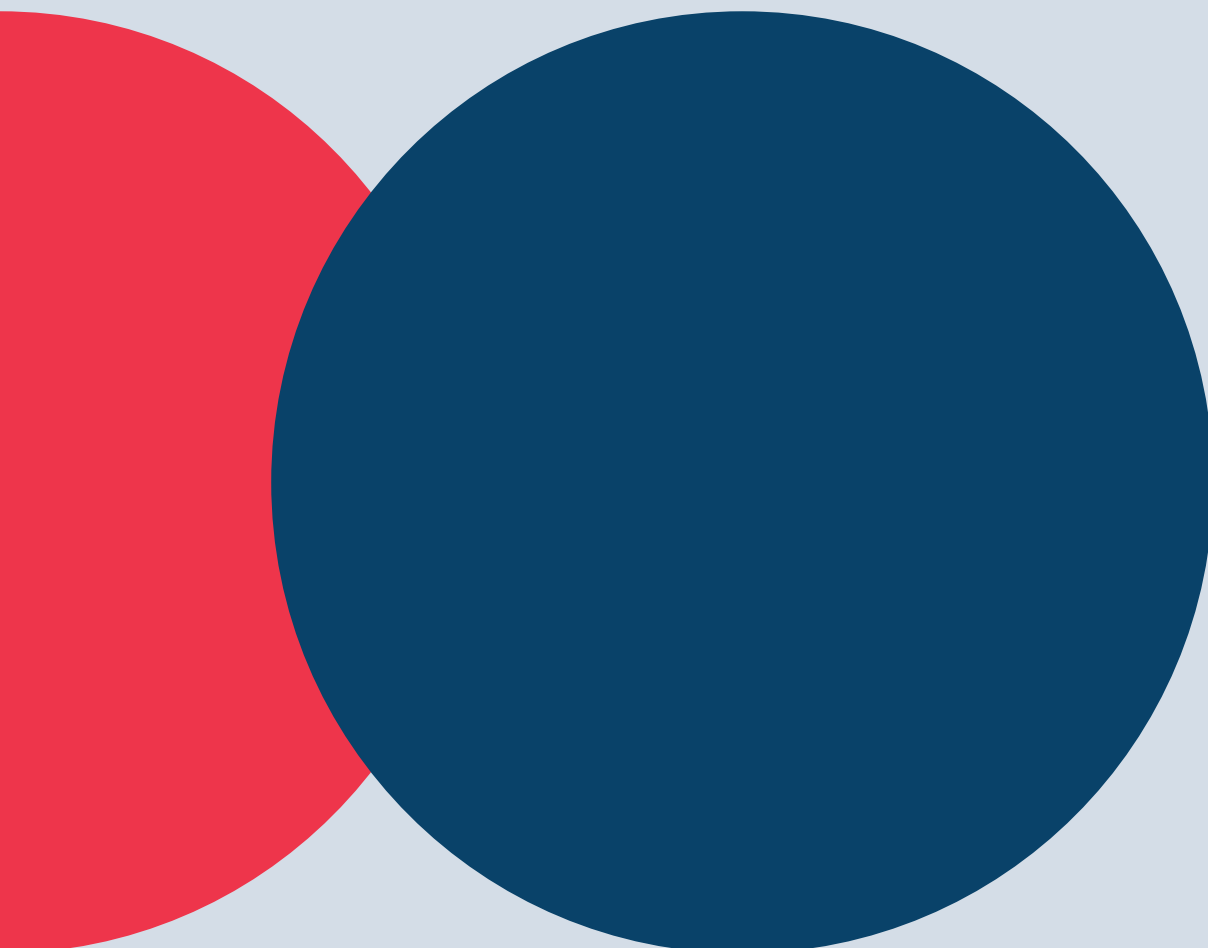


August 2018

CONSULTATION PAPER

REVIEW STRUCTURE IN RELATION TO  
LISTING COMMITTEE DECISIONS



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## HOW TO RESPOND TO THIS CONSULTATION PAPER

The Stock Exchange of Hong Kong Limited (the “**Exchange**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEX**”), invites written comments on the matters discussed in this Paper, or comments on related matters that might have an impact upon the matters discussed in this Paper, on or before **12 October 2018**. You can respond by completing the questionnaire which is available at: <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Questionnaire/cp201808q.docx>

Written comments may be sent:

By mail or hand delivery to Hong Kong Exchanges and Clearing Limited  
10/F, One International Finance Centre  
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Central  
Hong Kong  
**Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions**

By fax to (852) 2524 0149

By e-mail to [response@hkex.com.hk](mailto:response@hkex.com.hk)  
Please mark in the subject line:  
**Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions**

Our submission enquiry number is (852) 2840 3844.

Respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. If you do not wish your name to be disclosed to members of the public, please state so when responding to this Paper. Our policy on handling personal data is set out in **Appendix IV**.

Submissions received during the consultation period by **12 October 2018** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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## EXECUTIVE SUMMARY

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1. In June 2016, the Exchange and the Securities and Futures Commission (“**SFC**”) launched a joint consultation (the “**Joint Consultation**”) on “Proposed Enhancements to the Exchange’s Decision-Making and Governance Structure for Listing Regulation”<sup>1</sup>. The consultation conclusions to the Joint Consultation (the “**Conclusions**”) were published in September 2017<sup>2</sup>.
2. Following the publication of the Conclusions:
  - (a) The Listing Policy Panel has been established as an advisory, consultative and steering body to initiate and centralise discussions on listing policy with broader regulatory or market implications.
  - (b) An addendum to the Memorandum of Understanding Governing Listing Matters between the SFC and the Exchange dated 28 January 2003 (the “**MOU**”) has been signed to reflect the amendments to the MOU as a result of the SFC’s new front-loaded approach to listing regulation and the amendments necessitated by the Conclusions.
  - (c) The Listing Rules have been amended such that the Chief Executive of HKEX will not attend Listing Committee meetings on individual cases in the first instance or on review<sup>3</sup>.
3. In the Conclusions, it was stated that the Exchange would conduct a separate consultation on a proposal to replace the Listing (Review) Committee (the “**LRC**”) and the Listing Appeals Committee (the “**LAC**”) with one or more independent committees that consist entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX, and publication of decisions made by the proposed new review committee(s). The Exchange would also consult on whether to maintain a two-tier review structure for Listing Committee decisions.
4. This is the consultation on the Exchange’s structure for the review of Listing Committee decisions as mentioned in paragraph 3 above.
5. The current review process and structure for both disciplinary and non-disciplinary matters is set out in Chapter 1 of this Paper. The discussions in this Paper focus on the review of Listing Committee decisions for non-disciplinary matters, but the proposals and/or matters discussed in Chapters 2, 3 and 5 will also apply to disciplinary matters. Appendices I and II set out the current and the proposed review structure for both non-disciplinary and disciplinary matters.
6. Our proposals aim to enhance governance within the Exchange’s structure for reviewing Listing Committee decisions and promote transparency, accountability and consistency in decision-making.
7. Unless the context specifies otherwise, all Rule references in this Paper are to the

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<sup>1</sup><http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/cp201606.pdf>

<sup>2</sup>[http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2016-Joint-Consultation-Paper/Conclusions-\(September-2017\)/cp201606cc.pdf](http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2016-Joint-Consultation-Paper/Conclusions-(September-2017)/cp201606cc.pdf)

<sup>3</sup> Rules 2A.28 and 2B.11(3).

Main Board Rules. Whilst this Paper focuses on the Main Board Rules, equivalent proposed amendments apply to the GEM Rules (to the extent that equivalent GEM Rules exist).

## Summary of the proposals (Chapters 2 to 4 of this Paper)

### Number of levels of review for decisions of Material Significance (Chapter 2 of this Paper)

8. For the purposes of this Paper, listing decisions of material significance refer to (i) rejection of a new applicant's listing application solely on the ground of unsuitability for listing<sup>4</sup>; (ii) cancellation of listing; and (iii) imposition of certain disciplinary sanctions<sup>5</sup> ("**decisions of Material Significance**"). At present, decisions of Material Significance which are made by the Listing Committee<sup>6</sup> are subject to a first review by the LRC or the Listing (Disciplinary Review) Committee (the "**LD(R)C**"), as the case may be, and a further and final review by the LAC.
9. There is not necessarily a "correct" answer as regards whether there should be one level or two levels of review in respect of decisions of Material Significance made by the Listing Committee. After carefully weighing up the competing considerations, the Exchange proposes 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. If this proposal proceeds, the LAC would be discontinued without being replaced. Please see Chapter 2 of this Paper for further discussion.

### Establishment of independent review committee (Chapter 3 of this Paper)

10. We propose to establish an independent review committee consisting entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX (to be named the "**Listing Review Committee**") to replace the LRC and the LD(R)C and to hear reviews currently conducted by them. As and when required to review a decision, members will be drawn<sup>7</sup> from the new Listing Review Committee to conduct a review hearing. If the proposal in Chapter 2 is not adopted, members of the review committee for the final level of review for decisions of Material Significance (which replaces the LAC) will also be drawn from the new Listing Review Committee<sup>8</sup>.

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<sup>4</sup> For the avoidance of doubt, this will include rejection of listing applications under Chapters 8A, 18A and 19C of the Main Board Listing Rules by companies from emerging and innovative sectors solely on the ground of unsuitability for listing, for example, where these companies fail to demonstrate the features or characteristics set out in Chapters 8A and 18A of the Main Board Listing Rules, as well as the guidance letters GL92-18 on "Suitability for listing of biotech companies" and GL93-18 on "Suitability for listing with a WVR structure" published in April 2018.

<sup>5</sup> Decisions pursuant to Rule 2A.09(2), (3), (5), (7), (8) or (9) (i.e. certain of the disciplinary sanctions, including public censure and public statement which involves criticism).

