

# Listing Committee Report 2019

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# Foreword

## Purpose of this report

This report is an account of the work of the Listing Committee<sup>1</sup> of The Stock Exchange of Hong Kong Limited (the “Exchange”) for the year ended 31 December 2019. It highlights the matters the Listing Committee has dealt with during the year which it believes will be of greatest interest to the investing public, practitioners and issuers, and outlines the position or action the Listing Committee, the Listing Division (the “Division”) and the Exchange have taken. It also includes a policy agenda of matters that the Listing Committee plans to consider in 2020 and beyond.

This report has been prepared for the board of the Exchange and the board of its parent company, Hong Kong Exchanges and Clearing Limited (“HKEX”) and was approved for submission to those boards on 25 February 2020. It will be forwarded to the Financial Services and the Treasury Bureau, the Securities and Futures Commission (“SFC”) and posted on the HKEX website.

## A busy and important year

Despite testing political and economic circumstances, 2019 has been a busy and important year for the Listing Committee and the Exchange. The Listing Committee considered 197 listing applications in 2019 (a 7% increase on last year) in addition to hearing 39 review and 19 disciplinary cases. Sub-committees meetings were held to discuss matters relating to backdoor listing, the listing regime for overseas issuers, the optimisation of the IPO price discovery process and market infrastructure, Chapter 37 debt, Listing Rule sanctions and Corporate Governance/ESG<sup>2</sup>. The Exchange published seven Guidance Letters, three Listing Decisions, four consultation papers and three consultation conclusions. The Listing Committee members also officiated at 182 listing ceremonies.

Our 2018 reforms to facilitate the listing of companies from emerging and innovative sectors<sup>3</sup> continued to bear fruit in 2019. 10 companies were listed under the new listing chapters, accounting for 37% of the total amount of funds raised in this year. This included Alibaba Group Holding Limited in the form of a secondary listing on 26 November 2019 which, at its time of listing, was the largest IPO globally of the year raising HK\$101.2 billion in funds. In addition, nine new biotech companies were listed under Chapter 18A raising a total of HK\$16.1 billion in funds, expanding the rapidly growing pool of these companies and the diversity of choice available to investors on the Exchange.

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<sup>1</sup> The Main Board and GEM Listing Committees have operated as a combined committee since 2003, and membership of the committees was fully unified in May 2006. The expressions “Listing Committee” and “Committee” refer to the combined committees.

<sup>2</sup> Environmental, Social and Governance (“ESG”)

<sup>3</sup> Through the Consultation Conclusions Paper on a Listing Regime for Companies from Emerging and Innovative Sectors (“Rule Chapters Conclusions Paper”)

## Enhancing the quality and reputation of the Hong Kong market

In 2019, the Exchange undertook the following measures to enhance the quality and reputation of the Hong Kong market:

### Addressing backdoor listings

To address evolving market practices in backdoor listing and “shell” activities, the Exchange published the Backdoor Listing Consultation Conclusions<sup>4</sup> on 26 July 2019. Respondents were supportive of our proposals and the Exchange implemented them with modifications reflecting the comments we had received. The amended Rules on RTOs<sup>5</sup> and continuing listing criteria provide us with the flexibility we need to address the changing nature of transaction structures we have seen over time without restricting the legitimate business activities of listed issuers, their business expansion or diversification. The Rule amendments became effective on 1 October 2019.

### Improving the quality and reliability of financial information

Improving the quality and reliability of financial information published by issuers is vital to safeguarding market quality. To this end, with the market support, we published the Disclaimer Opinion Consultation Conclusions<sup>6</sup> on 24 May 2019. Under the revised Rules, the Exchange will normally require suspension of trading in an issuer’s securities if an issuer publishes a preliminary results announcement for a financial year and the auditor had issued, or had indicated that it would issue, a disclaimer of opinion or an adverse opinion on the issuer’s financial statements. The new Rules are applicable to issuers’ preliminary annual results announcements for financial years commencing on or after 1 September 2019.

### Implementation of the new delisting regime

Delisting long suspended companies with persistent regulatory issues is an important part of maintaining the quality, reputation and trust in the Exchange’s markets. 2019 saw the first delistings under the Exchange’s new delisting regime under which the Exchange may cancel the listing of an issuer if it has been continuously suspended for 18 months. As of 31 December 2019, 17 long suspended companies with a resumption deadline of 31 July 2019 had either been delisted or proceedings had been begun to delist them. Eight companies with the same resumption deadline successfully resolved all their regulatory issues and resumed trading. Many of the delisted companies had been suspended for several years prior to their delisting and several had experienced serious regulatory failings.

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<sup>4</sup> Consultation Conclusions on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments (“Backdoor Listing Consultation Conclusions”)

<sup>5</sup> Reverse takeovers (“RTOs”)

<sup>6</sup> Consultation Conclusions on Proposal relating to Listed Issuers with Disclaimer or Adverse Audit Opinion on Financial Statements (“Disclaimer Opinion Consultation Conclusions”)

<sup>7</sup> Environmental, Social and Governance (“ESG”)

<sup>8</sup> Environmental, Social and Governance Reporting Guide (“ESG Reporting Guide”)

## Developing ESG<sup>7</sup> governance and disclosure

An effective governance structure on ESG matters is fundamental to quality ESG performance and reporting. In 2019, we consulted the market on our review of the ESG Reporting Guide<sup>8</sup> and proposed changes to improve the ESG governance and disclosure framework for listed issuers. The consultation reflected our commitment to enhance Hong Kong's ESG regulatory framework and built upon our ongoing ESG-related efforts since the launch of the ESG Reporting Guide in 2013. The Exchange established a standing Corporate Governance/ ESG Sub-committee of the Committee to take such matters forward on an ongoing basis. The changes received strong support from the respondents and will be effective for financial years commencing on or after 1 July 2020.

## New review structure for Listing Committee decisions

To enhance our own decision making structures, following the publication of the Conclusions on the Review Structure<sup>9</sup>, we established a new independent review committee (the "Listing Review Committee") on 5 July 2019. The Listing Review Committee is an independent and final review body for decisions made by the Listing Committee. It consists of 20 members drawn entirely from outside market participants. Subject to the transitional arrangements, all decisions made by the Listing Committee on or after 6 July 2019 are now subject to review by the Listing Review Committee.

## Market education

In addition to its vetting, supervision and enforcement responsibilities, the Exchange continued its market education efforts on listing matters by improving the clarity of the Rules and ensuring they reflect currently acceptable standards. The Exchange continued to streamline the various guidance materials on the HKEX website, and consulted the market on the codification of general waivers relating to IPOs and listed issuers in August. The Exchange also launched two e-training courses: (i) an e-training course on ESG Governance and Reporting which explains the board's leadership role in ESG matters and (ii) an e-training course to help directors of issuers understand the revised ESG Reporting Guide that will become effective on 1 July 2020. In addition, the Exchange published its first Listed Issuer Regulation Newsletter in November 2019 to update the market of the Exchange's work with a view towards improving transparency on how it administers the Listing Rules and assists listed companies in complying with the Rules.

## Our focus moving forward

The Exchange will continue to focus on both market development and quality of market matters in 2020. In particular, we intend to review our regime for overseas companies to facilitate such listings in Hong Kong and so further broaden the opportunities available to investors on our markets. We will also be reviewing how to optimize the IPO price discovery process and market infrastructure (such as the IPO settlement cycle) to ensure Hong Kong remains competitive amongst its peers. To maintain high market standards, we will review the regime for the share schemes of listed issuers and publish a consultation paper on a review of our disciplinary powers and sanctions. In addition, we will consider requiring online display of documents to widen public access to issuer's information, enhance transparency and facilitate investors to appraise the issuer and to make investment decisions. A full list of our policy agenda for 2020 and beyond is set out on page 32.

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<sup>9</sup> The Consultation Conclusions on Review Structure in relation to Listing Committee Decisions ("Conclusions on the Review Structure") (published on 18 January 2019).

## Charitable initiatives

In 2019, the Committee continued to lead charitable initiatives and held “Pedal Power” for the ninth consecutive year. This initiative raised more than HK\$1 million for specially selected local secondary school students to participate in leadership courses with Outward Bound Hong Kong. The Listing Committee also led the “Hike for Hong Kong” in November and raised over HK\$500,000 for HandsOn Hong Kong to benefit year-round service programs that address social needs in Hong Kong.

The Division continued to work at a high standard during 2019. I wish to thank my two Deputy Chairmen and fellow Listing Committee members for their continuous dedication and hard work. I would also like to thank David Graham who retired at the end of 2019 after a successful and productive tenure as Head of Listing. I have been very fortunate to have been Chairman during David’s time at the Exchange and am thankful for his insight and contribution. Finally, I would like to warmly welcome Bonnie Y Chan back to the Exchange as its new Head of Listing and I am looking forward to working with her as the Exchange continues to strengthen and advance its listing platform.



**Andrew Weir**  
Chairman

# Main Topics Arising in the Year

1. This section contains the matters that the Listing Committee has dealt with during the year which it believes will be of greatest interest to the investing public, practitioners and issuers, and outlines the position or action the Listing Committee, the Division and the Exchange have taken. A full list of policy matters considered by the Committee is set out in Appendix 2.

