure requirements following an imposition of a condition, aggrieved HKEX-listing applicants' and HKEX-listed companies' rights of review, and the consequences of breaching a condition imposed by the SFC. Although the explanatory note will not have the force of law, the SFC considers that it will provide stakeholders with guidance on the SFC's regulatory approach and the operations of the SMLR's proposed new sections.

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