<sup>6</sup> Under Rule 2A.05, subject to Rule 2A.05A (application for listing of debt securities under Chapter 37) and Rule 2A.05B (application for listing for collective investment scheme authorised by the SFC), every application for listing by a new applicant should be submitted to the Listing Department which may reject it or recommend the Listing Committee to approve or reject it. However, the Listing Committee has reserved for itself the power to approve all applications for listing from a new applicant.

<sup>7</sup> Similar to the review hearings of the Listing Committee, a pooling arrangement will be in place. Members of the new Listing Review Committee (except the chairmen pool) will be divided into two pools. The two pools will take turn to be the primary pool and the secondary pool by rotation. Members of the primary pool (who do not have any conflict of interest in the case) will be invited to attend a particular review hearing. For conflicted members of the primary pool, their counterparts in the secondary pool will be invited. A member of the chairmen pool will chair the review hearing.

<sup>8</sup> Please refer to paragraph 91 for further details.

11. The new Listing Review Committee will comprise at least 15 members, with at least four investor representatives and the remaining members representing a suitable balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)). Members of the new Listing Review Committee are expected to be former Listing Committee members. However, persons with experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee, may also be appointed to sit on the new Listing Review Committee. The quorum for a review hearing by the new Listing Review Committee will be five members present in person.
12. Any review hearing by the new Listing Review Committee will ordinarily be chaired by a member from a pool of chairmen appointed from among the members of the new Listing Review Committee. An honorarium will be offered to each of the members and the chairmen respectively.
13. Similar to the Listing Committee, members of the new Listing Review Committee will be nominated by the Listing Nominating Committee<sup>9</sup>. The selection process will also be similar to that for the Listing Committee. The Listing Nominating Committee will seek applications from candidates, and short-listed candidates will be interviewed before appointments are made. Members of the new Listing Review Committee will normally be appointed for a term of approximately twelve months (which is expected to run concurrently with the term of the Listing Committee members)<sup>10</sup>, and may only remain in office for a maximum of six consecutive years.

Publication of decisions of the new Listing Review Committee for non-disciplinary matters (Chapter 4 of this Paper)

14. To enhance the transparency and accountability of the Exchange's decision-making process, the Exchange proposes that the decisions of the new Listing Review Committee for non-disciplinary matters will be routinely published. If the proposal set out in Chapter 2 is not adopted, both the decision of the first Listing Review Committee and the decision of the second Listing Review Committee will be published at the end of the process (i.e. after completion of the final review). However, if the Exchange considers that the disclosure of the review applicant's identity may be unduly prejudicial to a party's interests or that the decision is price sensitive or may contain price-sensitive information, the Exchange may: (a) publish a review decision on a "no-names" basis; or (b) publish a review decision on a delayed basis.
15. The purpose of publishing decisions of the new Listing Review Committee is for enhancing transparency and accountability and should be distinguished from the listing decisions published by the Exchange as detailed in paragraph 42 below. To ensure that published decisions of the new Listing Review Committee are not misinterpreted by the market, the Exchange will emphasise that they do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future.
16. Published decisions of the new Listing Review Committee will be sufficiently detailed to enable readers who were not involved in the review proceedings to understand the

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<sup>9</sup> Rules 2A.21 and 2A.22. The Listing Nominating Committee comprises three non-executive directors of HKEX and the chairman and two executive directors of the SFC.

<sup>10</sup> It is expected that the members sitting on the inaugural new Listing Review Committee will be appointed for a term of approximately 15 months.

issues, the essential facts and the reasoning of the new Listing Review Committee in reaching its decision (including, where applicable, why the decision under review was upheld or overturned). However, the decisions will necessarily represent only a summary of the new Listing Review Committee's analysis, and will not be in the nature of legal judgments which exhaustively set out the facts and address all of the arguments presented. There will be no requirement that members of the new Listing Review Committee add dissenting views where they have dissented from a decision.

### **Codification of the SFC's power to request review of decisions (Chapter 5 of this Paper)**

17. As mentioned in the Conclusions, the proposal to codify the SFC's power to request a consideration or review of any matter or decision of the Listing Committee as currently provided under paragraph 10.6 of the MOU will be adopted. Accordingly, we will make provisions in the Listing Rules for the SFC to request a consideration or review of any matter, including a decision of the Listing Committee. For the reasons: (i) the new Listing Review Committee will serve as the final review body; (ii) the new Listing Review Committee is a separate and independent committee from the Listing Committee; and (iii) all non-disciplinary decisions of the new Listing Review Committee will be routinely published, the SFC has determined that it will not request a consideration or review of any decisions of the new Listing Review Committee and this will be reflected in a further addendum to the MOU. The provisions in the Listing Rules will also provide that, where the review body in an SFC-initiated review overturns, modifies or varies the decision subject to review, the relevant party will have a further and final opportunity to seek a review by the new Listing Review Committee and that, in each case, the review body will take into account written submissions from the relevant party, the Listing Department (the "**Department**") and the SFC in reaching its decision. Where the SFC had requested a review by the new Listing Review Committee of a decision made by the Listing Committee, any further and final review requested by the relevant party will be heard by a second group of members from the new Listing Review Committee, who do not have any conflict of interest in the case and who did not participate in the earlier review hearing by the first Listing Review Committee. As discussed in Chapter 4, all non-disciplinary decisions of the new Listing Review Committee (whether acting as the first or second review body) will be routinely published at the end of the process with reasons addressing any submissions made by the SFC (where applicable) and other provisions in Chapter 4 will apply as appropriate.
18. The SFC may request written reasons for a decision of the Listing Committee or the new Listing Review Committee if no written reasons were provided and the relevant party does not request written reasons within the time stipulated in the Listing Rules. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the SFC and the Department. Similarly, written reasons provided to the SFC pursuant to the SFC's request will also be provided to the relevant party and the Department. If the SFC decides to initiate a review, it will do so within seven business days after receipt of the relevant decision or, if the SFC or the relevant party requests written reasons for the decision, those written reasons.
19. The Exchange does not consider that formal consultation is required in relation to this codification.

### **Next step**

20. After considering feedback received from the market, the Exchange will prepare the proposed amendments to the Listing Rules to put the proposals and codification of the SFC's power to request review of decisions into effect. The equivalent changes (where appropriate) will apply to disciplinary matters. Equivalent amendments to the GEM

Rules (to the extent that equivalent GEM Rules exist) will also be made. Appropriate transitional arrangements will be put in place prior to the implementation of the new review structure.

21. Following the conclusion of this consultation, the Exchange will conduct a separate consultation on (i) its disciplinary powers and sanctions<sup>11</sup>; and (ii) procedural issues for disciplinary and non-disciplinary review hearings. The implementation of the new review structure will not be affected by the forthcoming consultation.

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<sup>11</sup> In the Conclusions, it was stated that the Exchange will continue to keep the effective use of its existing disciplinary powers and sanctions under review, and will conduct a separate public consultation on its disciplinary powers and sanctions in due course. In July 2013, the Listing Committee considered the Department's paper on the review of sanctions available to the Listing Committee in the exercise of its disciplinary power under the Listing Rules. In May 2014, February 2015 and November 2015, the Listing Committee further considered the Department's proposals on the Exchange's disciplinary powers and sanctions, as well as the procedural issues relating to Listing Committee hearings (disciplinary and non-disciplinary review). This project was put on hold as a result of the Joint Consultation.



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## CHAPTER 1: INTRODUCTION

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### Background

22. In the Joint Consultation, it was proposed, amongst other matters, in relation to non-disciplinary matters, to (a) replace the LRC to address any concern arising from the fact that the Listing Committee, as a decision-maker, and the LRC, as the body that reviews Listing Committee decisions, share the same pool of members<sup>12</sup>; and (b) replace the LAC to address any perceived conflict of interests posed by it sitting at the top of the review structure.
23. The Exchange is a public body and the decisions of its review committees are amenable to judicial review. The Exchange aims to meet the highest standards in its governance structure and decision-making processes. A party appearing before a decision-making body of the Exchange has a right to a fair hearing properly conducted before a competent, independent and impartial committee. It is well recognised that a decision-maker that follows a fair procedure is more likely to reach a fair decision. For these reasons, the Exchange strives to ensure that the procedures used by its review committees to reach their decisions are fair and proper, and that the public perceives its procedures as such.
24. At the same time, as will be explained below, we are mindful that the decision-making process of the Listing Committee is intended to be market-driven and the members of the Listing Committee hearing a particular review may or may not be legally qualified. The procedures for review hearings should, as far as possible without compromising on fairness, take into account the practicalities of the situation and be flexible to adapt to the unique circumstances of each case.
25. The proposals in this Paper concern the review of decisions of the Listing Committee and the LRC (or the LD(R)C) only.
26. In this Chapter, we set out the current process and structure for the review of Listing Committee decisions. We also discuss its strengths and outline the potential areas and weaknesses for further enhancement.

### Current review process/structure

#### Listing Committee

27. The board of directors of the Exchange (the “**Exchange Board**”) has arranged for all of its powers and functions in respect of all listing matters to be discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in Chapter 2A of the Listing Rules<sup>13</sup>.
28. The Listing Committee acts both as an independent administrative decision maker and an advisory body for the Exchange. It has four principal functions:

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<sup>12</sup> Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case or have participated in either the initial decision or the first review by the Listing Committee.

<sup>13</sup> Rule 2A.01.

- (a) to oversee the Department (to the extent practicable given the Listing Committee's mode of operation);
  - (b) to provide policy advice to the Department on listing matters and to approve amendments to the Listing Rules;
  - (c) to take decisions of material significance for new applicants, listed issuers and the individuals concerned. These include approvals of listing applications, cancellations of listing and disciplinary matters; and
  - (d) to act as a review body for decisions made by the Department and by the Listing Committee.
29. The Listing Committee is the review body for all decisions made by the Department. The quorum for a review hearing is five members present in person.
30. The Listing Committee currently comprises 28 members<sup>14</sup>, including at least eight investor representatives, a suitable balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)) as well as the Chief Executive of HKEX as an ex officio non-voting member<sup>15</sup>. Listing Committee members are nominated by the Listing Nominating Committee. The Listing Nominating Committee also nominates the Listing Committee chairman and deputy chairmen. Listing Committee members are normally appointed for a term of approximately twelve months, and may only remain in office for a maximum of six consecutive years<sup>16</sup>.