## Consultations

### Consultation Conclusions on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments

2. On 29 June 2018, the Exchange published the Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments to seek market views on proposed changes to the Rules to address concerns over backdoor listings and “shell” activities. The consultation period closed on 23 March 2018. A total of 121 responses were received from a broad range of stakeholders. Respondents were supportive of the initiatives, though some commented on specific RTO proposals and their possible application to normal business activities of issuers. The Exchange amended the consultation proposals to reflect comments received and published the Backdoor Listing Consultation Conclusions on 26 July 2019. The Rule amendments became effective on 1 October 2019<sup>10</sup>.

3. The major Rule amendments included:

#### Backdoor listing – Definition of an RTO transaction

- (a) Codifying the six assessment factors<sup>11</sup> under the principle based test in Guidance Letter (HKEX-GL78-14<sup>12</sup>), with modifications made to the last two factors on the assessments of change in de facto control and what constitutes a series of transactions and/or arrangements.
- (b) Modifying the bright line tests to:
  - Apply to very substantial acquisitions from an issuer’s controlling shareholder within 36 months from a change in control of the issuer.
  - Restrict disposals (or distributions in specie) of all or a material part of the issuer’s business proposed at the time of or within 36 months after a change in control of the issuer<sup>13</sup>.

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<sup>10</sup> A transitional period of 12 months from the Effective Date will apply to listed issuers that do not comply with the new Rule 13.24 or 14.82 strictly as a result of the Rule amendments.

<sup>11</sup> Under the amended RTO Rules, the six factors are (i) transaction size; (ii) target quality; (iii) nature and scale of issuer’s business; (iv) fundamental change in principal business; (v) change in control/de facto control; and (vi) series of transactions and/or arrangements (this includes acquisitions, disposals and/or change in control or de facto control that take place in reasonable proximity (normally within 36 months) or are otherwise related).

<sup>12</sup> It has been replaced by the new Guidance Letter (HKEX-GL104-19).

<sup>13</sup> The Exchange may also apply the restriction to disposals (or distributions in specie) at the time of or within 36 months after a change in de facto control of the issuer.



- (c) Codifying Guidance Letter (HKEX-GL84-15<sup>14</sup>) to disallow backdoor listing through large scale issue of securities for cash, where there is, or will result in, a change in control or de facto control of the issuer, and the proceeds will be applied to acquire and/or develop new business that is expected to be substantially larger than the issuer’s existing principal business.

#### **Backdoor listing – Tightening the compliance requirements for RTOs and extreme transactions**

- (d) Extreme transactions:
- Codifying the “extreme VSAs” requirements in Guidance Letter (HKEX-GL78-14) and renaming this category of transactions as “extreme transactions”.
  - Imposing additional eligibility criteria<sup>15</sup> on the issuer that may use this transaction category.
- (e) Modifying the Rules to require the acquisition targets in an RTO or extreme transaction to meet the requirements of Rule 8.04 and Rule 8.05 (or Rule 8.05A or 8.05B)<sup>16</sup>, and the enlarged group to meet all the new listing requirements in Chapter 8 of the Rules except Rule 8.05.

#### **Continuing Listing Criteria for Listed Issuers**

- (f) Amending Rule 13.24 to require an issuer to carry out a business with a sufficient level of operations and to have assets of sufficient value to support its operations to warrant its continued listing. Proprietary securities trading and/or investment activities by an issuer’s group (other than a Chapter 21 company) are normally excluded when considering whether the issuer can meet Rule 13.24<sup>17</sup>.
- (g) Extending the definition of “short-dated securities” held by cash companies (Rule 14.82) to cover investments that are easily convertible into cash and rename it as “short-term investments”; and confining the exemption under Rule 14.83 to cash and short-term investments held by members of an issuer’s group that are banking companies, insurance companies or securities houses.
4. The consultation paper, consultation conclusions and copies of respondents’ submissions are available on the HKEX website.
5. The Exchange also published (i) three new Guidance Letters to provide guidance on the application of the amended Rules<sup>18</sup> and (ii) FAQ Number 057-2019<sup>19</sup>.

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<sup>14</sup> It has been replaced by the new Guidance Letter (HKEX-GL105-19).

<sup>15</sup> The additional eligibility criteria are (i) the issuer must operate a principal business of substantial size; or (ii) the issuer must have been under the control or de facto control of the same person(s) for a long period (normally not less than 36 months) and the transaction will not result in a change in control or de facto control of the issuer.

<sup>16</sup> Where the RTO is proposed by a Rule 13.24 issuer, the acquisition targets must also meet the requirement of Rule 8.07.

<sup>17</sup> Except for those carried out by a member of the issuer’s group that is a banking company, an insurance company, or a securities house that is mainly engaged in regulated activities under the Securities and Futures Ordinance

## Consultation Conclusions on Proposal relating to Listed Issuers with Disclaimer or Adverse Audit Opinion on Financial Statements

6. To improve the quality and reliability of issuers' financial information and safeguard market quality, the Exchange published the Consultation Paper on Proposal relating to Listed Issuers with Disclaimer or Adverse Audit Opinion on Financial Statements on 28 September 2018. The consultation period closed on 30 November 2018. A total of 62 responses were received from a broad range of stakeholders. The Exchange amended the consultation proposals to reflect the responses and published the Disclaimer Opinion Consultation Conclusions on 24 May 2019. The Rule changes apply to issuers' preliminary annual results announcements for financial years commencing on or after 1 September 2019<sup>20</sup>.
7. The major Rule amendments included:
  - (a) Subject to exceptions<sup>21</sup>, requiring suspension of trading in an issuer's securities if the issuer publishes a preliminary results announcement for a financial year and the auditor has issued, or has indicated that it will issue, a disclaimer of opinion or an adverse opinion on the issuer's financial statements. Trading in the securities may resume once the issuer addressed the matters giving rise to the disclaimer or adverse opinion, provided comfort that a disclaimer or adverse opinion in respect of such matters would no longer be required, and disclosed sufficient information for investors to assess its updated financial positions.
  - (b) Requiring the suspended issuer to take action to resolve the matters that resulted in the disclaimer or adverse opinion to bring itself into re-compliance with the Rules and resume trading. Under the Rules, the Exchange may delist a Main Board issuer after a trading suspension of a continuous 18 months (GEM issuer: 12 months). Where the resolution of issues giving rise to the disclaimer or adverse opinion is outside the issuer's control, a longer remedial period may be allowed.
8. The consultation paper, consultation conclusions and copies of respondents' submissions are available on the HKEX website.

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<sup>18</sup> Guidance on Application of the RTO rules ([HKEX-GL104-19](#)), Guidance on Large Scale Issues of Securities ([HKEX-GL105-19](#)), and Guidance on Sufficiency of Operations ([HKEX-GL106-19](#))

<sup>19</sup> Frequently Asked Question on the Notifiable Transaction Requirements relating to Securities Transactions

<sup>20</sup> Under the transitional arrangement, a remedial period will be extended to 24 months for both Main Board and GEM issuers that are suspended solely due to a disclaimer or adverse opinion on the issuers' financial statements for the financial years commencing between 1 September 2019 and 31 August 2021.

<sup>21</sup> The suspension requirement will not be applied where (i) the disclaimer or adverse opinion relates solely to going concern; or (ii) the underlying issue giving rise to the audit modification has been resolved before the issuer publishes the preliminary results announcement.

## Consultation Paper and Conclusions on Review of the Environmental, Social and Governance Reporting Guide and Related Listing Rules

9. On 17 May 2019, the Exchange published the Consultation Paper on Review of the ESG Reporting Guide and Related Listing Rules (“ESG Consultation Paper”) to support and improve issuers’ governance and disclosure of ESG policies and metrics. The consultation period closed on 19 July 2019. A total of 153 responses were received from a broad range of respondents. The feedback indicated strong support for the consultation proposals. The Exchange published the consultation conclusions on 18 December 2019. The changes will become effective for financial years commencing on or after 1 July 2020.
10. The key Rule changes included:
  - (a) Introducing mandatory disclosure requirements to include:
    - A board statement setting out the board’s consideration of ESG matters.
    - Application of Reporting Principles “materiality”, “quantitative” and “consistency”.
    - Explanation of reporting boundaries of ESG reports.
  - (b) Requiring disclosure of significant climate-related issues that have impacted and may impact the issuer.
  - (c) Amending the “Environmental” key performance indicators (“KPIs”) to require disclosure of relevant targets.
  - (d) Upgrading the disclosure obligation of all “Social” KPIs to “comply or explain”.
  - (e) Shortening the deadline for publication of ESG reports to within five months after the financial year-end.
11. The [consultation paper](#), [consultation conclusions](#) and copies of [respondents’ submissions](#) are available on the HKEX website.
12. The Exchange also published the following ESG related guidance materials:
  - (a) Two e-training courses for directors. Please refer to paragraphs 37 to 39 for details.
  - (b) Updated FAQs [Series 17](#)<sup>22</sup> and [Series 18](#)<sup>23</sup> to clarify how different aspects of ESG relate to the Corporate Governance Code.
  - (c) Updated Guidance Letter ([HKEX-GL86-16](#)) to require additional disclosure on policy of board diversity (including gender) and how gender diversity of the board can be achieved in the case of a single gender board. The revised Guidance Letter also sets out our expected disclosure on ESG matters.

