



Hong Kong

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NEW LISTING COMMITTEE DECISION REVIEW STRUCTURE FOR HKEX IN 2019

The Stock Exchange of Hong Kong Limited (the **HKEx**) has published its Consultation Conclusions¹ on its proposed revision of the review structure for decisions of the Listing Committee set out in its 10 August 2018 Consultation Paper.² All the Consultation Paper's proposals have been adopted, with some minor changes to reflect comments made by respondents to the consultation. The key changes under the amended HKEx Listing Rules which will take effect in mid-2019 are that:

- Some of the most significant decisions made by the Listing Committee, including a rejection of a listing applicant solely on the basis of lack of suitability and listing cancellations, will in future be entitled to only one level of review. The Listing Appeals Committee, to which there is currently a further right of review, will cease to exist.
- A new Listing Review Committee, made up of market participants with no current members of the Listing Committee, the HKEx or the SFC, will replace the existing Listing (Review) Committee and the Listing (Disciplinary Review) Committee and hear reviews currently conducted by them.

1 HKEx. Consultation Conclusions: Review Structure in relation to Listing Committee Decisions. January 2019. [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Conclusions-\(January-2019\)/cp201808cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Conclusions-(January-2019)/cp201808cc.pdf)

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

- Decisions on non-disciplinary matters will be routinely published.
- The SFC's right to request a review of any matter, including a review of a Listing Committee decision, will be codified. The SFC will not however be able to request a review of decisions of the Listing Review Committee.

One Level of Review for Decisions on Matters of Material Significance

Currently, there are two levels of review for the Listing Committee's decisions. Non-disciplinary matters can be referred to the Listing (Review) Committee, and disciplinary matters can be referred to the Listing (Disciplinary Review) Committee. Both of these committees consist of members of the 28-member Listing Committee who did not participate in the initial decision of the Listing Committee. The Listing Appeals Committee, consisting of the Chairman and two other members of Hong Kong Exchanges and Clearing Limited, is the final review body for decisions made by the Listing Committee, Listing (Review) Committee and the Listing (Disciplinary Review) Committee concerning (i) the termination of the role of an authorised representative of a listed issuer; (ii) 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 (iii) Matters of Material Significance.

Matters of Material Significance include:

- a) the rejection of a new applicant's listing application solely on the basis of unsuitability for listing;
- b) the cancellation of a listing; and
- c) a decision imposing any of the following disciplinary sanctions: (i) a public statement involving criticism; (ii) a public censure; (iii) 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; (iv) where a director of a listed issuer fails wilfully or persistently to discharge his responsibilities under the HKEx Listing Rules, a public statement that the HKEx is of the opinion that the director's retention of office is prejudicial to the interests of investors; (v) a suspension or cancellation of listing of a listed issuer's securities where the director remains in office after a statement pursuant to (iv) above has been issued; or (vi) where a listed issuer fails wilfully or persistently to discharge his responsibilities under the HKEx 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.

In its Consultation Conclusions, HKEx states that it does not regard either one or two levels of review to be the "correct" answer, but will adopt the one level structure since most respondents to the consultation supported it.

Creating the Listing Review Committee

HKEx will replace the Listing (Review) Committee and the Listing (Disciplinary Review) Committee with a new Listing Review Committee, which will be a committee of HKEx. It will consist of at least twenty members (rather than fifteen as originally proposed) who have experience and expertise in Listing Rule matters or are familiar with the Listing Committee's work - HKEx has said that it expects members to be former members of the Listing Committee, although that is not a Listing Rule requirement. Current Listing Committee members will not be permitted to sit on the Listing Review Committee. A former member of the Listing Committee will have to wait two years before becoming a member of the Listing Review Committee. Members of the Listing Review Committee will normally be appointed for a term of twelve months and cannot remain in office longer than six consecutive years. With respect to the

first members who will be appointed at the same time, HKEx thinks it is likely that some members will retire after serving only two years so that there will be a continuous and consistent turnover of members in the Listing Review Committee.