#### The LRC and the LD(R)C

31. For non-disciplinary matters, a new applicant or a listed issuer has the right to have the Listing Committee decision referred to the LRC<sup>17</sup> for review.
32. For disciplinary matters, a party sanctioned under the Listing Rules<sup>18</sup> has the right to have the Listing Committee decision referred to the LD(R)C for review<sup>19</sup>.
33. Members of the LRC and the LD(R)C (as the case may be) are drawn from the Listing Committee and must not have participated in either the initial decision or the first review by the Listing Committee<sup>20</sup>. The composition of the LRC and the LD(R)C also depends on factors such as the members' availability and conflicts. The quorum for a review hearing is five members present in person.

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<sup>14</sup> Rule 2A.17.

<sup>15</sup> Under Rules 2A.28 and 2B.11(3), the Chief Executive of HKEX will not attend Listing Committee meetings on individual cases in the first instance or on review.

<sup>16</sup> Rules 2A.22A and 2A.24.

<sup>17</sup> For matters on rejection of an authorised representative and rejection of a lifting of a suspension of trading, Rules 2B.07(3) and (4) provide that the decisions of the Listing Committee are reviewed by the LAC directly.

<sup>18</sup> Rules 2A.09 and 2A.10.

<sup>19</sup> Rule 2A.11

<sup>20</sup> For disciplinary reviews, Rule 2A.28 provides that at any meeting held to review an earlier decision of the Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.

For non-disciplinary reviews, Rule 2B.11(4) provides that at any meeting held to review an earlier decision of the Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the Listing Committee or the LRC, as the case may be, all of the members present at the review hearing shall be persons who were not present at the earlier Listing Committee meeting.

### The LAC

34. The LAC is the final review body for decisions of the LRC, the LD(R)C or the Listing Committee<sup>21</sup> (as the case may be) in respect of the following matters<sup>22</sup>:
- (a) that the role of an authorised representative appointed under Rule 3.05 must be terminated<sup>23</sup>;
  - (b) that an application for listing by a new applicant has been rejected solely on the grounds that the new applicant or its business is unsuitable for listing;
  - (c) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;
  - (d) that the listing of a listed issuer be cancelled; or
  - (e) any decision pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9) (i.e. certain of the disciplinary sanctions, including public censure and public statement which involves criticism).
35. The LAC comprises the Chairman of HKEX Board and two other members of HKEX Board<sup>24</sup>. The chairman of the LAC is the Chairman of HKEX Board<sup>25</sup>. The chairman of the LAC appoints (i) a deputy chairman; and (ii) a third member as and when the LAC is required to review a decision<sup>26</sup>. The quorum for a review hearing is three members present in person.
36. The LRC, the LD(R)C and the LAC are hereinafter collectively referred to as the “**Review Committees**” and individually as a “**Review Committee**”.

### Nature of reviews

37. All review hearings of the Exchange take the form of a hearing *de novo* (i.e. a re-hearing). This means that a Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments. Accordingly, review hearings are concerned with the substantive merits of the case. A Review Committee does not need to consider the question of whether there may have been a defect in the procedure followed by any previous decision-making body. There is also no need for the Review Committee to consider whether the reasoning of any previous decision making body was defective, although it is open to a Review Committee to review the decision of the previous decision making body and to address that decision in its written decision, if it considers appropriate to do so.
38. In administering the Listing Rules, the Exchange does not adopt a precedent system. Any decision of a Review Committee will not bind the Department, the Listing

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<sup>21</sup> In respect of rejection of an authorised representative and rejection of a lifting of suspension of trading.

<sup>22</sup> Rules 2A.36 and 2B.07.

<sup>23</sup> Reviews conducted by the LAC from 2000 to 2017 did not involve this type of decision.

<sup>24</sup> Rule 2A.29.

<sup>25</sup> Rule 2A.30.

<sup>26</sup> Rules 2A.31 to 2A.34.

Committee or any other Review Committee in the future, nor have the effect of altering the construction or effect of the Listing Rules.

Number of levels of review for Listing Committee decisions

39. Appendix I sets out the current review structure for both non-disciplinary and disciplinary matters.
40. Most non-disciplinary decisions of the Listing Committee are subject to one level of review. Decisions of Material Significance<sup>27</sup> are subject to a further and final review by the LAC.

Publication of decisions of the Review Committees

41. For non-disciplinary matters, decisions of the Review Committees are generally not published by the Exchange as they relate to individual cases<sup>28</sup>. However, to fulfil their disclosure obligations under the inside information provisions of the Securities and Futures Ordinance (Cap. 571), listed issuers have to announce decisions which affect them and which are price sensitive<sup>29</sup>. Such announcements are different in content and purpose from listing decisions published by the Exchange (see paragraph 42 below). The Exchange would, where appropriate, ensure the listed issuers promptly publish the information by way of an announcement.
42. Separately, the Exchange will prepare listing decisions to explain the interpretation of certain Listing Rules in specific regulatory decisions made by the Exchange in light of the specific facts of the cases presented and available to it. The underlying decisions may have been made by the Department, the Listing Committee or the Review Committees. Listing decisions on specific matters are published (on a “no-names” basis and without specifying the decision-making body) where, in the Exchange’s opinion, publication would have regulatory value or would assist market’s understanding of the Listing Rules or the activities of the Exchange. They may relate to an issue that has arisen in a transaction, be it during the course of considering an IPO application or a listed issuer’s ongoing corporate transaction, or an issue that has recurred frequently. The market may refer to published listing decisions for reference or guidance, but the Exchange is not bound by the decisions made in those underlying cases.
43. For disciplinary matters, a news release will be published on the HKEX’s website when a respondent is being publicly sanctioned by the Exchange. The news release will include brief facts of the case, the Listing Committee’s (including the Review Committees’) findings of breach, the reasons for such decision and the sanctions imposed. No news release of the disciplinary decision will be published if the final review body modifies the decision under review and decides not to impose any public sanction.

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<sup>27</sup> Being (i) rejection of a new applicant’s listing application solely on the ground of unsuitability for listing; (ii) cancellation of listing; and (iii) imposition of certain disciplinary sanctions.

<sup>28</sup> Where necessary the Exchange could make a case-specific announcement in the discharge of its obligation under section 21 of the Securities and Futures Ordinance (Cap. 571) and under Rule 2.07(2)(e) of the Listing Rules. This had rarely happened in the past.

<sup>29</sup> These may include decisions regarding compliance with sufficiency of operations or assets for a continued listing, decisions regarding a reverse takeover ruling, or decisions regarding suitability for listing.

### SFC's power to request review of decisions

44. Under paragraph 10.6 of the MOU, the SFC may request the Listing Committee and the LAC to review any matter or decision of the respective committee. Paragraph 10.6 of the MOU provides that:

*“Referrals. The Listing Committee and the Listing Appeals Committee shall, if so requested by the SFC, consider or review any matter, including a decision by the respective committee itself. The SFC acknowledges that in considering or reviewing a matter, the committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further consideration or review of the matter.”*

45. The Listing Rules do not contain any specific provisions for SFC-initiated reviews and the MOU itself is not part of the Listing Rules.

### **Strengths of the current review process/structure**

46. The Listing Rules confer a significant degree of discretion upon the Exchange and are intended to be flexible. In this respect, the Listing Rules allow the Exchange to exercise its own judgment in respect of matters such as suitability for listing and cancellation of listing, and also to impose additional requirements or to waive, modify or not require compliance with the Listing Rules to suit the circumstances of any particular case<sup>30</sup>. This enables the Exchange to innovate and respond to developments in the market and the unique circumstances of any particular new applicant or listed issuer.
47. The current review process/structure provides new applicants and listed issuers with the right to seek a second and final review by the LAC for decisions of Material Significance made by the Listing Committee to ensure that they have ample opportunity to address any grievance with how the Exchange's discretion was exercised. Thus if, for example, the Listing Committee rejects a listing application solely on the ground that the new applicant is unsuitable for listing, that new applicant can then apply for a review by the LRC and, if the LRC upholds the Listing Committee decision, again to the LAC.
48. Some aspects of the current review process/structure promote flexibility to enable the Exchange to make an appropriate decision for each individual case. This is achieved by the following:
- (a) De novo hearing - Each review is by way of a hearing *de novo*, thus the Review Committees can focus on the substantive issues and make their own decisions on the facts and merits (rather than having to focus on whether there were errors (factual or otherwise) in the earlier decision(s)). It is however open to the Review Committees to consider the decisions of the previous decision making bodies.
  - (b) Non-binding nature of the decisions - The decisions of the Review Committees do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future.

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<sup>30</sup> Rule 2.04.

This enables the Exchange to respond to developments in the market and the unique circumstances of any particular new applicant or listed issuer.

- (c) Responsiveness to the market - As members of the Listing Committee (and hence the LRC and the LD(R)C) comprise representatives of investors, listed issuers and market practitioners, the existing process is more informal in nature than court proceedings and promotes market-driven decision making, rather than legalistic decisions.
  - (d) Appointment of Listing Committee members - The current selection process of Listing Committee members ensures the right balance in public interest representation on the Listing Committee, and also ensures that people with knowledge, experience and technical skills appropriate for the role as Listing Committee members are appointed.
49. Whilst promoting flexibility, the existing review process also encourages consistency. Both the LRC and the LD(R)C draw their members from the Listing Committee. As Listing Committee members meet and make listing policies and decisions together, they are more likely to apply the Listing Rules and exercise their discretion by reference to the prevailing objectives, policy and approach of the Exchange.
50. The existing review process has stood up well to challenge. Notwithstanding that the Exchange regularly has to decide very contentious issues, there has not been a successful judicial review against the Exchange. In the last 20 years, there were only four judicial review proceedings against the decisions of the Exchange in disciplinary and non-disciplinary review hearings and the Exchange was successful in defending all four judicial reviews.

