

Hong Kong Capital Markets Update

ISSUE 2017-04 | September 2017



SFC and the Exchange conclude joint consultation on listing regulation

On 15 September 2017, the Securities & Futures Commission (SFC) and The Stock Exchange of Hong Kong Limited (the Exchange) published [conclusions](#) to their consultations on the proposed enhancements to the Exchange's decision-making and governance structure for listing regulation.

Among other items, the conclusions clarify the role of the SFC as the statutory regulator which administers the Securities and Futures Ordinance (SFO) and the Securities and Futures (Stock Market Listing) Rules (SMLR) and the Exchange's role as the regulator administering the Listing Rules. The role of the Listing Committee (LC) under the Listing Rules will remain unchanged. This publication provides a summary of the key conclusions reached by the SFC and the Exchange.

Policy development

A new Listing Policy Panel (LPP) will be established as an advisory, consultative and steering body to initiate and centralise discussions on listing policy with broader regulatory or market implications. This will achieve the core objective of the originally proposed Listing Policy Committee (LPC), which is to gather senior representatives of the relevant organisations in one forum to ensure that policy development is more agile, coordinated and responsive to emerging risks and market developments.

The LPP will be constituted by a memorandum of understanding arrangements between the SFC and the Exchange, but will not be a committee under either of the regulators.

The LPP will include the eight members proposed for the original LPC:

- Chair and two Deputy Chairs of the LC
- Chief Executive of HKEX
- Chair of the Takeovers Panel
- CEO of the SFC
- Executive Director of the SFC's Corporate Finance Division and another senior executive nominated by that Executive Director

In addition, the LPP will also include two non-executive directors from the Exchange's board and two non-executive directors from the SFC's board.

The LPP will serve as the focal point for its members to raise and discuss listing policy with broader regulatory or market implications. The LPP will have no rule-making powers, and its advice or recommendations will not be binding on the organisations represented on the LPP.



Role of LPP in policy development

The LPP, comprising representatives from the SFC, the Exchange (led by the LC) and the HKEX, could serve to offer balanced views on listing policy with broader regulatory or market implications. With the LPP, policy development may be discussed in a more coordinated and efficient manner, and this will have a positive impact on both market quality and market development. For example, the evaluation of the overall listing framework to strengthen Hong Kong's role as an international financial centre by attracting more listings of "new-economy" companies is underway, and the close collaboration between the LPP, the SFC and the Exchange will help meet these objectives efficiently and effectively.

Listing decisions

The SFC and the Exchange concluded that they have decided not to implement the proposal to establish the originally proposed Listing Review Committee (LRC).

IPO applications

IPO applications will continue to be received by the Exchange and filed with the SFC in accordance with existing procedures. For cases that raise concerns under the SMLR¹, the SFC will communicate directly with the relevant applicant and its advisers. The SFC will cease to review and comment on a listing application once they determine that the case does not raise concerns under the SMLR.

Except for applications with SMLR concerns, the Exchange will remain as the primary front-line regulator and contact point for all listing applications. The Exchange will continue to process and vet such applications in accordance with its usual procedures.

Post-IPO matters

Similar to IPOs, the SFC will directly regulate post-IPO matters that fall within the scope of the SMLR or the Securities and Futures Ordinance (SFO). The Exchange will continue to be responsible for making decisions under the Listing Rules in relation to post-IPO matters.

Illustrations of the SFC's previous approach to processing IPO applications and its approach going forward are shown in Appendix II.



The SFC's "front-loaded" regulatory approach

Under the SMLR, the SFC has the statutory power to object to a listing based on a set of specific legal grounds. These include indications of serious disclosure failures as well as the public interest. They also allow the SFC to object on the same grounds to some capital raising proposals by companies that are already listed. In addition, the SFC is also empowered under the SMLR to suspend the trading of a company's shares in order to protect the wider investing public.

For cases with SMLR issues, the SFC will be the sole point of contact for the applicant and its advisers, and it will no longer relay its comments to the applicant via the Exchange.