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<sup>22</sup> Frequently Asked Questions on Review of the CG Code and Related Listing Rules

<sup>23</sup> Frequently Asked Questions on ESG Reporting

## Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only

13. On 6 December 2019, the Exchange published the Consultation Paper on the Review of Chapter 37 – Debt Issues to Professional Investors Only. The consultation proposals aimed to balance the need to safeguard investors whilst maintaining an effective and appropriate listing platform for the continued development of the bond market in Hong Kong.
14. Key consultation proposals included:
  - (a) Raising the existing issuer’s minimum net assets requirement from HK\$100 million to HK\$1 billion.
  - (b) Introducing a minimum issuance size of HK\$100 million.
  - (c) Requiring issuers to state explicitly in their listing documents that the target investors are professional investors only.
  - (d) Requiring publication of listing documents on the Exchange’s website on the listing date.
  - (e) Issuing guidance on the disclosure of certain special features of Chapter 37 debt securities and other disclosure-related matters.
  - (f) Introducing other Rule amendments to enhance regulatory oversight over issuers and guarantors’ in terms of their continuing obligations.
15. The consultation period closed on 7 February 2020. The Exchange is now considering the responses received.
16. The [consultation paper](#) is available on the HKEX website.

## Consultation Paper on Corporate WVR Beneficiaries

17. On 24 April 2018, the new listing regime for companies from emerging and innovative sectors was implemented through the publication of the Rule Chapters Conclusions Paper. The regime limits beneficiaries of WVR to individuals only. However, we stated in the conclusions that the Exchange planned to launch a separate consultation on whether beneficiaries of weighted voting rights (“WVR”) should be widened to include corporate entities (“Corporate WVR Consultation”).
18. On 25 July 2018, the Exchange announced that it had decided to defer the Corporate WVR Consultation. At the time, as the WVR regime had only recently been put in place, the Exchange believed it should engage with relevant stakeholders further in order to develop a broader consensus on corporate WVR. Having done so, the Exchange published the Consultation Paper on Corporate WVR Beneficiaries on 31 January 2020 to seek public feedback.

19. The key requirements of the corporate WVR regime proposal included:

#### **Suitability requirements**

- (a) A corporate WVR beneficiary must either be an innovative company itself or have business experience in one or more emerging and innovative sectors as well as a track record of investments in, and contributions to, innovative companies.
- (b) A corporate WVR beneficiary must have held an interest of at least 10% and must have had a material involvement in the management or the business of the listing applicant for at least two years prior to its listing. At listing and thereafter, the corporate WVR beneficiary must hold an economic interest of at least 30% in the listing applicant.<sup>24</sup>
- (c) In place of the contributions that would normally be expected of an individual WVR beneficiary, a corporate must demonstrate that it owns and operates an “ecosystem” at listing (and on an ongoing basis) that benefits the listing applicant.

#### **Eligibility requirements**

- (d) A corporate WVR beneficiary must be primary listed on the Exchange or on a Qualifying Exchange<sup>25</sup> and have a minimum market capitalisation of at least HK\$200 billion.
- (e) A corporate WVR beneficiary must be either the company that meets the proposed requirements to benefit from WVR itself or be a wholly owned subsidiary of that company.
- (f) The listing applicant must not represent more than 30% of the corporate WVR beneficiary in terms of market capitalisation at time of listing.

20. The [consultation paper](#) is available on the HKEX website.

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<sup>24</sup> A corporate WVR beneficiary must meet the minimum 10% economic interest requirement for at least two financial years and any stub period up to the date on which it increases its stake in the applicant to meet the minimum 30% economic interest requirement. A corporate WVR beneficiary may increase its economic stake to meet this requirement in compliance with existing Rules and guidance on pre-IPO investments and placing to existing shareholders.

<sup>25</sup> NYSE, NASDAQ or the Main Market of the London Stock Exchange (and belonging to the UK Financial Conduct Authority’s “Premium Listing” segment).

## Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments

21. On 2 August 2019, the Exchange published the Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments to (i) improve the clarity of the Rules; (ii) ensure the Rules reflect currently acceptable standards in the market place; (iii) codify a number of administrative provisions that are currently provided in guidance letters or listing decisions; and (iv) make certain housekeeping amendments to the Rules.
22. Key consultation proposals included the codification of:
  - (a) A number of waivers with general effect previously approved by the SFC pursuant to Rule 2.04 of the Main Board Listing Rules (Rule 2.07 of the GEM Listing Rules).
  - (b) The principles and conditions underpinning a number of waivers that have been granted by the Exchange on more than one occasion in the last three years.
  - (c) Minor Rule amendments.
23. The consultation period closed on 27 September 2019. The Exchange is considering the responses received.
24. The [consultation paper](#) is available on the HKEX website.

## Prospectus and Listing Process

### Review of Conditions to Confidential Filing of Application Proof

25. Under the Rules, listing applicants are required to publish on the Exchange's website an advanced proof of the listing document ("AP") when submitting an application. Confidential filing of an AP is allowed for overseas companies that have been listed on a recognised overseas exchange for not less than five years ("Five-year Requirement") and fulfil other conditions.
26. At the March 2019 policy meeting, the Division proposed that the Five-year Requirement should be reviewed, and presented a revised Guidance Letter setting out the further factors that should be considered in determining a confidential filing application. The Committee endorsed the Division's proposal, and the amended Guidance Letter ([HKEX-GL57-13](#)) was published on the HKEX website on 22 March 2019.

### Guidance on Sanctions Risks

27. At the March 2019 policy meeting, the Division sought the Committee's endorsement on the publication of a Guidance Letter on sanctions risks to replace a Listing Decision on the subject. This followed market feedback on the difficulty of applying the Listing Decision in practice. The Committee endorsed the Guidance Letter ([HKEX-GL101-19](#)), which was published on the HKEX website 22 March 2019.

## Guidance on Non-GAAP Financial Measures

28. At the March 2019 policy meeting, the Division presented the Committee with a draft Guidance Letter on the presentation of non-GAAP financial measures in a draft prospectus. The Committee endorsed the Guidance Letter ([HKEX-GL103-19](#)), which was published on the HKEX website on 26 April 2019.

## Streamlining Guidance Materials relating to Listing Matters

29. In 2019, the Exchange continued its exercise of streamlining guidance materials published on the HKEX website. The Exchange published a [news release](#) announcing its second batch of streamlining guidance materials on 22 March 2019. This resulted in the following changes:
- (a) One new Guidance Letter – [HKEX-GL100-19](#) (Guidance on Competition between the Businesses of A New Applicant and Its Controlling Shareholder).
  - (b) Six updated Guidance Letters – [HKEX-GL57-13](#) (Guidance on the Logistical Arrangements for the Submission and Publication of Application Proofs, Post Hearing Information Packs and Related Materials on the Exchange’s Website); [HKEX-GL63-13](#) (Guidance on Disclosure of Non-compliance Incidents in Listing Documents); [HKEX-GL68-13](#) (Guidance on Suitability for Listing for New Applicants); [HKEX-GL71-14](#) (Gambling Activities of New Applicants and/or Listed Issuers); [HKEX-GL96-18](#) (Guidance on Listed Issuer’s Suitability for Continued Listing); and [HKEX-GL97-18](#) (Guidance for New Applicants in the Internet Technology Sector or that Have Internet-based Business Models).
  - (c) 31 withdrawn guidance materials – 17 Listing Decisions, 10 Interpretative Letters and four sets of FAQs.
30. A third batch of streamlining guidance materials was approved by the Committee at its March 2019 policy meeting and announced in a [news release](#) published on 26 April 2019. This batch resulted in the following changes:
- (a) One new Guidance Letter – [HKEX-GL102-19](#) (Guidance on Accounting Policies and Stock-taking Procedures Performed by the Reporting Accountants).
  - (b) Four updated Guidance Letters – [HKEX-GL32-12](#) (Guidance on the Accounting and Disclosure Requirements for Acquisitions of Subsidiaries and Businesses Conducted During or After the Trading Record Period); [HKEX-GL35-12](#) (Guidance on Profit Forecast and Special Dividend); [HKEX-GL37-12](#) (Guidance on Disclosure on Financial Information and Prospects of New Applicants); and [HKEX-GL45-12](#) (Guidance on Trading Record and Financial Eligibility Requirements and Disclosure of Certain Financial Information).
  - (c) 26 withdrawn guidance materials – three Guidance Letters, 16 Listing Decisions, six Interpretative Letters and one set of FAQs.