#### **Potential areas/weaknesses in the current review process/structure for further enhancement**

51. In practical terms, a new applicant or listed issuer will only seek a review when a decision is unfavorable to them. The consequence of giving new applicants or listed issuers two rights to review decisions of Material Significance made by the Listing Committee is that, for an unfavorable decision to stand, three decision-making bodies must make the same finding, whereas the new applicant or listed issuer only has to convince one of the three bodies in order to "win" the case. Therefore, the current review structure is unbalanced in favour of the review applicants.
52. A second issue that has been raised relates to the timeliness of the review process. In particular, the two-level review structure in respect of decisions of Material Significance made by the Listing Committee means that it takes a longer time for such decisions to become final. Dispensing with the two-level review structure and having only one level of review in respect of such decisions would speed up the review process and result in significant decisions becoming final more quickly.
53. Other issues have been raised in relation to the composition and perceived independence of the Review Committees, including:
- (a) Overlapping memberships of the Listing Committee and the Review Committees – The LRC and the LD(R)C are drawn from the same pool of members as the Listing Committee. An individual may sit on the Listing Committee for one particular case, but appear on the LRC for another (unrelated) case involving similar issues. The system for selecting members does not take into account the level of relevant knowledge, experience or

specialisation of the individuals concerned. As a result, there is some level of arbitrariness in the selection of members who hear a case at the first instance and those who hear the review, which blurs the hierarchy of the review structure. Although the LRC and the LD(R)C may overturn an earlier decision of the Listing Committee, decisions of the LRC and the LD(R)C are not binding precedents which must be followed by other committees in the future.

- (b) Perceived independence of the LRC and LD(R)C from the Listing Committee - The fact that the LRC and the LD(R)C comprise members of the Listing Committee may result in the perception that these committees are not as independent as they can or should be (even though Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case or have participated in either the initial decision or the first review by the Listing Committee).
- (c) Conflicting role of the LAC - The LAC, being the ultimate authority which may veto Listing Committee decisions to reject listing applications, comprises solely HKEX Board members and this may undermine the perceived effectiveness and fairness of the “Chinese wall” arrangement<sup>31</sup> as well as public confidence in the Exchange’s gate-keeping role.
- (d) Composition of LRC and LD(R)C – Listing Committee members who sit on an LRC or an LD(R)C may not be more senior or experienced in terms of time served on the Listing Committee. This may result in the members of the LRC or LD(R)C appearing to be less qualified to consider the matter than the members of the Listing Committee responsible for making the decision at first instance.
- (e) Burden on the Listing Committee members - As Listing Committee members are also required to sit on both the LRC and the LD(R)C, this places a burden on the time of members especially when there is an increasing number of listing applications<sup>32</sup>. This may also give rise to a practical difficulty in finding sufficient quorum for review hearings by the LRC and the LD(R)C.

54. Last but not least, it has been suggested that the transparency of the Exchange’s decision-making process, and therefore the accountability to the public for its decisions, might be enhanced if review decisions were routinely published.

### **Purpose of this Paper**

55. In this Paper, we will discuss possible changes to the current review process and structure with a view to enhancing governance within the Exchange’s structure for reviewing Listing Committee decisions, and promoting transparency, accountability

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<sup>31</sup> The fact that HKEX is a recognised exchange controller which controls the Exchange under the Securities and Futures Ordinance (Cap. 571) and that HKEX is also a company listed on the Exchange give rise to potential actual and perceived conflicts of interest. HKEX and the Exchange manage those conflicts by, most significantly, delegating its functions and powers in relation to listing matters (other than making amendments to the Listing Rules and certain rights of review) to the Listing Committee. In addition, HKEX has established a conflict committee to consider potential conflicts that might affect the performance of regulatory functions by HKEX. There is also physical segregation between the Department and other business units of HKEX to avoid leakage of price sensitive information.

<sup>32</sup> The number of listing applications (Main Board and GEM) accepted by the Exchange increased over the past five years, from 177 in 2013 to 310 in 2017.

and consistency in decision-making. We will also provide details regarding provisions for the SFC's power to request review of decisions under the Listing Rules.

56. The discussions in this Paper focus on the review of Listing Committee decisions for non-disciplinary matters, but the proposals and/or matters discussed in Chapters 2, 3 and 5 will also apply to disciplinary matters.
57. Following the conclusion of this consultation, the Exchange will conduct a separate consultation on (i) its disciplinary powers and sanctions; and (ii) procedural issues for disciplinary and non-disciplinary review hearings. The implementation of the new review structure will not be affected by the forthcoming consultation.



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## CHAPTER 2: NUMBER OF LEVELS OF REVIEW FOR DECISIONS OF MATERIAL SIGNIFICANCE

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58. This Chapter discusses our proposal in relation to the number of levels of review for decisions of Material Significance.
59. Currently, decisions of Material Significance made by the Listing Committee are subject to two levels of review. They are subject to a first review by the LRC or the LD(R)C, as the case may be, and a further and final review by the LAC.
60. The Joint Consultation did not specifically consult on the number of levels of review for decisions of Material Significance. Amongst the few submissions that commented on proposals relating to the review of listing decisions, there was support for generally maintaining the current two-level review structure for certain types of Listing Committee decisions.
61. It was stated in the Conclusions that the Exchange would consult on whether to maintain a two-tier review structure for Listing Committee decisions, given that the Listing Committee is itself an independent committee of experienced market participants.
62. We have reviewed the current review structure and, after carefully weighing up the competing considerations, propose revising the review structure so that there will be only one level of review for decisions of Material Significance made by the Listing Committee. Listing Committee decisions (other than decisions of Material Significance) will continue to be subject to one level of review after the proposals in this consultation paper are implemented (see Appendix II).

### Our analysis

63. As has been explained, the Listing Rules confer a significant degree of discretion upon the Exchange and are intended to be flexible. In this respect, the Listing Rules allow the Exchange to exercise its own judgment in respect of matters such as suitability for listing and cancellation of listing, and also to impose additional requirements or to waive, modify or not require compliance with the Listing Rules to suit the circumstances of any particular case<sup>33</sup>. This enables the Exchange to innovate and respond to developments in the market and the unique circumstances of any particular new applicant or listed issuer.
64. The current review process/structure provides new applicants and listed issuers with the right to seek a second and final review by the LAC for decisions of Material Significance made by the Listing Committee to ensure that they have ample opportunity to address any grievance with how the Exchange's discretion was exercised. In this connection, the Exchange recognises that it plays a unique role in that it is the only recognised stock exchange and therefore offers companies the only route by which they may become listed in Hong Kong. Further, once an issuer is listed in Hong Kong, its securities become owned by the investing public. Decisions of the

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<sup>33</sup> Rule 2.04.

Exchange therefore can have the potential to affect the interests of a large number of people, and it is important that the decision-making and review processes are robust and afford adequate opportunity to correct any decision which is wrong.

65. The Exchange believes that a two-level review structure for decisions of Material Significance made by the Listing Committee has afforded the Exchange, as a practical matter, with a large degree of protection against the risk of decisions being challenged by way of judicial review. In particular, although there is no administrative law requirement for the number of levels of review, in assessing whether a party to the proceeding has been given a reasonable opportunity to be heard, the whole of the decision-making process must be considered, including any review processes available. Having a second level of review ensures that any identified procedural or other defects in relation to the initial decision of the Listing Committee or the LRC or LD(R)C can be corrected before the conclusion of the process as a whole. Even if a judicial review application has little or no merits, responding to a judicial review is time-consuming and creates uncertainty for new applicants, listed issuers and investors<sup>34</sup>.
66. In the last five years, there were 27 cases which were eligible for review by the LAC. Based on our records, applications for review by the LAC were made in over 50% of those cases<sup>35</sup>. This suggests that the second level of review has been frequently utilised by the market. As at 31 July 2018, out of the 12 review hearings conducted by the LAC (which accounted for 9.1% of the review hearings before the Review Committees), two cases were overturned.
67. On the other hand, there are reasons in favour of revising the current review structure so that there will be only one level of review for decisions of Material Significance made by the Listing Committee. As the LRC and the LD(R)C comprise members of the Listing Committee, who are experienced market representatives, giving a new applicant or listed issuer two chances to review a decision of Material Significance would not appear to add much to the overall process when the Listing Committee and the LRC (or the LD(R)C) (both comprising market representatives) have already found against the new applicant or listed issuer.
68. Second, although the two-level review structure offers additional opportunities for a new applicant or listed issuer to request a review of a decision of Material Significance made by the Listing Committee, the structure is not, by itself, essential to a fair and due process. In this respect, the Exchange notes that decisions currently made by the Listing Committee (other than decisions of Material Significance) are subject only to one level of review.
69. Third, as has been explained it has been suggested that giving a new applicant or listed issuer two chances to review a decision of Material Significance made by the Listing Committee unduly favours them and sets an unreasonably high threshold for any negative finding against a new applicant or listed issuer to be upheld. In practical terms, the effect of giving new applicants or listed issuers an additional right to review a decision of Material Significance is that three decision-making bodies must make the same finding, whereas the new applicant or listed issuer only has to convince one of

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<sup>34</sup> An additional level of review may add a minimum of two months to the process, whereas from experience a judicial review lasts for more than a year.

<sup>35</sup> Out of the 27 eligible cases, around 40% were cancellation of listing cases. Please refer to Appendix III for further details.

the three bodies in order to "win" the case. Therefore, the current review structure is unbalanced in favour of the review applicants.

70. Fourth, the two-level review structure in respect of decisions of Material Significance made by the Listing Committee means that it takes a longer time for such decisions to become final. A one-level review structure would result in a more streamlined process and in more timely regulatory outcomes than a two-level review structure.