At least six members will be investor representatives, while the other members will be representatives of listed issuers and market practitioners. At least four members of the Listing Review Committee will form a chairmen pool. Any review heard by the Listing Review Committee must be chaired by a member of that pool, who must not have a conflict of interest with the case. If no member of the chairmen pool is available, an acting chairman can be chosen from the other members of the Listing Review Committee for that case. The Listing Review Committee will hear reviews that are currently conducted by its two predecessor committees. It will hear cases *de novo* (i.e. a re-hearing) and make its own decisions after considering all relevant evidence and arguments, old and new. In upholding or overturning a prior decision, it will state its reasons for its own decision.

The rationale for the formation of a new Listing Review Committee comprising market participants rather than Listing Committee members was to increase the perception of the review body's independence. Some respondents expressed concerns that members of the new body may be less familiar with HKEx's current policy objectives potentially leading to decisions that are inconsistent with HKEx's objectives and the standards applied by the Listing Committee. HKEx considers that these concerns can be addressed by providing briefings to Listing Review Committee members on HKEx policy and the Listing Committee's approach.

Publication of Decisions on Non-Disciplinary Matters

HKEx will publish the Listing Review Committee's decisions on non-disciplinary matters on a routine basis with the aim of promoting transparency and accountability in their decision-making and to allow the market to better understand HKEx's interpretation and application of the HKEx Listing Rules. To address concerns of confidentiality, HKEx will delay the publication of a decision if it contains price-sensitive information or withhold the names of the relevant parties if their interests would be unduly prejudiced by such disclosure.

The SFC's Power to Request Reviews of Decisions

The SFC has the power to request review of any decision made by the Listing Committee under paragraph 10.6 of the Memorandum of Understanding signed by HKEx and the SFC (the **Memorandum of Understanding**). This power will be codified in the HKEx Listing Rules. However, the SFC will not be able to request reviews of the Listing Review Committee's decisions as it will be the final review body of the Listing Committee's decisions. This limit on the SFC's power will be included in an addendum to the Memorandum of Understanding.

Where the SFC requests a review of a Listing Committee decision, and the Listing Review Committee overturns its decision, the relevant party will have the right to seek a further review of the decision. In this situation, the final review will be conducted by a different group of members of the Listing Review Committee.

Transitional Arrangements before the New Review Structure Takes Effect

The Consultation Conclusions state that the new review structure will come into effect in mid-2019, but do not set a specific date.

Disciplinary Review Hearings

All disciplinary review hearings commenced before the new HKEx Listing Rules take effect date will be conducted under the current HKEx Listing Rules. Disciplinary proceedings are deemed to commence when the Listing Department submits a report laying out its case to the Secretary.

Non-disciplinary Review Hearings

All non-disciplinary review hearings will be conducted under the current HKEx Listing Rules in the case of:

- a) first instance decisions (subject to (b) and (c) below) made before the new HKEx Listing Rules come into effect;
- b) decisions made under Practice Note 17;³

- c) decisions under Listing Rule 6.10(1) made before the new HKEx Listing Rules come into effect, and any further decision made in relation to those decisions (including cancellations of listing where the issuer fails to remedy specified matters within a specified period); and
- d) reviews of any of (a), (b) or (c) above.

The Listing (Disciplinary Review) Committee, Listing (Review) Committee and the Listing Appeals Committee will therefore continue to exist after the new HKEx Listing Rules come into effect until all relevant reviews have been completed. The current HKEx Listing Rules and procedures will apply to those proceedings.

³ Practice Note 17 which sets out a three-stage de-listing procedure for issuers without sufficient operations or assets was removed with effect from 1 August 2018. It continues to apply however for suspended listed issuers placed in a delisting stage under Practice Note 17 before the effective date of Rule 6.01A.

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