31. The Committee approved the fourth batch of streamlining guidance materials at its November 2019 policy meeting. The relevant [news release](#) was published on 28 February 2020. This batch resulted in the following changes:
- (a) Three updated Guidance Letters – [HKEXGL89-16](#) (Guidance on Issues related to “Controlling Shareholder” and Related Listing Rules Implications); [HKEX-GL52-13](#) (Guidance for Mineral Companies) and [HKEX-GL36-12](#) (Guidance on Due Diligence to be Conducted by the Sponsor and Disclosure in the Listing Document relating to A Distributorship Business Mode).
  - (b) Eight sets of updated [FAQs](#) – [FAQ Series 1](#); [FAQ Series 5](#); [FAQ Series 8](#); [FAQ Series 20](#); [FAQ Series 24](#); [FAQ Series 26](#); [FAQ Series 31](#); and [FAQ No.008-2017 to 022-2017 and 023-2018](#)<sup>26</sup>.
  - (c) 15 withdrawn guidance materials – Eight guidance materials had been consolidated into the revised [HKEX-GL52-13](#); four outdated Listing Decisions<sup>27</sup> and three Interpretative Letters<sup>28</sup> had been withdrawn.
32. The Exchange will continue to review and streamline its guidance materials as appropriate.

### Unwinding of the Delegated Authority

33. In July 2008, the Listing Committee delegated its power to approve GEM listings (“Delegated Authority”) to the Division in order to streamline the listing process.
34. In June 2017, the Division stated in the GEM Consultation Paper<sup>29</sup> that the Delegated Authority would be unwound and returned to the Committee. This decision was made as: (i) the time to listing for GEM applicants has not necessarily shortened, given the Division was processing significantly more GEM listing applications since 2008; and (ii) the Exchange had received comments that the then GEM requirements had been exploited by some market players.
35. The restoration of the Committee’s authority to approve GEM applications means the GEM listing approval process now benefits from the GEM Listing Committee members’ collective market expertise. This outweighs the main disadvantage of imposing additional workload on the GEM Listing Committee which has been reduced by the formation of the Listing Review Committee.
36. The Exchange amended the GEM Listing Rules to reflect the unwinding of the Delegated Authority with effect from 1 January 2020 and announced it through a [news release](#) published on the HKEX website on 18 October 2019.

<sup>26</sup> [FAQ Series 1](#) (Rule Requirements relating to Listing Criteria Issues and Continuing Obligations); [FAQ Series 5](#) (Rule Amendments relating to GEM Review); [FAQ Series 8](#) (Rule Amendments relating to the 2008 Combined Consultation); [FAQ Series 20](#) (Rule Requirements relating to Notifiable Transactions, Connected Transactions and Issues of Securities); [FAQ Series 24](#) (Listing Rule Changes to Complement the Securities and Futures Commission’s New Sponsor Regulation Effective on 1 October 2013); [FAQ Series 26](#) (Questions relating to the New Companies Ordinance and Its Impact on Issuers); [FAQ Series 31](#) (Questions relating to the Review of Listing Rules on Disclosure of Financial Information with reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/ Housekeeping Rule Amendments); and [FAQ No.008-2017 to 022-2017 and 023-2018](#) (FAQ on Consultation Conclusions on the Review of the Growth Enterprise Market (GEM) and changes to the GEM and Main Board Listing Rules)

<sup>27</sup> [HKEX-LD106-1](#), [HKEX-LD46-3](#), [HKEX-LD21-2](#) and [HKEX-LD12-3](#)

<sup>28</sup> [HKEX-RL4-05](#), [HKEX-RL6-05](#) and [HKEX-RL22-07](#).

<sup>29</sup> Consultation Paper on the Review of Growth Enterprise Market and Changes to the GEM and Main Board Listing Rules (“GEM Consultation Paper”)



## Listing Matters

### Directors Training

37. On the day of publication of the ESG Consultation Paper, the Exchange launched an e-training course on ESG Governance and Reporting (see paragraphs 9 to 12). The e-training course explained the board's leadership role in ESG matters.
38. Following the Exchange's publication of the conclusions of the ESG Consultation Paper, the Exchange launched a second e-training course on 6 March 2020 to help directors of issuers understand the revised ESG Reporting Guide that will take effect on 1 July 2020.
39. The first and second e-training courses are available on the HKEX website.

### Reviews of Listed Issuers' Annual Disclosure

40. The Division undertakes three on-going review programmes of listed issuers' annual disclosure, namely: (i) our Review of Disclosure in Issuers' Annual Reports to monitor Rule compliance; (ii) our Financial Statements Review Programme (the "FSRP"); and (iii) our Analysis of Environmental, Social and Governance Practice Disclosure.
41. The Analysis of Environmental, Social and Governance Practice Disclosure in 2018 was published on 18 December 2019 on the HKEX website and the Division's findings and recommendations from review programmes (i) and (ii) above were presented in the Review of Issuers' Annual Report Disclosure – Report 2019, which was published on the HKEX website on 31 January 2020.

### Review of Disclosure in Issuers' Annual Reports to Monitor Rule Compliance

42. The Division has conducted an annual review of listed issuers' annual reports since 2013 as part of its ongoing monitoring and compliance activities. The Division examined issuers' annual reports with a focus on Rule compliance, issuers' corporate conduct and their disclosure of material events and developments. For the purpose of the review, the Division considered the findings and observations in its previous reports and the latest market trends and developments of issuers, and selected specific areas for assessing issuers' performance and providing appropriate guidance and recommendations.
43. The Division reviewed annual reports with a financial year ended in 2018. The Division was generally satisfied with the findings from its review of disclosures covering the following themes: continuing connected transactions; material asset impairments and results of performance guarantees; significant investments in the Management Discussion & Analysis ("MD&A") section; and disclosure required for issuers listed under the new listing regime for WVR and biotech companies.
44. The Division encourages issuers to take note of its recommendations, especially those in respect of: the amended Rules on annual report disclosure; business review in the MD&A section; financial statements with auditors' modified opinions; and disclosure on material other expenses.

## Financial Statements Review Programme

45. The Division has performed a FSRP since 2009. The FSRP is an educational programme to help increase issuers' awareness of possible pitfalls in the preparation of periodic financial reports, particularly with respect to: compliance with the disclosure requirements of the Rules; accounting standards; and relevant disclosure requirements of the Hong Kong Companies Ordinance (Cap. 622) ("Companies Ordinance"). The Division adopts a risk-based approach in selecting financial reports to review and does not review all financial reports published in a year.
46. In 2019, the Division reviewed 300 annual reports with a financial year ended in 2018, focusing on the following accounting review themes: material intangible assets; disclosure relating to the implementation of HKFRS 9; disclosure relating to the implementation of HKFRS 15; disclosure of possible impact of applying a new or amended HKFRS in issue but not yet effective; and using non-GAAP financial measures.
47. From this year's review under the FSRP, except for three cases which were referred to the Financial Reporting Council ("FRC") for further enquiry and investigation of possible accounting and auditing irregularities, the Division did not find any significant breaches of the Rules, accounting standards or relevant disclosures requirements of the Companies Ordinance that would render the financial statements misleading, require their restatement or warrant disciplinary action. Moreover, through other related work at the Exchange, we referred seven cases to the FRC and four cases to the Hong Kong Institute of Certified Public Accountants.

## Implementation Review of ESG Reporting Guide

48. In 2019, the Division reviewed ESG reports for the financial year ended on 31 March, 30 June or 31 December 2018 from 400 randomly selected issuers ("Sample Issuers"). The purpose of the review was primarily to give meaningful guidance to issuers on possible improvement areas to focus on when preparing ESG reports so as to meet stakeholders' expectations.
49. Key findings and recommendations of the review included:
  - (a) All Sample Issuers published an ESG report within the timeframe set out in the Rules. A majority published their ESG reports on the same day as their annual reports.
  - (b) Two-thirds of Sample Issuers disclosed that a materiality assessment had been undertaken although some described the assessment in a more detailed manner than others. Issuers should note that "materiality" is a fundamental element for a company to assess ESG-related risks it faces.
  - (c) ESG reports from a majority of Sample Issuers contained little or no description of board involvement. It is important for boards to be meaningfully involved in assessing and addressing ESG-related risks.
  - (d) When an issuer is required to "comply or explain", only three per cent of such provisions were "explained". The high percentage of reports adopting the "comply" option may suggest that issuers have not properly determined what is material to them, or that the "explain" option is believed to be a less-preferable option. Issuers are reminded that if a "comply or explain" provision is immaterial to them, then an explanation to that effect may well be appropriate as an "explanation" is not a less preferred or secondary option.

## Ongoing Obligations and Other Related Matters

### Long Suspended Companies and New Delisting Framework

50. The Exchange implemented the new delisting regime and delisted long suspended companies that failed to remedy regulatory issues within the prescribed remedial period. As a transitional arrangement, the Exchange gave a number of companies a deadline of 31 July 2019 to incentivize these companies to rectify issues and minimize trading suspension. As of 31 December 2019, eight of these companies successfully resolved all their regulatory issues and resumed trading, and 17 companies were either delisted or proceedings had been begun to delist them. Many of the delisted companies had been suspended for several years prior to their delisting and several had experienced serious regulatory failings.