#### **Our proposal**

71. There is not necessarily a "correct" answer as regards whether there should be one level or two levels of review in respect of decisions of Material Significance made by the Listing Committee. After carefully weighing up the competing considerations, the Exchange proposes 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. If this proposal proceeds, the LAC would be discontinued without being replaced.

**Q1: *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? Please give reasons for your views.***

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## CHAPTER 3: ESTABLISHMENT OF INDEPENDENT REVIEW COMMITTEE

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72. This Chapter discusses our proposal in relation to the establishment of a new independent review committee to replace the LRC and the LD(R)C, and if the proposal set out in Chapter 2 is not adopted, the LAC.
73. In the Conclusions, the SFC expressed the view that, to enhance governance within the Exchange's structure for reviewing Listing Committee decisions, there should be no overlap in membership between each review body and the body whose decisions it will review, and that the LRC and the LAC should be replaced with one or more independent committees that consist entirely of outside market participants, with no current Listing Committee members or representatives of the SFC or HKEX. We stated in the Conclusions that we agreed with the SFC in principle as it may promote a higher degree of independence for the review bodies.
74. To address market concern and perception, we are proposing the establishment of an independent review committee to replace the LRC and the LD(R)C, and if the proposal set out in Chapter 2 is not adopted, the LAC. The Exchange's general approach to representation at meetings, handling conflicts of interest, the nature of review hearings, the nomination and selection process of members of the review committee, the term of appointment, the quorum for hearings, the process for drawing members, the payment of honorarium as well as the provision of the review committee's decisions and their rationale in writing, would however remain largely unaltered.

### Our analysis

75. Under the current structure, a new applicant or a listed issuer has the right to have a Listing Committee decision referred to the LRC<sup>36</sup> or the LD(R)C for review. Presently, for decisions of Material Significance, a new applicant or a listed issuer has the right to have the LRC or the LD(R)C decision referred to the LAC for a final review. As indicated in the previous Chapter, the Exchange is now consulting on a proposal to revise the current review structure such that decisions of Material Significance made by the Listing Committee will be subject to only one level of review. Were this proposal to proceed, the LAC would simply be discontinued without being replaced.
76. The LRC and the LD(R)C comprise members of the Listing Committee while the LAC comprises solely HKEX Board members. It has been suggested that the following concerns arise in relation to the composition and independence of the LRC, LD(R)C and LAC:
- (a) Overlapping memberships of the Listing Committee and the Review Committees – The LRC and the LD(R)C are drawn from the same pool of members as the Listing Committee. An individual may sit on the Listing Committee for one particular case, but appear on the LRC for another (unrelated) case involving similar issues. The system for selecting members does not take into account the level of relevant knowledge, experience or specialisation of the individuals concerned. As a result, there is some level of

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<sup>36</sup> For matters on rejection of an authorised representative and rejection of a lifting of a suspension of trading, the decisions of the Listing Committee are reviewed by the LAC directly.

arbitrariness in the selection of members who hear a case at the first instance and those who hear the review, which blurs the hierarchy of the review structure. Although the LRC and the LD(R)C may overturn an earlier decision of the Listing Committee, decisions of the LRC and the LD(R)C are not binding precedents which must be followed by other committees in the future.

- (b) Perceived independence of the LRC and LD(R)C - The fact that the LRC and the LD(R)C comprise members of the Listing Committee may result in the perception that these committees are not as independent as they can or should be (even though Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case or have participated in either the initial decision or the first review by the Listing Committee).
- (c) Conflicting role of the LAC - The LAC, being the ultimate authority which may veto Listing Committee decisions to reject listing applications, comprises solely HKEX Board members and this may undermine the perceived effectiveness and fairness of the “Chinese wall” arrangement<sup>37</sup> as well as public confidence in the Exchange’s gate-keeping role.
- (d) Composition of LRC and LD(R)C – Listing Committee members who sit on an LRC or an LD(R)C may not be more senior or experienced in terms of time served on the Listing Committee. This may result in the members of the LRC or LD(R)C appearing to be less qualified to consider the matter than the members of the Listing Committee responsible for making the decision at first instance.
- (e) Burden on the Listing Committee members - As Listing Committee members are also required to sit on both the LRC and the LD(R)C, this places a burden on the time of members especially when there is an increasing number of listing applications<sup>38</sup>. This may also give rise to a practical difficulty in finding sufficient quorum for review hearings by the LRC and the LD(R)C.

77. Although there may be a perception that the LRC or the LD(R)C is not independent, there is no “real” overlap between the LRC members or the LD(R)C members and the Listing Committee members for any particular case. The Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case or have participated in either the initial decision or the first review by the Listing Committee.

78. Nevertheless, it is an important principle of fairness that a party to a proceeding before a Review Committee is entitled to a hearing before an impartial and unbiased committee. Where a committee member has a direct pecuniary or proprietary interest in the outcome of the proceeding, the member should be disqualified from participating in the review. Committee members should also be disqualified from sitting on the

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<sup>37</sup> The fact that HKEX is a recognised exchange controller which controls the Exchange under the Securities and Futures Ordinance (Cap. 571) and that HKEX is also a company listed on the Exchange give rise to potential actual and perceived conflicts of interest. HKEX and the Exchange manage those conflicts by, most significantly, delegating its functions and powers in relation to listing matters (other than making amendments to the Listing Rules and certain rights of review) to the Listing Committee. In addition, HKEX has established a conflict committee to consider potential conflicts that might affect the performance of regulatory functions by HKEX. There is also physical segregation between the Department and other business units of HKEX to avoid leakage of price sensitive information.

<sup>38</sup> The number of listing applications (Main Board and GEM) accepted by the Exchange increased over the past five years, from 177 in 2013 to 310 in 2017.

committee if the hearing involves a review of a decision which they previously made. In addition, a committee member will be disqualified where in the circumstances there appears to be a real possibility of bias on the part of the member. The test refers to the possibility – not probability – of bias. In this respect, it is noted that members of the Listing Committee do meet and work together frequently to discuss listing policy and to decide different cases (based on the duty roster).

79. In the interests of ensuring that both parties to review proceedings before the Exchange and the market have the utmost confidence in the Exchange, the Exchange proposes to replace the LRC and the LD(R)C with a new review committee, to be named the “**Listing Review Committee**”, which members are individuals entirely independent of the Listing Committee and HKEX.
80. Setting up such a new review committee will also reduce the work burden on Listing Committee members (see paragraph 76(e) above). This will enable Listing Committee members to focus their time and resources on considering listing policy matters and making first instance decisions on reserved matters<sup>39</sup>. This is particularly important in light of the increase in workload in considering and approving listing applications<sup>40</sup> and listing applications of companies from emerging and innovative sectors.
81. If the two-level review structure is retained for decisions of Material Significance made by the Listing Committee, we are aware of the practical difficulty in setting up two new review bodies to replace (i) the LRC and the LD(R)C, and (ii) the LAC, in that there is a limited number of suitable and willing candidates to serve in this capacity and who are not already Listing Committee members. From our experience in relation to the current Listing Committee, we believe it would be a challenge to fill two new review bodies. We therefore believe that a more feasible alternative is to set up one independent review committee, with members being drawn from the same pool of persons to form the first and second review bodies (which will replace (i) the LRC and the LD(R)C; and (ii) the LAC respectively), as and when required. It is recognised that this may give rise to the same concerns regarding overlapping memberships as discussed in paragraphs 76(a) and (b) above.
82. In order to ensure that there is no overlap in the membership between the new Listing Review Committee and the Listing Committee, members of the new Listing Review Committee should not be current Listing Committee members. There has however been a suggestion that this may create a risk that members of the new Listing Review Committee will be less familiar with the evolving objectives, policy and approach of the Listing Committee, and may make it more difficult for the Exchange to decide on issues consistently. The Exchange is confident that the concern outlined above can be managed by appointing members who are experienced market participants that are close to and understand the market, as well as by providing regular briefings to the new Listing Review Committee members to update them on the latest policy and approach of the Listing Committee. The new Listing Review Committee is expected to

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<sup>39</sup> The reserved matters include (a) the power to approve most Main Board listing applications from new applicants – Rule 2A.05; (b) the power to cancel the listing of a listed issuer – Rule 2A.08; and (c) the power to impose disciplinary sanctions – Rule 2A.09.

<sup>40</sup> The number of listing applications (Main Board and GEM) accepted by the Exchange increased over the past five years, from 177 in 2013 to 310 in 2017. In addition, as set out in the consultation conclusions on “The Review of the GEM and Changes to the GEM and Main Board Listing Rules” published in December 2017, the delegated authority to the Department by the Listing Committee to approve or reject GEM listing applications will be unwound. Reviews of Listing Committee decisions to reject GEM listing applications will be conducted by the new Listing Review Committee. The unwinding of the delegated authority will be implemented at a later date following the outcome of this consultation or such earlier date as the Exchange considers appropriate.

mainly comprise former Listing Committee members (see paragraph 83 below). This would enable the new Listing Review Committee to benefit from the experience of these former Listing Committee members. Further, it is proposed that decisions of the new Listing Review Committee for non-disciplinary matters be routinely published, which will also help to promote transparency and consistency in decision-making (see Chapter 4).

83. It is also important to ensure that the composition of the new Listing Review Committee achieves the right balance in public interest representation, knowledge, experience and technical skills appropriate for the role the new Listing Review Committee is to play. We believe a pool of at least 15 members, at least four of whom should be investor representatives, will ensure that there are sufficient members to be drawn from for any particular case. Similar to the quorum for review hearings of the LRC, a quorum of five members present in person, will ensure review decisions be taken only after significant and balanced input from the new Listing Review Committee members.

