



Hong Kong Law

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SFC and Exchange sign addendum to MOU Governing Listing Matters

On 9 March 2018, the Securities and Futures Commission (**SFC**) and the Stock Exchange of Hong Kong Limited (**the Exchange**) signed an **addendum (Addendum)** to the **Memorandum of Understanding (MoU) Governing Listing Matters** which took immediate effect.

The Addendum follows up on the Joint Consultation Conclusions on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation (**Joint Consultation Conclusions**) published on 15 September 2017. To read more about the Joint Consultation Conclusions, please refer to **Charltons' September newsletter**.

Establishment of a Listing Policy Panel

The Addendum arranges for the establishment of a new Listing Policy Panel (**LPP**) as a centre point for discussions on listing policy with broader regulatory or market implications. The LPP is not a committee under the SFC, Hong Kong Exchanges and Clearing Limited (**HKEx**) or the Exchange, and it will have no rule-making powers. The LPP will comprise of 12 members who are senior representatives of the SFC, the Listing Committee, HKEx and the Takeovers and Mergers Panel, and its advice or recommendations will not be binding on the represented organisations. The establishment of the LPP will not limit powers of the SFC or the Exchange. The High-Level Group,

a liaison group between the SFC and the Exchange set up in 2003, will be dissolved.

The Listing Division will consult the LPP when formulating proposed Listing Rule amendments or other policy proposals. The LPP is granted powers to ask the Listing Division to work on a proposal in relation to any matter under discussion by the LPP. The Head of the Listing Committee will serve as the Secretariat for the LPP and will attend LPP meetings.

The Listing Committee Chair and Deputy Chairs will represent the Listing Committee's views (including any differing views of Listing Committee members) at meetings of the LPP. Non-executive directors of HKEx and its chief executive will represent the HKEx's interests in LPP discussions. The views of the SFC will be represented by the SFC's Chief Executive Officer and non-executive directors.

The SFC and HKEx websites will regularly publish summary reports of the LPP policy work and recommendations.

Clarification of the SFC's role in listing matters

The Addendum also clarifies the division of responsibilities between the SFC and the Exchange in regulating listing matters. The SFC is the statutory regulator responsible for administering the SFO and the Securities and Futures (Stock Market Listing) Rules (**the Rules**),

while the Exchange remains the primary front-line regulator responsible for administering the Listing Rules. The Exchange is the contact point for all listing applications except where the SFC raises concerns under the Rules, for which the SFC is the main contact point.

The SFC will not be responsible for ensuring compliance of a listing application with the specific requirements of the Listing Rules and does not intend to comment on these matters. If the SFC decides to exercise any of its powers or functions under the Rules, it will aim to do so within the Exchange's timetable for processing listing applications.

The SFC's comments on a listing application will be passed to the Exchange as soon as reasonably practicable for the Exchange's further handling and raising with the applicant, except if:

- the SFC issues a letter of mindedness (**LOM**) to the listing applicant when it considers it more likely than not that it will object to the listing application under its powers under the Rules;
- the SFC needs to ask for clarification from the applicant to form a definitive view as to whether the SFC has grounds for issuing an LOM;
- the SFC issues a final decision notice (within the time period specified in the Rules) to object to the listing application where the SFC considers that the listing applicant's responses to the LOM are inadequate to address the SFC's concerns; or
- the SFC notifies the applicant that its responses to the LOM have adequately addressed the SFC's concerns after the issue of an LOM.

Co-ordination between the SFC and the Exchange on Listing Matters

The SFC and the Exchange will inform one another of their respective comments given to listing applicants and discussions with applicants and their advisers. They will also copy each other on their respective correspondence with applicants

and advisers.

The SFC is required to notify the Exchange's Listing Division as soon as reasonably practicable:

1. of any decision to issue an LOM and its grounds for doing so; and
2. if it forms the view that a listing applicant's response to an LOM adequately addresses the SFC's concerns.

The Exchange's Listing Division will notify the SFC as soon as reasonably practicable:

1. of any decision to reject a listing application and its grounds for doing so; and
2. If it determines that any concerns that might cause the Exchange to reject a listing application have been satisfactorily dealt with.

Once the SFC forms a view that there are no apparent grounds for the issue of an LOM, it will notify the Listing Division as soon as is reasonably practicable and cease vetting the application.

Further, the SFC will refer to the Exchange any pre-IPO enquiries which relate to issues under the Listing Rules while the Exchange will refer pre-IPO enquiries relating to the Rules to the SFC.

The Exchange will continue to have the discretion to suspend, resume or continue its own vetting procedures regardless of the outcome of the issuance of the LOM, and the SFC will take into account the decisions and guidance of the Listing Committee when approving or disapproving an application. The SFC's actions should not be interpreted as limiting or modifying the Exchange's duties and obligations in relation to vetting listing applications. The Exchange will proceed to complete the listing process and list the securities for trading unless the SFC indicates its objection to a listing application.

The SFC's review of the Exchange's performance related to the regulation of listing-related matters will focus on whether the Exchange has discharged and is discharging its duties under the SFO, the adequacy of the Exchange's systems and processes for performing its listing function, and the effectiveness of the management of conflicts

of interest within the Exchange and the Listing Committee.

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