### New Review Structure for Listing Committee Decisions

51. To enhance the Exchange's decision making structures, following publication of the Conclusions on the Review Structure, the Listing Review Committee was established on 5 July 2019.
52. The Listing Review Committee is an independent and final review body for decisions made by the Listing Committee consisting of 20 members. At least six of these members must be investor representatives and the remaining members must be a suitable balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)). Four members of the Listing Review Committee form a chairmen pool. Any review hearing by the new Listing Review Committee is ordinarily chaired by a member from the chairmen pool. The function of Listing Review Committee is as a review body only and has no other functions.
53. Subject to the transitional arrangements, all decisions made by the Listing Committee on or after 6 July 2019 are now subject to review by the Listing Review Committee. Under the transitional arrangements, the existing review regime (including the Listing Appeals Committee, the Listing (Review) Committee and the Listing (Disciplinary Review) Committee) continues to operate to review Listing Committee decisions, concurrently with the new Listing Review Committee until all relevant review proceedings have been concluded.

### Recognition of Overseas Audit Firms in relation to the Amendments to the Financial Reporting Council Ordinance

54. The Amendments to the Financial Reporting Council Ordinance came into effect on 1 October 2019. Any non-Hong Kong audit firm is now required to be recognized by the FRC before the audit firm can (i) "undertake" any PIE Engagement<sup>30</sup>; and (ii) carry out any PIE Engagement for an overseas entity. The Exchange must issue a Statement of No Objection ("SNO") before the FRC will consider an application.
55. At the Committee meeting on 29 August 2019, the Division proposed to publish new FAQs, including guidance to assist overseas equity issuers and applicants when they intend to appoint overseas audit firms to carry out PIE Engagements and seek a SNO from the Exchange. The Committee endorsed the Division's proposal. The relevant FAQs<sup>31</sup> were published on the HKEX website on 6 September 2019.

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<sup>30</sup> The PIE Engagements were the preparation of: (i) auditors' report on the annual financial statements; (ii) accountants' report included in a listing document; or (iii) accountants' report included in a circular in connection with a very substantial acquisition and RTOs.

<sup>31</sup> Frequently Asked Questions on recognition of overseas audit firms in relation to the amendments to the Financial Reporting Council Ordinance – Effective on 1 October 2019

# Regular Business

## Listing Applications

56. Statistics in relation to listing applications handled by the Listing Committee are set out in the tables below.

<b>Meetings at which IPO applications were considered</b>	<b>2019</b>	<b>2018</b>
Meetings Within the Regular Schedule	45	48
Specially Convened Meetings	13	15

<b>Listing Applications considered by the Listing Committee</b>	<b>2019</b>	<b>2018</b>
Applications Considered (Note 1)	197	184
Applications Approved (Note 2)	179	167
Applications Rejected	17	13
Decisions Deferred Pending Further Information	1	4

<b>Listing Applications approved and/or listed by the Listing Committee</b>	<b>2019</b>	<b>2018</b>
Applications Approved and Listed in the Year	143	128
Applications Approved in Previous Year and Listed in the Year	26	16
Applications Listed in the Year	169	144

Notes:

1. This excludes cases considered by the GEM Listing Approval Group ("GLAG"). Any case that was considered by the Committee more than once was counted as one case only.
2. 2019 includes three (2018: six) applications approved at the second hearing.

## Cancellation of Listing

57. Statistics in relation to delisting matters considered at the Listing Committee's regular meetings are set out below:

Nature of decision	Number of cases	
	2019	2018
<b>Main Board</b>		
Cancellation of listing (Note 1)		
– Under the previous regime (Note 2)	5	6
– After expiry of prescribed remedial period under the new regime (Note 3)	14	–
Listed issuers placed into third stage of delisting procedures (Note 4)	6	4
Resumption of trading	1	2
<b>GEM</b>		
Cancellation of listing (Note 5)		
– Under the previous regime (Note 2)	3	2
– After expiry of prescribed remedial period under the new regime (Note 3)	3	–
Listed issuers given a specific remedial period (Note 6)	–	2
Resumption of trading	–	–

Notes:

1. As at 31 December 2019, eight of the 19 cancellation decisions made in 2019 were still subject to the review procedures under the Listing Rules.
2. This refers to cancellation of listing of (i) Main Board issuers under Practice Note 17 or Main Board Rule 6.10 and (ii) GEM issuers under GEM Rule 9.15.
3. This refers to cancellations pursuant to the fixed period delisting criteria of 18 months for Main Board issuers and of 12 months for GEM issuers implemented in accordance with the new delisting regime (see paragraph 50).
4. This refers to issuers under the third stage of delisting under Practice Note 17.
5. As at 31 December 2019, two of the six cancellation decisions made in 2019 were still subject to the review procedures under the Listing Rules.
6. This refers to issuers given a remedial period pursuant to GEM Rule 9.15.

## Other Matters

58. An analysis of other matters considered at regular meetings during the year is set out below:

Nature of decision/advice sought	Number of cases	
	2019	2018
<b>Listing Application Requirements</b>		
– Guidance on GEM listing applications	2	1
– Requests for pre-application guidance from potential IPO applicants (Note 1)	2	13
<b>Ongoing Obligations</b>		
– Approval of voluntary withdrawal of listing (Note 2)	27	23
– Consideration of spin off proposal	17	5
– Guidance on whether a listed issuer had sufficient operations and assets to warrant continued listing under Main Board Rule 13.24 and GEM Rule 17.26	8	8
– Approval of an issuer of structured products	3	–
– Extension of deadline in connection with a resumption proposal (Note 3)	1	8
– Guidance on resumption proposal (Note 4)	1	–
– Proposed listing of debt securities to retail investors	1	–
– Guidance on proposed subscriptions	1	–
– Consideration of individuals' suitability to be directors	–	1
– Guidance on issue of convertible securities	–	1
– Direct a resumption of trading in an issuer's securities	–	1

Notes:

- 2019 includes nil (2018: one) case considered twice.
- 2019 includes withdrawal of listing of 14 (2018: 13) ETFs, nil (2018: two) investment products and offshore preference shares of two (2018: nil) issuers.
- 2019 includes nil (2018: two) cases considered twice.
- 2019 includes one case considered twice.

# Service Standards

## Listing Applications

- 59. In 2019, the number of applications vetted by the Division was 33% higher than the five-year average from 2014 to 2018. In 2019, the Division was actively vetting 101% more listing applications as compared to that in 2014, the first full year after the new sponsor regime was implemented.
- 60. The Exchange continues to look at ways to better accommodate the increasing number of listing applications and expedite the vetting process. The Exchange however will not jeopardise the quality of its vetting. The Division was able to issue the first round comments within 20 business days from the date of acceptance for 97% of the listing applications received in 2019. 42% of the applications received in 2019 (33.8% in 2018) were presented to the Listing Committee or GLAG for approval in 2019.
- 61. The relevant statistics on vetting of IPO applications are summarized in the following tables:

Action	Number of comment letters issued	Average number of business days taken from date of case acceptance
Issuance of first round of comments	283	14

Action	Number of cases	Average number of business days taken from date of case acceptance
IPO cases presented to the Listing Committees for consideration	197	128
IPO cases presented to the GLAG for consideration	24	178
Overall	221	133

## Monitoring and guidance actions

62. The following table summarises the Exchange's service standards for monitoring and guidance actions. It is the Exchange's objective to continue improving the transparency, quality, efficiency and predictability of its service.

Service for Initial Responses	Service standard	% of cases meeting service standard	
		2019	2018
Pre-vetting activities			
- Initial response to pre-vetted announcements	Same day	96%	97%
- Initial response to pre-vetted circulars (very substantial acquisition)	10 business days	100%	100%
- Initial response to pre-vetted circulars (other than very substantial acquisition)	5 business days	97%	99%
Issuers' enquiries (Note 1)			
- Initial response to issuer's enquiries	5 business days	94%	95%
Waiver applications (Note 2)			
- Initial response to waiver applications (other than application for delay in despatch of circular)	5 business days	94%	99%
Post-vetting activities			
- Initial response to post-vetted result announcements	3 business days	98%	99%
- Initial response to post-vetted announcements (other than results announcements)	1 business day	98%	98%

### Notes:

1. In 2019, 390 written enquiries (2018: 405) on Rule interpretations and related matters were handled.
2. In 2019, 351 waiver applications (2018: 454) from strict compliance with requirements under the Rules were processed.



# Disciplinary Matters

## General Approach

63. The Exchange has a statutory duty to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of listed securities.
64. The Enforcement Policy Statement (published 17 February 2017) sets out the Exchange's approach in relation to enforcing the Rules. This includes four fundamental objectives, to:
  - (a) Deter future breaches.
  - (b) Educate the market.
  - (c) Influence compliance culture and attitude.
  - (d) Enhance corporate governance.
65. The Division is responsible for the Exchange's enforcement of the Rules.