Recent cases where the SFC issued an LOM on IPO and post-IPO cases with SMLR issues

In one case, the SFC was concerned about the company's relationship and dealings with its largest supplier, and it appeared to the SFC that they had been given false information on this. The SFC issued a formal letter to the company's board via the IPO sponsor indicating their intention to object to the listing.

In another case, the SFC took action in relation to an existing listed company's proposal to issue shares to a small group of subscribers at a price significantly lower than the market price. In this case, the company failed to explain why the placing was being conducted on such a highly dilutive basis when they did not have any actual funding needs. The placing was terminated after the SFC informed the company that they intended to object to the corporate action under the SMLR.

¹ The grounds for the SFC to raise objection to a listing application are set out in section 6(2) of the SMLR. Section 6(2) of the SMLR provides that the SFC may object to any listing application if it appears to the SFC that:

- (a) the application does not comply with a requirement under section 3 of the SMLR (namely, (i) non-compliance with the Listing Rules (except to the extent waived or not required by the Exchange); (ii) non-compliance with applicable law; or (iii) does not contain such particulars and information which, having regard to the particular nature of the applicant and the securities, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position, of the applicant at the time of the application and its profits and losses and of the rights attaching to the securities);
- (b) the application is false or misleading as to a material fact or is false or misleading through the omission of a material fact;
- (c) the applicant has failed to comply with a requirement to supply to the SFC such further information as the SFC may reasonably require for the performance of its functions under the SMLR or, in purported compliance with the requirement has furnished the SFC with information which is false or misleading in any material particular; or
- (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

Review and publication of listing decisions

To enhance governance within the Exchange's structure for reviewing the LC's decisions, the SFC notes that there should be no overlap in membership between each review body and the body whose decisions it will review. In addition, the SFC notes that the existing Listing (Review) Committee and the Listing Appeals Committee (LAC) should be replaced with one or more independent committees that consist entirely of outside market participants with no current LC members or representatives of the SFC or HKEX.

To this end, the Exchange will conduct a consultation on the review system of the LC in 2018, along with the publication of detailed reasons for all decisions made by the new review committee(s). In addition, the Exchange will also consult on the LD's right to seek a review of the LC's decision if the LC overturns, modifies or varies a LD decision on matters involving listed issuers.

The Listing (Review) Committee and the LAC, and other aspects of the current system for the review of listing decisions (including the publication of review decisions), will continue to operate unchanged until the implementation of necessary Listing Rule amendments resulting from the abovementioned consultation process.

Oversight of the listing function

Proposed oversight of the listing function and for appraising senior executives of the LD on the performance of their regulatory responsibilities by a separate committee will not be established. Instead, the 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.

Disciplinary matters

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.

If you have any questions about the matters discussed in this publication, please feel free to contact the following partners in our Capital Markets Advisory Group:

Paul Lau
Partner,
Head of Capital Markets
KPMG China
T: +852 2826 8010
E: paul.k.lau@kpmg.com

Katharine Wong
Partner,
Capital Markets Advisory Group
KPMG China
T: +852 2978 8195
E: katharine.wong@kpmg.com

kpmg.com/cn

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Appendix I – Summary of the main consultation proposals and our 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 modifications	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 modifications	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 modifications	The 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). The 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	The 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 SMLR or the SFO more generally. • The Exchange will continue to make all decisions under its Listing Rules (including decisions on suitability of listing).
	5. The SFC will not issue a separate set of comments on IPO applications as a matter of routine.	Yes, with modifications	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.

	Proposals	Adopt?	Way forward
Review of listing decisions	6. The Listing (Review) Committee will be replaced as the review body of the 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	The 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 a 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 the Exchange	11. LPC to be the body responsible and accountable for oversight of the listing function and for appraising senior executives of the LD on the performance of their regulatory responsibilities.	No	The 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 decisions	12. Publication of reasoned decisions by the LRC, LRRC, LDC and LDRC.	Subject to further consultation	The Exchange will separately 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.

Appendix II – Illustrations of the SFC’s previous approach to processing IPO applications and its approach going forward