### **Our proposal**

84. We propose to establish a new independent review committee, which will comprise at least 15 members, who are market participants with no current Listing Committee members or representatives of the SFC or HKEX. The new Listing Review Committee will be a committee of the Exchange. Members of the new Listing Review Committee are expected to be former Listing Committee members. However, persons with experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee, may also be appointed to sit on the new Listing Review Committee. There will be at least four investor representatives, with the remaining members representing a suitable balance of representatives of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers).
85. Similar to the Listing Committee, members of the new Listing Review Committee will be nominated by the Listing Nominating Committee. The selection process will also be similar to that for the Listing Committee. The Listing Nominating Committee will seek applications from candidates, and short-listed candidates will be interviewed before appointments are made. Members of the new Listing Review Committee will normally be appointed for a term of approximately twelve months (which is expected to run concurrently with the term of Listing Committee members)<sup>41</sup>, and may only remain in office for a maximum of six consecutive years.
86. As and when there is a review of a Listing Committee decision, members will be drawn from the new Listing Review Committee<sup>42</sup> to conduct a review hearing<sup>43</sup>. The new Listing Review Committee will replace the LRC and the LD(R)C. The Exchange does not adopt a precedent system in the administration of the Listing Rules. Accordingly,

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<sup>41</sup> It is expected that the members sitting on the inaugural new Listing Review Committee will be appointed for a term of approximately 15 months.

<sup>42</sup> Similar to the review hearings of the Listing Committee, a pooling arrangement will be in place. Members of the new Listing Review Committee (except the chairmen pool) will be divided into two pools. The two pools will take turn to be the primary pool and the secondary pool by rotation. Members of the primary pool (who do not have any conflict of interest in the case) will be invited to attend a particular review hearing. For conflicted members of the primary pool, their counterparts in the secondary pool will be invited. A member of the chairmen pool will chair the review hearing.

<sup>43</sup> Currently, review of Listing Committee decisions in respect of rejection of an authorised representative under Rule 3.05 and rejection of a lifting of suspension of trading is conducted by the LAC. Under our proposal, the new Listing Review Committee will replace the LAC to conduct review of these Listing Committee decisions.

although the new Listing Review Committee may overturn an earlier decision of the Listing Committee, that new Listing Review Committee decision will not become a binding precedent which must be followed by other committees in the future. Nevertheless, the Exchange will continue to strive for consistency in its decision-making and in performing its regulatory functions.

87. All review hearings of the new Listing Review Committee will take the form of a hearing *de novo*. The new Listing Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information adduced for the purposes of the review<sup>44</sup>. The new Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The new Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.
88. Any review hearing by the new Listing Review Committee will ordinarily be chaired by a member from a pool of chairmen appointed from among the members of the new Listing Review Committee (and nominated by the Listing Nominating Committee). The Secretary will also refer any pre-review hearing enquiries or procedural matters or otherwise to that chairman for confirmation or decision. The quorum for a review hearing will be five members present in person.
89. The Exchange recognises that serving as a member of the new Listing Review Committee would place a burden on the valuable time of its members. Accordingly, similar to the practice for the Listing Committee, an honorarium will be offered to each of the members and the chairmen respectively on account of attendance at and preparation for review meetings.
90. We believe the above arrangements, together with the composition of members, will achieve the purpose of promoting a higher degree of independence of the new Listing Review Committee.
91. If, after taking into account the public responses received for this consultation, the Exchange decides to retain a two-level review structure for decisions of Material Significance made by the Listing Committee (i.e. if the proposal set out in Chapter 2 is not adopted), the review committee for the second level of review (which replaces the LAC) will be (a) drawn from the new Listing Review Committee (who must not have any conflict of interest in the case and have not participated in the first review), and (b) chaired by a member of a separate chairperson panel comprising at least three experienced professionals, who are not current Listing Committee members, members of the new Listing Review Committee or representatives of the SFC or HKEX. Members of the chairperson panel will be nominated by the Listing Nominating Committee. In addition, we propose that members of the chairperson panel should be persons who have retired from their profession to ensure the independence of the chairperson panel and to reduce the possibility of chairperson panel members being conflicted out from hearing a case. Appropriate modifications will be made to the proposal in respect of the new Listing Review Committee.

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<sup>44</sup> For disciplinary review hearings, new evidence can only be adduced in exceptional circumstances and with leave of the chairman of the new Listing Review Committee.



92. If the proposal set out in this Chapter is adopted, the Listing Rules regarding the delegation of decision-making powers by the Exchange Board to the Listing Committee<sup>45</sup> and the Listing Committee's existing oversight role<sup>46</sup> will be modified.

**Q2: Do you agree with:**

- (a) *the proposal to establish a new independent review committee to replace the LRC and the LD(R)C 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)?*

*Please give reasons for your views.*

**Q3: *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 LAC 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 process or safeguards that you would suggest to enhance this aspect of the review structure for such decisions of Material Significance? Please give reasons for your views.***

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<sup>45</sup> Rule 2A.01 provides that the Exchange Board has arranged for all of its powers and functions in respect of all listing matters to be discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in Chapter 2A of the Listing Rules. The Listing Committee and, in relation to certain powers of review, the LAC have sole power and authority to act in relation to all listing matters to the exclusion of the Exchange Board, unless and until the Exchange Board revokes these arrangements.

<sup>46</sup> Rule 2B.01 provides that the Listing Committee has retained the role of oversight of the Department and the Chief Executive of the Exchange to ensure that they exercise those powers and carry out their day-to-day functions in a professional and impartial manner. This oversight role does not mean, however, that the Listing Committee will be involved in the day-to-day administration of the Listing Rules but the Listing Committee will act as an independent review body and has retained the right to review at any time, on its own volition, any decision of the Chief Executive of the Exchange, the Head of Listing or any member of the staff of the Department which is made under any of the powers delegated by the Listing Committee and to endorse, modify, vary or reverse any such decision.

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## CHAPTER 4: PUBLICATION OF DECISIONS OF THE NEW LISTING REVIEW COMMITTEE FOR NON-DISCIPLINARY MATTERS

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93. This Chapter discusses our proposal in relation to the publication of decisions made by the new Listing Review Committee for non-disciplinary matters. For the avoidance of doubt, the current practice for publication of decisions in respect of disciplinary matters will remain unchanged<sup>47</sup>.
94. As explained in paragraphs 41 and 42 above, presently, decisions of the Review Committees for non-disciplinary matters are generally not published by the Exchange as they relate to individual cases. Separately, the Exchange publishes non-binding listing decisions on specific matters (on a “no-names” basis) to assist the market’s understanding of the Listing Rules or the activities of the Exchange. These published listing decisions (without specifying the decision-making body) may contain an overview of the decisions made by the Review Committees, the Listing Committee or the Department.
95. The Joint Consultation proposed, amongst other things, the routine publication of decisions of the review bodies<sup>48</sup> and detailed reasons for those decisions. Only a small number of submissions commented on the proposal to publish decisions.
96. Some of these submissions expressed concern about the current volume of published guidance by the Exchange and the risk that publishing detailed decisions would add to the volume of published decisions. On the other hand, some respondents expressed the view that publication of detailed decisions would promote consistency in decision-making and better understanding of the interpretation and application of the relevant rules.
97. In the Conclusions, the SFC and the Exchange agreed that the publication of detailed reasons for listing decisions is important and to propose in the separate consultation that the decisions made by the new Listing Review Committee<sup>49</sup> be routinely published. It was envisaged that there will be an explanation of the reasons for the decisions, including (where applicable) why the decision under review was upheld or overturned and setting out any dissenting views. The Exchange will have the discretion to allow decisions to be published either on a “no-names” basis or on a delayed basis, if it is demonstrated that disclosure of the review applicant’s identity would be unduly prejudicial to its interests or that the decision is price sensitive. Decisions that are pending further review will not be published until the entire review process has ended.

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<sup>47</sup> For disciplinary matters, a news release will be published on the HKEX’s website when a respondent is being publicly sanctioned by the Exchange. The news release will include brief facts of the case, the Listing Committee’s (including the Review Committees’) findings of breach, the reasons for such decision and the sanctions imposed. No news release of the disciplinary decision will be published if the final review body modifies the decision under review and decides not to impose any public sanction.

<sup>48</sup> These are the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee.

<sup>49</sup> The decisions of the new Listing Review Committee will have no precedential effect and will not be binding on future cases.

## **Our analysis**

98. The Exchange recognises that the publication of detailed reasons for decisions will promote transparency and accountability in decision-making in that it will enable the public to scrutinise the work of the new Listing Review Committee. Apart from promoting good governance and confidence in the Exchange, the routine publication of decisions may also help the market to better understand the Exchange's interpretation and application of the Listing Rules.
99. The Exchange also recognises, however, that the routine publication of decisions has the potential to give rise to certain issues. Amongst other things, in adopting a practice of routine publication of decisions, the Exchange must be mindful of confidentiality concerns and the risk that publication may cause unfair prejudice to the subject company or individual concerned or result in the disclosure of price-sensitive information. Notwithstanding that the identity of the company or individual may be anonymised, the market may still be able to guess the identity of the subject company or individual from the description of facts (especially if a detailed decision is published). Unfavourable decisions against the subject company may have an adverse impact on its business or may be prejudicial to its shareholders. For example, the rejection of a new applicant's listing application due to unsuitability may affect the new applicant's listing application in other jurisdictions or could affect its business more generally.
100. Second, it is important that decisions which are published are not misinterpreted by the market. As has been explained, decisions of the new Listing Review Committee do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future. This ensures the Exchange's decision-making process remains flexible and able to respond to developments in the market and the unique circumstances of any particular applicant or issuer. It also ensures that the Listing Rules are relatively easy to interpret, because they are not subject to a body of complex "case law" which alter the interpretation or construction of the Listing Rules. Creating additional complexity around the Listing Rules may make it difficult or impossible for listed issuers and directors to understand their obligations and to comply with them, and may substantially increase compliance costs. To the extent that there is routine publication of review decisions, it would therefore be necessary to explain that publication is primarily for the purposes of transparency and accountability and that the decisions do not represent binding precedents.
101. Third, it is important to recognise that the written decisions proposed to be published by the new Listing Review Committee will not be as lengthy or detailed as those seen in courts of law. It is expected that most members will not be legally trained and will have many other professional responsibilities in their day-to-day lives. It is unrealistic to expect the new Listing Review Committee to write a detailed decision in the nature of a legal judgment which exhaustively sets out the facts and addresses all of the arguments presented. More fundamentally, requiring the new Listing Review Committee to prepare very lengthy decisions similar to those published by courts of law mean that it will take considerably longer for decisions to be issued and published. This would be the opposite of streamlining the review process.