## Enforcement Investigations

66. Each year, the Division investigates conduct which may give rise to breaches of the Rules. The Division receives referrals from various sources including:
  - (a) Other regulatory or law enforcement agencies.
  - (b) Complaints from the general public.
  - (c) Internal referrals as a result of compliance monitoring.
67. In pursuing any potential breach of the Rules, the Division focuses its resources on the most blatant and serious conduct. The Enforcement Policy Statement sets out the non-exhaustive factors to be taken into account in deciding the level of regulatory action.
68. In circumstances where the Division commences an investigation, the conduct and potential breach of the Rules will normally be of a nature sufficiently serious to warrant a public sanction to be imposed by the Listing Committee.
69. Regulatory letters (such as warning letters) may be issued in circumstances where disciplinary proceedings before the Listing Committee are not considered appropriate. These will be recorded as part of the compliance history for the relevant party.

70. During 2019:
- (a) The Division commenced 48 new investigations (not including the active investigations continued from 2018). This figure is generally consistent with the number of new investigations commenced in 2017 and 2018 (44 and 46 respectively).
  - (b) The Division finalized 51 investigations. The average time for completion of an investigation was 9.6 months, which continues to be broadly consistent with previous years (nine months in 2018 and 9.4 months in 2017).
- 71 The Division will continue to implement further process improvements during 2020 in an attempt to enhance efficiency for each investigation without compromising the standard of investigative and analytical work undertaken.

### **Enforcement Themes**

72. The Division continues to adopt a thematic approach to its investigations.
73. The current themes are as follows:
- (a) Directors' performance of fiduciary duties – particularly the exercise of care, skill and diligence required under the Rules.
  - (b) Financial reporting – delays or internal control and governance matters.
  - (c) Inaccurate, incomplete and/or misleading disclosures in corporate communications.
  - (d) Failure to comply with procedural requirements in respect of notifiable or connected transactions.
  - (e) Repeated breaches of the Rules.
  - (f) Delayed trading resumption.
  - (g) Failure of issuers and directors to co-operate with the Division's investigation.
74. Whilst the Division will continue to have the ability to pursue any breach of the Rules, during 2019, 93% of investigations related to one or more of the enforcement themes identified above.

## Disciplinary Action

75. Following an investigation and where disciplinary action is appropriate, the Committee will follow the Disciplinary Procedures which are published on the HKEX website. In 2019, there were 13 concluded disciplinary actions (cases which had been heard by the Committee and for which the results had been published). As at 31 December 2019, there were 16 ongoing disciplinary cases (some under review) awaiting final outcome (as compared to 15 as at 31 December 2018).
76. By way of comparison, there were eight concluded disciplinary actions in 2016, nine in 2017 and 21 in 2018. There are a number of factors which influenced the increase in 2018 including a number of disciplinary actions against directors for their failure to co-operate with the Division's investigation, which proceeded on an undefended basis. There is however a clear correlation between the steady increase in the number of overall investigations in recent years and a rise in the number of concluded disciplinary actions.

## Sanctions

77. Following any disciplinary action, the Committee has the power to impose certain sanctions on relevant parties. During 2019, the Division obtained public sanctions in all of the 13 concluded disciplinary cases that were dealt with by the Committee.
78. The collective and individual responsibility of directors continues to be a cornerstone of the current enforcement regime. Directors must provide a personal undertaking to procure Rule compliance by listed issuers. The personal undertaking not only requires directors to ensure substantive compliance with the Rules, but also imposes a proactive obligation to create conditions within listed issuers to ensure such compliance. In 2019, the Division took action against directors as follows:

Number of directors subject to sanctions (Note)	2019	2018	2017
Executive directors	31	71	17
Non-executive directors	12	10	4
Independent non-executive directors	20	39	3
<b>Total</b>	<b>63</b>	120	24

Note: During 2019, the Division also took disciplinary actions and obtained public censures against three supervisors of a listed issuer and a controlling shareholder of another listed issuer.

79. The difference in the number of directors sanctioned (as shown in the table above) was influenced by a number of factors, including the number of concluded cases in a particular year and the increased number of sanctions imposed in 2018 against directors who failed to co-operate with investigations (see also paragraph 76).

80. In addition to issuing sanctions for breaches of the Rules, the Division obtained a number of directions requiring listed issuers and directors to take proactive remedial action to rectify breaches, improve internal controls and overall corporate governance. Such directions included training requirements and the appointment of external experts to assist with control deficiencies and to provide compliance advice on an ongoing basis. The following table provides an overview of the various directions obtained by the Division in 2019:

Number of cases involving	2019	2018	2017
“Internal Control Review” direction	2	2	0
“Retention of Compliance Adviser” direction	3	8	1
“Training of Directors” direction	9	12	4

81. The Division continues to assess the effectiveness of those sanctions and directions in light of the fundamental objectives contained within the Enforcement Policy Statement and the overall purpose of enforcement of the Rules.

## Settlement and Cooperation

82. Investigations and disciplinary actions can be disposed of by settlement as approved by the Committee. Where the terms of the settlement represent a fair overall regulatory outcome and achieve the Exchange’s regulatory objectives, the Committee continues to welcome the efforts made by market users and the Division to bring about the settlement and agreed disposal of investigations and disciplinary matters in an appropriate manner. Three out of the 13 concluded disciplinary cases were disposed of by settlement during 2019.
83. The Division wishes to remind directors that there is a positive obligation on them to interact promptly and openly with the Division during the course of all interactions with it. Directors should, by now, be acutely aware that the failure to co-operate with an investigation by the Division will likely lead to disciplinary action and is a key focus of the Division given its enforcement themes (paragraph 73 above).

## Interaction with Other Regulators

84. The Division refers the conduct of listed issuers and their directors which may give rise to suspected breaches of the law to the SFC and other law enforcement agencies (e.g., the Independent Commission Against Corruption and the Commercial Crime Bureau of the Hong Kong Police) as appropriate. It provides assistance by providing documents or information and witness statements (covering, amongst other things, technical advice on the application of the Rules), to support prosecution proceedings.
85. During 2019, the Division provided continuing support to the SFC and other law enforcement agencies by dealing with 51 requests for documents or information and providing seven witness statements (as compared with 72 requests and seven witness statements in 2018).

## Enforcement News

86. The Division continues to publish Enforcement Newsletters relating to enforcement activity and specific focus areas which it considers to be of public interest.

## Review Meetings

87. The Listing Committee considered 39 (2018: 39) requests for reviews of decisions made by the Listing Division or Committee during the year, some of which related to decisions that had been made in the previous year. The Listing Appeals Committee considered nine (2018: five) requests for review. The Listing Review Committee considered 11 requests for review. Details of these reviews<sup>32</sup> are set out in the table below.

Review cases under the new review regime:

Appeal Committee	Decision made by	Nature of decision	Number of cases	Outcome as at 31 December 2019 (Note 1)
Listing Review Committee	Listing Committee	Cancellation of listing	8	Upheld: 8
	Listing Committee	Rejection of listing application	3	Overtured: 3
Listing Committee	Listing Division	Suspension of trading and commencing cancellation of listing procedure	1	Upheld: 1

Review cases under the old review regime:

Appeal Committee	Decision made by	Nature of decision	Number of cases	Outcome as at 31 December 2019 (Note 2)
Listing Appeals Committee	Listing Appeals Committee	Rejection of listing application	1 (Note 3)	Overtured: 1 (Note 4)
	Listing (Review) Committee	Cancellation of listing	4	Upheld: 4
	Listing (Review) Committee	Rejection of listing application	4	Upheld: 3 Overtured: 1 (Note 4)

<sup>32</sup> Reviews of disciplinary decisions are excluded.

Appeal Committee	Decision made by	Nature of decision	Number of cases	Outcome as at 31 December 2019 (Note 2)
Listing (Review) Committee	Listing Committee	Cancellation of listing	8	Upheld: 8
	Listing Committee	Rejection of listing application	11	Upheld: 9 Overturned: 2
	Listing Committee	Placing a listed issuer into the second delisting stage	1	Upheld
	Listing Committee	Spin-off proposal	1	Upheld
Listing Committee	Listing Division	Rejection of listing application	5	Upheld: 3 Overturned: 2
	Listing Division	Spin-off proposal	1	Upheld
	Listing Division	Placing a listed issuer into the second delisting stage	1	Upheld
	Listing Division	Cancellation of listing	8	Upheld: 8
	Listing Division	Return of listing application	2	Upheld: 2

Notes:

1. The decision letter for one review hearing of the Listing Review Committee was issued in January 2020.
2. The decision letter for one review hearing of the Listing Appeals Committee was issued in January 2020.
3. Under paragraph 10.6 of the Memorandum of Understanding Governing Listing Matters between the SFC and the Exchange dated 28 January 2003 (as amended by the First Addendum dated 9 March 2018), the SFC requested the Listing Appeals Committee to review the Listing Appeals Committee's decision to overturn the Listing Committee's decision to reject a company's listing application.
4. These two overturns relate to the same case. In other words, the Listing Appeals Committee, in its second review, effectively reinstated the decision of the Listing Committee and Listing (Review) Committee.