## **Our proposal**

102. As mentioned in Chapter 3, the new Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The new Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision. To enhance the transparency and accountability of the Exchange's

decision-making process, the Exchange proposes that the decisions of the new Listing Review Committee for non-disciplinary matters will be routinely published. If the proposal set out in Chapter 2 is not adopted and a two-level review structure for decisions of Material Significance made by the Listing Committee is retained, both the decision of the first Listing Review Committee and the decision of the second Listing Review Committee will be published at the end of the process (i.e. after completion of the final review).

103. However, if the Exchange considers that disclosure of the review applicant's identity may be unduly prejudicial to a party's interests or that the decision is price sensitive or may contain price-sensitive information, the Exchange may: (a) publish a review decision on a "no-names" basis; or (b) publish a review decision on a delayed basis. Other cases (e.g. potential illegality) will be considered on a case-by-case basis.
104. The purpose of publishing decisions of the new Listing Review Committee is for enhancing transparency and accountability and should be distinguished from the listing decisions published by the Exchange as detailed in paragraph 42 above. To ensure that published decisions of the new Listing Review Committee are not misinterpreted by the market, the Exchange will emphasise that they do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future.
105. Decisions of the new Listing Review Committee will be sufficiently detailed to enable readers who were not involved in the review proceedings to understand the issues, the essential facts and the reasoning of the new Listing Review Committee in reaching its decision (including, where applicable, why the decision under review was upheld or overturned). However, the decisions will necessarily represent only a summary of the new Listing Review Committee's analysis, and will not be in the nature of legal judgment which exhaustively set out the facts and address all of the arguments presented. There will be no requirement that members of the new Listing Review Committee add dissenting views where they have dissented from a decision.

**Q4: *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 paragraphs 102 to 105? Please give reasons for your views.***

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## **CHAPTER 5: CODIFICATION OF THE SFC'S POWER TO REQUEST REVIEW OF DECISIONS**

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106. This Chapter provides details regarding provisions for the SFC's power to request review of decisions.
107. The Listing Rules do not currently contain any provisions for SFC-initiated reviews.
108. In the Joint Consultation it was proposed that paragraph 10.6 of the MOU (which provides that the SFC may request the Listing Committee and the LAC to consider or review any matter, including a decision by the respective committee itself) should be codified in the Listing Rules, with the reference to the LAC deleted. In the Conclusions, it was concluded that this proposal would be adopted and no further formal consultation would be required.
109. Accordingly, we will codify the SFC's power to request a consideration or review of any matter currently contained in the MOU, except that, subject to the outcome of this consultation, the relevant provisions will be amended to reflect certain proposed changes to the review structure set out in this consultation paper, and certain administrative procedures. If the relevant proposals in this consultation paper are not adopted, the corresponding amendments will not be adopted.

### **Background**

110. In the past 15 years, the SFC has invoked paragraph 10.6 of the MOU on non-disciplinary matters in four instances and requested the Listing Committee or the LRC to review its decisions<sup>50</sup>. The procedures for these review hearings largely followed those set out in Chapter 2B of the Listing Rules<sup>51</sup>. The review bodies made their decisions based on the documents that were before the earlier committees, the SFC's written reasons for its requests, and the further submissions from the Department and the relevant parties for the purposes of the SFC-initiated reviews. The relevant parties were allowed a further and final right of review of the decisions made at the SFC-initiated reviews.
111. It is desirable to set out the provisions for SFC-initiated reviews in the Listing Rules so as to provide clarity to the market.

### **Listing Rule changes**

112. As stated in the Conclusions, the proposal to codify the SFC's power to request a consideration or review of any matter or decision under the MOU will be adopted. Subject to the outcome of this consultation, the relevant provisions will be amended to reflect the proposed changes to the review structure set out in this consultation paper<sup>52</sup>, and certain administrative procedures. In particular, we will make provisions in the Listing Rules for the SFC to have a right to request a consideration or review of any matter, including a decision of the Listing Committee by the new Listing Review

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<sup>50</sup> The SFC has not invoked paragraph 10.6 of the MOU on disciplinary matters.

<sup>51</sup> The procedures are prescribed by the Exchange on a case-by-case basis under Rules 2.04 and 2B.03.

<sup>52</sup> Namely, the proposals in Chapters 3 and 4.

Committee<sup>53</sup>. For the reasons: (i) the new Listing Review Committee will serve as the final review body; (ii) the new Listing Review Committee is a separate and independent committee from the Listing Committee; and (iii) all non-disciplinary decisions of the new Listing Review Committee will be routinely published, the SFC has determined that it will not request a consideration or review of any decisions of the new Listing Review Committee and this will be reflected in a further addendum to the MOU. In considering or reviewing a matter, the review body shall have due regard to the rights and interests of all third parties who would be directly affected by the further consideration or review of the matter.

113. In addition we will include the following provisions:

*Written reasons*

114. The SFC may request written reasons for a decision of the Listing Committee or the new Listing Review Committee if no written reasons were provided and the relevant party does not request written reasons within the time stipulated in the Listing Rules. The SFC will make such a request within seven days of the expiry of the time stipulated for the relevant party to request written reasons. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the SFC and the Department. Similarly, written reasons provided to the SFC pursuant to the SFC's request will also be provided to the relevant party and the Department.

*Time period to initiate a review*

115. If the SFC decides to initiate a review, it will do so within seven business days after receipt of the relevant decision or, if either the SFC or the relevant party requests written reasons for the decision, those written reasons. Further, under the provisions, the review body and/or its chairman may prescribe the procedures for such review. This is in line with the current Rules for review hearings<sup>54</sup>.

*Written submissions*

116. The provisions will provide that the relevant party, the Department and the SFC will have the right to make submissions to each review body, and each review body will take into account all such written submissions in reaching its decision. This applies to (i) a review requested by the SFC; and (ii) any further and final review requested by the relevant party (see paragraph 117 below).

*Opportunity to seek a further review*

117. Where a review is requested by the SFC, and the review body overturns, modifies or varies the decision subject to review, the relevant party will have a further and final opportunity to seek a review by the new Listing Review Committee. Where the SFC had requested a review by the new Listing Review Committee of a decision made by the Listing Committee, any further and final review requested by the relevant party will be heard by a second group of members from the new Listing Review Committee, who do not have a conflict of interest in the case and who did not participate in the earlier review hearing by the first Listing Review Committee.

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<sup>53</sup> Paragraph 10.7 of the MOU provides that the SFC, in making any such request, shall do so in writing, giving reasons for the request and signed by the Executive Director of the Corporate Finance Division after consultation and agreement with the SFC Chairman.

<sup>54</sup> Rule 2B.03.

*Nature of the review*

118. Similar to other review hearings of the Exchange, SFC-initiated reviews will take the form of a hearing *de novo*.

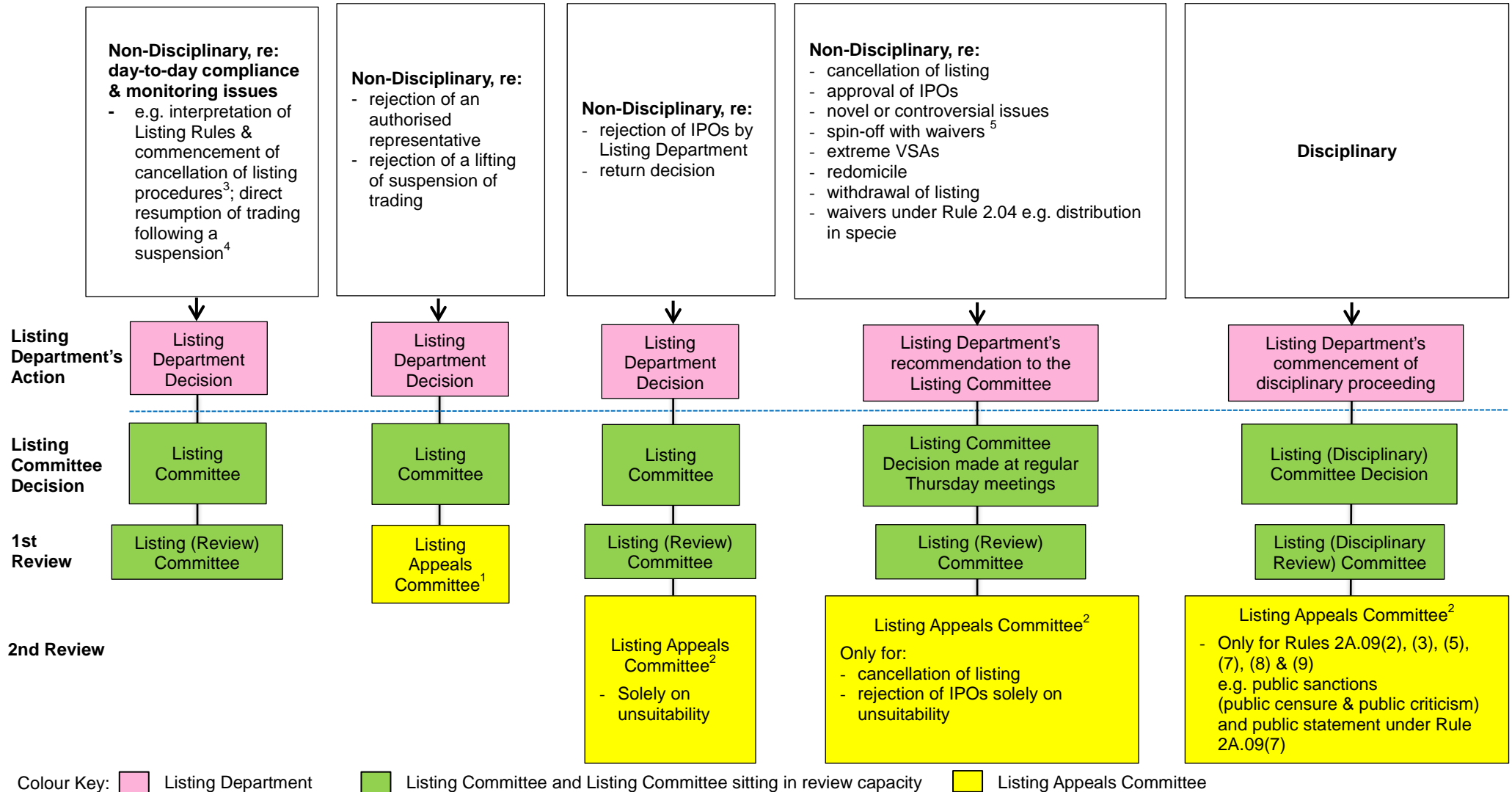
*Publication of decisions*

119. If the proposals in Chapter 4 are adopted, the non-disciplinary decisions of the new Listing Review Committee will be routinely published at the end of the process with reasons addressing any submissions made by the SFC (where applicable) and the provisions in Chapter 4 will apply as appropriate. To the extent that the SFC-initiated review concerns a decision of the Listing Committee, and a further and final review requested by the relevant party is heard by the second Listing Review Committee pursuant to paragraph 117 above, both the decision of the first Listing Review Committee which heard the SFC-initiated review and the decision of the second Listing Review Committee which heard any further and final review by the relevant party will be published.

***The Exchange does not consider that specific consultation is required in relation to these provisions (as they reflect the MOU and administrative procedures) but would be pleased to receive any comments from respondents.***

# APPENDIX I: CURRENT REVIEW STRUCTURE

The number of levels of review described in this chart applies to Listing Committee decisions (but not Listing Department decisions). Listing Department decisions are subject to review by the Listing Committee.

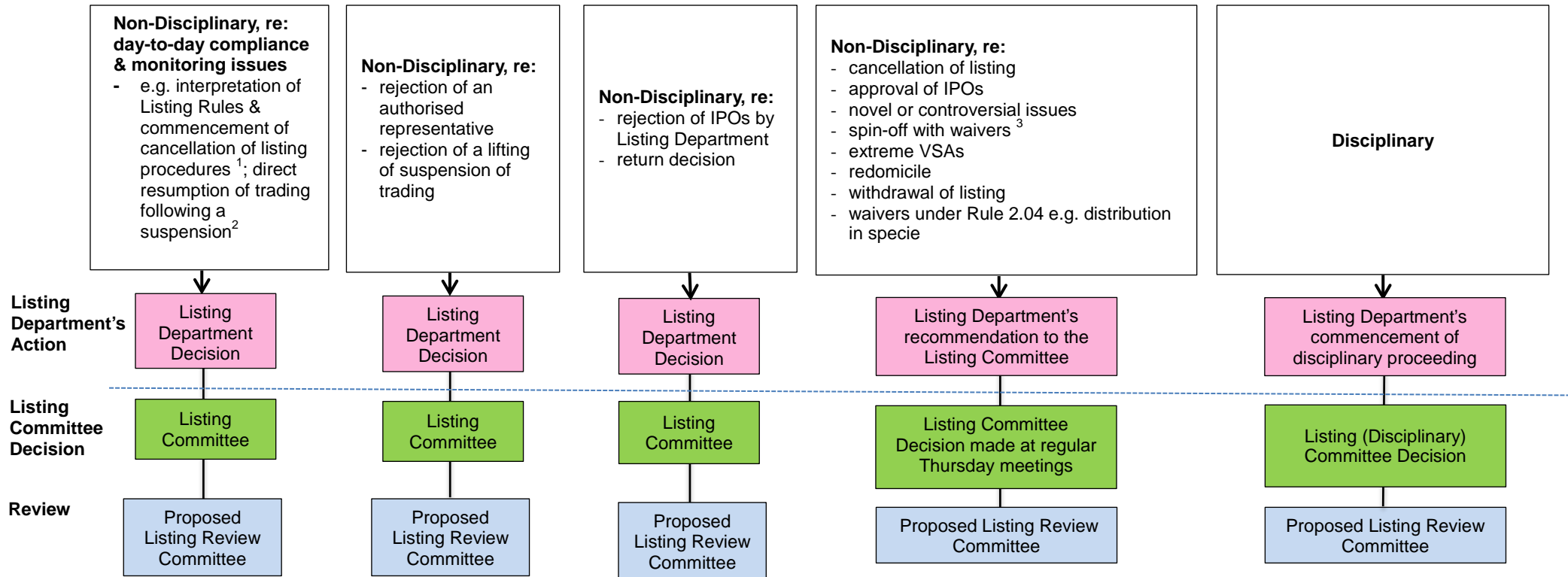




- <sup>1</sup> Rules 2B.07(3) and (4) provide that for matters on rejection of an authorised representative and rejection of a lifting of a suspension of trading, the decisions of the Listing Committee are reviewed by the LAC directly.
- <sup>2</sup> Rules 2A.36 and 2B.07 provide that the LAC shall be the final review body in respect of the following matters :
- (a) that the role of an authorised representative appointed under Rule 3.05 must be terminated
  - (b) that an application for listing by a new applicant has been rejected solely on the grounds that the new applicant or its business is unsuitable for listing;
  - (c) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;
  - (d) that the listing of a listed issuer be cancelled;
  - (e) any decision pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9) (i.e. certain of the disciplinary sanctions, including public censure and public statement which involves criticism); or
  - (f) that trading in the shares of an issuer be restored pursuant to Rule 6.07.
- <sup>3</sup> Please refer to the consultation conclusions on “Delisting and other Rule Amendments” published on 25 May 2018. A new delisting process has been applied to all of the existing delisting criteria in Rule 6.01. Under this new process, the Exchange may (i) publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting, or (ii) delist the issuer immediately in appropriate circumstances. Practice Note 17, which sets out a three stage delisting procedure for issuers without sufficient operations or assets, has been removed and the new delisting process applies.
- <sup>4</sup> Please refer to the consultation conclusions on “Delisting and other Rule Amendments” published on 25 May 2018. The authority to direct resumption of trading has been delegated to the Department to expedite the process.
- <sup>5</sup> At the 30 November 2015 Listing Committee policy meeting, the Listing Committee has delegated to the Head of Listing the authority to approve waivers from the assured entitlement requirement under paragraph 3(f) of PN 15 for spin-off proposals where there are no novel issues. The Listing Committee’s approval is required where (i) there are novel issues; and/or (ii) any waiver applications which the Head of Listing is minded to reject.

## APPENDIX II: PROPOSED REVIEW STRUCTURE

The number of levels of review described in this chart applies to Listing Committee decisions (but not Listing Department decisions). Listing Department decisions are subject to review by the Listing Committee.



<sup>1</sup> Please refer to the consultation conclusions on "Delisting and other Rule Amendments" published on 25 May 2018. A new delisting process has been applied to all of the existing delisting criteria in Rule 6.01. Under this new process, the Exchange may (i) publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting, or (ii) delist the issuer immediately in appropriate circumstances. Practice Note 17, which sets out a three stage delisting procedure for issuers without sufficient operations or assets, has been removed and the new delisting process applies.

<sup>2</sup> Please refer to the consultation conclusions on "Delisting and other Rule Amendments" published on 25 May 2018. The authority to direct resumption of trading has been delegated to the Department to expedite the process.

<sup>3</sup> At the 30 November 2015 Listing Committee policy meeting, the Listing Committee has delegated to the Head of Listing the authority to approve waivers from the assured entitlement requirement under paragraph 3(f) of PN 15 for spin-off proposals where there are no novel issues. The Listing Committee's approval is required where (i) there are novel issues; and/or (ii) any waiver applications which the Head of Listing is minded to reject.

Colour Key:  Listing Department     Listing Committee     Proposed Listing Review Committee

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## APPENDIX III: STATISTICS - CASES ELIGIBLE FOR REVIEW BY LAC

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*The following table sets out the number of cases eligible for review by the LAC (disciplinary and non-disciplinary) from 2013 to July 2018<sup>1</sup>.*

Subject matter	TOTAL (2013 to July 2018)		
	No. of cases eligible for review by LAC <sup>2</sup>	Sought review by LAC	<u>Did not</u> seek review by LAC
Cancellation of listing	11	9	2
IPO – Unsuitability	9 <sup>3</sup>	2	7 <sup>4</sup>
Direct resumption of trading	1	1	0
Others <sup>5</sup>	1 <sup>6</sup>	1	0
Disciplinary	5	2	3
	<b>27</b>	<b>15 (56%)</b>	<b>12 (44%)</b>

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<sup>1</sup> The figures in the table include cases where a review application has been filed but the LAC hearing has not been scheduled or held.

<sup>2</sup> The table excludes the 10 cases where the review applicants would not seek review by the LAC as they got favourable decisions from the LRC, LD(R)C or LC.

<sup>3</sup> This includes two cases where the subject company was allowed a right to further review to the LAC as a result of a SFC-initiated review.

<sup>4</sup> See footnote 3.

<sup>5</sup> This includes rule interpretation; rejection of waiver application; placing company into 3rd delisting stage; suspension of trading and commencement of cancellation of listing procedures.

<sup>6</sup> This was the review to the LAC after a SFC-initiated review. At the SFC-initiated review, the LRC decided to suspend the company's trading and proceed with cancellation of the company's listing.

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## APPENDIX IV: PRIVACY POLICY STATEMENT

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### Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### Purpose

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("**Regulatory Functions**");
3. to provide you with our products and services and administer your account in relation to such products and services;

4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

## **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of your personal data**

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

## How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

## Compliance with laws and regulations

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

## Corporate reorganisation

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## Access and correction of personal data

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made

using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link <https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

## **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

## **Contact us**

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