88. As at 31 December 2019, there were 12 cases<sup>33</sup> under review as follows:

Review cases under the new review regime

<b>Appeal Committee</b>	<b>Decision made by</b>	<b>Nature of decision</b>	<b>Number of cases</b>
Listing Review Committee	Listing Committee	Cancellation of Listing	5
	Listing Committee	Suspension of trading and proceeding with cancellation of listing	1
	Listing Committee	Rejection of listing application	1
Listing Committee	Listing Division	Cancellation of Listing	1

Review cases under the old review regime

<b>Appeal Committee</b>	<b>Decision made by</b>	<b>Nature of decision</b>	<b>Number of cases</b>
Listing (Review) Committee	Listing Committee	Cancellation of Listing	3
	Listing Committee	Suspension of trading	1

<sup>33</sup> Reviews of disciplinary decisions are excluded.

# Policy Agenda for 2020 and Beyond

89. Highlighted below are those matters the Exchange currently plans to consider during 2020 and beyond:

## **Prospectuses and listing process**

- Review of Listing Regime for Overseas Companies
- Review on Optimization of the IPO Price Discovery Process and Market Infrastructure
- Consultation Conclusions on Corporate WVR Beneficiaries
- Consultation Conclusions on Review of Chapter 37 Debt Issues Regime for Professional Investor Only

## **Ongoing obligations and other related matters**

- Review of Share Schemes of Listed Issuers
- Consultation Paper on Proposals to Display Documents Online
- Consultation Paper on Review of Disciplinary Powers and Sanctions
- Streamlining Guidance Materials relating to Listing Matters



# Appendix 1 Composition, Role and Operations of Listing Committee

## Members as at 31 December 2019

### Chairman

WEIR Andrew Walter Bougourd Ross

### Deputy Chairmen

BRIEN Peter Wilhelm Hubert

YIEN Yu Yu, Catherine

### Ex officio member

LI Xiaojia, Charles

### Other members (in alphabetical order)

BHATIA Renu

CHAN Chiu Kong, Edmond

CHAN Wai Yan, Ronald

CHAN Yuen Shan, Clara

CHAU Paul

DEMOPOULOS Frederick

EMSLEY Matthew Calvert

GAO Vincent

LAU Pak Wai, David

LI Chun Elsy

LLOYD Victoria Sally Tina

NIXON Charles George Rupert

POGSON Keith Timothy

PU Hai Tao Richard

ROBERTS Donald Jeffrey

SOON Y S Elizabeth

SWIFT Joseph Daniel

TYE Philip Andrew

VAN RIJN Arnout

WOLHARDT Julian Juul

WONG John William Pei-Keat

WONG Yu Tsang Alex

YANG Hoi Ti Heidi

YIH Lai Tak, Dieter

## Composition of Listing Committee

1. The Listing Committee consists of 28 members (or such greater number that the board of the Exchange shall agree) as follows:
  - (a) At least eight individuals whom the Listing Nominating Committee (“LNC”) considers will represent the interests of investors;
  - (b) 19 individuals whom the LNC considers will represent a suitable balance of representatives of listed issuers and market practitioners, including lawyers, accountants, corporate finance advisers, and Exchange Participants or officers of Exchange Participants; and
  - (c) The Chief Executive of HKEX as an ex-officio non-voting member<sup>34</sup>.
2. The Listing Committee has no staff and no budget. A fixed annual fee of HK\$150,000 is offered for regular Committee members, HK\$187,500 for the Deputy Chairmen and HK\$225,000 for the Chairman on account of their contribution to the Listing Committee.

## Role of Listing Committee

3. The Listing Committee acts both as an independent administrative decision maker and an advisory body for the Exchange. It has four principal functions:
  - (a) To oversee the Division (to the extent practicable given the Committee’s mode of operation).
  - (b) To provide policy advice to the Division on listing matters and to approve amendments to the Main Board Rules and GEM Rules.
  - (c) To take decisions of material significance for listing applicants, listed issuers and the individuals concerned. These include approvals of listing applications and cancellations of listing and disciplinary matters.
  - (d) To act as a review body for decisions made by the Division<sup>35</sup>.
4. The Listing Liaison Forum (“LLF”) provides a monthly forum for operational matters to be raised by the Chairman and Deputy Chairmen with the Chief Executive and the Head of Listing (and vice versa). This is part of the oversight of the Division by the Listing Committee. The LLF is not a forum for discussing substantive policy matters. In addition, on a semi-annual basis, the Committee’s Chairman and two Deputy Chairmen and Head of Listing attend a meeting of the HKEX Board to communicate with the HKEX Board on the operation of the Division and the Listing Committee.

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<sup>34</sup> The Chief Executive of HKEX attends Listing Committee meetings as a non-voting member representing the HKEX’s board only where listing policy matters are discussed, and does not attend Listing Committee meetings on individual cases.

<sup>35</sup> The Listing Committee no longer act as a review body after the Listing Review Committee was established on 5 July 2019. For details of the new review structure and transitional arrangements, please refer to paragraphs 51 to 53.

5. The Listing Policy Panel (“LPP”) has been established as an advisory, consultative and steering body outside the SFC and the Exchange to centralise discussion of listing policies with broader regulatory or market implications. The LPP comprises the Chairman and Deputy Chairmen of the Listing Committee, as well as representatives from HKEX, the SFC and the Takeovers Panel. The Chairman and Deputy Chairmen of the Listing Committee represent the views of the Listing Committee (including any differing views among the Listing Committee members) at LPP meetings.
6. A more detailed description of the role and mode of operation of the Listing Committee and its approach to handling conflicts of interest is set out on the HKEX website.

## Operations of Listing Committee

7. One of the principal items of business of the Listing Committee’s regular meetings is considering whether or not to approve new listing applications for the Main Board and (from 1 January 2020) GEM (see paragraphs 33 to 36). The Division may reject a Main Board listing application, but the power to approve such listing applications rests with the Listing Committee. Listing applications are considered on the basis of reports from the Division, which include a recommendation on whether or not to approve the application. In respect of each application considered by the Committee, it may approve the application, with or without the imposition of conditions, reject the application or defer a decision pending the submission of further information.
8. The power to approve the cancellation of listing of securities (“delisting”) rests with the Listing Committee. Main Board issuers may be delisted immediately or delisted if they fail to remedy issues and resume trading before the end of the remedial period specified in the delisting notice. They may also be delisted under Rule 6.01A. GEM Rules 9.14 to 9.18 deal with the delisting of GEM listed issuers.
9. The Listing Committee’s approval is required to cancel the listing of a Main Board or GEM issuer. The Listing Committee’s decision to delist a Main Board or GEM issuer may be subject to review by the Listing Review Committee<sup>36</sup>.
10. At each regular meeting, the Division provides the Listing Committee with information on listed issuers whose shares have been suspended from trading since the last regular meeting of the Listing Committee. Each month, the Listing Committee receives an information paper on listed issuers whose shares have been suspended for a prolonged period. This forms the basis for a monthly update that is published on the HKEX website in respect of long suspended listed issuers.

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<sup>36</sup> The Listing Review Committee was established on 5 July 2019 and relevant Rule amendments became effective on 6 July 2019. For details, please refer to paragraphs 51 to 53.

11. Policy matters are generally dealt with at policy meetings of the Listing Committee as this helps to ensure broad participation from the Listing Committee membership. The Listing Committee aims to hold policy meetings on a quarterly basis. Nonetheless it is sometimes necessary for matters to be considered at regular meetings of the Committee. These items are normally in the nature of reporting back on minor revisions to policy previously agreed at quarterly policy meetings or amendments to the Rules which have previously been approved at quarterly policy meetings that are minor in nature but which, nonetheless, require the Listing Committee's approval.
12. Disciplinary matters are generally dealt with at specially convened meetings of the Listing Committee. For contested disciplinary actions, written representations are central to the process. A typical case will involve one round of written submissions from the Division and from those alleged to have breached the Rules (the listed issuer and/or its directors), with the Chairman having flexibility to allow additional submissions where it is considered appropriate. At the hearing, the Division and those against whom action is being brought are permitted to make oral representations to supplement their written submissions and Listing Committee members may ask questions of any party or its legal representative present at the meeting. The parties may thereafter make closing submissions.
13. For agreed disposals of disciplinary matters, a settlement proposal as agreed between the Division and the relevant parties is tabled before the Listing Committee at a meeting for the Committee to consider and, where appropriate, to endorse. All settlements are subject to the Committee's approval. All parties to a disciplinary action are invited to appear before the Committee to address any concerns which the Committee may have in respect of the settlement proposal, and the Committee may also ask questions of the parties present regarding the proposed settlement.

## Appendix 2 Policy Development

### Matters Considered During the Year

The table below summarises the policy matters considered at the Listing Committee's policy and regular meetings during the year.

Date	Items
<b>31 January 2019</b> Regular meeting	<ul style="list-style-type: none"> <li>- Update/Briefing on Listing Division's Key Initiatives 2019-2022</li> <li>- Approval of:               <ul style="list-style-type: none"> <li>• Listing Committee Report 2018</li> <li>• Report on Review of Issuers' Annual Report Disclosure</li> <li>• Guidance Letters on Suitability and Competition</li> </ul> </li> </ul>
<b>28 February 2019</b> Regular meeting	<ul style="list-style-type: none"> <li>- Approval of Country Guide for the Netherlands</li> </ul>
<b>4 March 2019</b> Policy meeting	<ul style="list-style-type: none"> <li>- Update/Briefing on:               <ul style="list-style-type: none"> <li>• Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments</li> <li>• Consultation Paper on Proposal relating to Listed Issuers with Disclaimer or Adverse Audit Opinion on Financial Statements</li> <li>• Corporate Governance and Environmental, Social and Governance</li> <li>• Review of Post-Listing Developments of Issuers Listed between 2015 and 2018</li> <li>• Review of the Profit Requirement</li> <li>• Operations of New Chapters for the Three Months Ended 31 December 2018</li> <li>• Review of Conditions to Confidential Filing of Application Proof</li> <li>• Online Display of Documents</li> <li>• Non-GAAP Financial Measures</li> <li>• GEM Applications Handled by the Listing Division for the Six Months Ended 30 September 2018</li> <li>• Streamlining Guidance Materials Relating to Listing Matters (Part Three)</li> </ul> </li> <li>- Approval of Guidance Letter on Sanctions Risks</li> </ul>
<b>11 April 2019</b> Regular meeting	<ul style="list-style-type: none"> <li>- Update/briefing on Environmental, Social and Governance and Gender Diversity</li> <li>- Approval of Disclaimer Opinion Consultation Conclusions</li> </ul>
<b>16 May 2019</b> Regular meeting	<ul style="list-style-type: none"> <li>- Approval of Themes for Review of Issuers' Annual Report Disclosure Program 2019</li> </ul>

Date	Items
<b>17 June 2019</b> <b>Policy meeting</b>	<ul style="list-style-type: none"> <li>- Update/Briefing on: <ul style="list-style-type: none"> <li>• Draft Consultation Paper on Proposed Changes to Chapter 37 – Debt Issues to Professional Investors Only</li> <li>• Listing Committee’s Oversight of Listing Division</li> <li>• Review of Disciplinary Power and Sanctions</li> <li>• Long Suspended Companies and New Delisting Framework</li> <li>• Review of Listing Regime for Overseas Issuers</li> <li>• IPO Process Reform</li> </ul> </li> <li>- Approval of: <ul style="list-style-type: none"> <li>• Consultation Paper on Corporate WVR Beneficiaries</li> <li>• Consultation Paper on Codification of General Waivers and Principles and Other Minor Rule Amendments</li> <li>• Backdoor Listing Consultation Conclusions</li> </ul> </li> </ul>
<b>29 August 2019</b> <b>Regular meeting</b>	<ul style="list-style-type: none"> <li>- Update/Briefing on: <ul style="list-style-type: none"> <li>• Recognition of Overseas Audit Firms in relation to the Amendments to the Financial Reporting Council Ordinance – Effective on 1 October 2019</li> <li>• Proposed Rule Changes to the GEM Listing Rules Pursuant to the Unwinding of the Delegation Authority</li> </ul> </li> </ul>
<b>11 September 2019</b> <b>Regular meeting</b>	<ul style="list-style-type: none"> <li>- Update/Briefing on Valuation Analysis during IPO Vetting Process</li> </ul>
<b>7 November 2019</b> <b>Regular meeting</b>	<ul style="list-style-type: none"> <li>- Approval of Consultation Conclusions on Review of the ESG Reporting Guide and Related Listing Rules and Review of ESG Practice Disclosure in 2018</li> </ul>
<b>14 November 2019</b> <b>Regular meeting</b>	<ul style="list-style-type: none"> <li>- Approval of Revised Draft Consultation Paper on Proposed Changes to Chapter 37 – Debt Issues to Professional Investors Only</li> </ul>
<b>25 November 2019</b> <b>Policy meeting</b>	<ul style="list-style-type: none"> <li>- Update/Briefing on: <ul style="list-style-type: none"> <li>• Share Schemes of Listed Issuers</li> <li>• GEM Applications Handled by the Listing Division for the Six Months Ended 31 March 2019 and 30 September 2019</li> <li>• Streamlining Guidance Materials Relating to Listing Matters (Part Four)</li> <li>• IPO Process Reform</li> <li>• Consultation Paper on Corporate WVR Beneficiaries</li> <li>• Chapter 21 – Listing Regime for Collective Investment Schemes not Authorized by the SFC</li> <li>• Consultation Paper on Review of Disciplinary Powers and Sanctions</li> <li>• Post-Listing Developments of Newly Listed Issuers</li> <li>• Post Listing Performance of Small Cap Main Board Issuers</li> <li>• Approach Adopted by the Accounting Affairs Team When Vetting Non-GAAP Financial Measures of Listing Applicants</li> </ul> </li> <li>- Approval of: <ul style="list-style-type: none"> <li>• Proposal to Align Disclosure in Allotment Results of Main Board with GEM and Corresponding Rule Changes</li> <li>• Withdrawal of Listing Decision on Waiver from the Disclosure Requirements on Advances to Entity</li> </ul> </li> </ul>
<b>19 December 2019</b> <b>Regular Meeting</b>	<ul style="list-style-type: none"> <li>- Approval of Country Guide for Ireland</li> </ul>

## Appendix 3 Meeting Statistics

The following meetings were held during the period covered by this report and in the preceding period:

Nature of meeting	Number of meetings		Average number of members in attendance	
	2019	2018	2019	2018
Regular Meetings:				
– With regular business only	49	47	13.3	13.3
– With policy items	9	19	14.9	19.2
<b>Total</b>	<b>58</b>	66	<b>13.6</b>	15.0
Review Meetings (*excluding reviews by Listing Appeals Committee)	39	39	6.0	6.4
Disciplinary Meetings	19	25	6.5	6.6
Quarterly and ad hoc policy meetings	3	3	20.7	24.3
<b>Total</b>	<b>119</b>	133		

Note: Decisions made by the Listing Committee on or after 6 July 2019 are now subject to review by the Listing Review Committee (subject to the transitional arrangements).

Details of members' attendance at meetings are set out in Appendix 4.

## Appendix 4 Attendance at Meetings

The following table shows Listing Committee members' attendance at meetings. Members' contributions this year also included participating on five sub-committees for particular policy matters and the officiating of 182 listing ceremonies.

Members	NATURE OF MEETING							
	Regular		Policy		Disciplinary		Review	
	Attended/ Pooled	%	Attended/ Eligible	%	Attended/ Eligible	%	Attended/ Eligible	%
<b>In office all year</b>								
Mr Andrew Weir	47/58	81	3/3	100	0/5	0	0/7	0
Mr Peter Brien	38/56	68	3/3	100	11/18	61	7/21	33
Ms Catherine Yien	33/47	70	3/3	100	6/14	43	15/22	68
Mr Charles Li (Note 3)	n/a	n/a	2/3	67	n/a	n/a	n/a	n/a
Mr Edmond Chan	44/34	129	3/3	100	7/8	88	14/17	82
Mr Ronald Chan	32/34	94	3/3	100	4/9	44	8/20	40
Ms Clara Chan	25/34	74	2/3	67	6/12	50	8/21	38
Mr Paul Chau	28/33	85	3/3	100	7/10	70	15/22	68
Mr Matthew Emsley	31/33	94	3/3	100	6/8	75	17/25	68
Mr Vincent Gao	24/34	71	3/3	100	2/11	18	3/25	12
Mr David Lau	29/34	85	3/3	100	9/12	75	13/16	81
Mr Charles Nixon	33/34	97	3/3	100	1/12	8	1/21	5
Mr Keith Pogson	42/33	127	3/3	100	4/8	50	10/15	67
Mr Richard Pu	15/33	45	1/3	33	3/12	25	7/30	23
Mr Arnout Van Rijn	21/34	62	3/3	100	3/12	25	5/27	19
Mr Donald Roberts	31/34	91	0/3	0	6/10	60	9/26	35
Mr Daniel Swift (Note 4)	35/34	103	3/3	100	2/11	18	8/22	36
Mr Philip Tye	26/34	76	2/3	67	7/11	64	15/23	65
Mr Julian Wolhardt	14/33	42	1/3	33	1/12	8	2/26	8
Mr Alex Wong	25/33	76	2/3	67	3/11	27	2/23	9
Mr Dieter Yih	35/36	97	2/3	67	4/11	36	10/19	53
Mr John Wong	12/34	35	2/3	67	0/13	0	2/30	7
<b>Appointed this year (Note 5)</b>								
Ms Renu Bhatia	23/18	128	1/1	100	3/7	43	13/18	72
Mr Frederick Demopoulos	18/16	113	1/1	100	3/6	50	6/16	38
Ms Elsy Li	17/18	94	1/1	100	6/7	86	8/16	50
Ms Victoria Lloyd	15/17	88	0/1	0	6/7	86	13/17	76
Ms Elizabeth Soon	13/16	81	0/1	0	0/6	0	1/18	6
Ms Heidi Yang	16/17	94	0/1	0	1/7	14	1/18	6
<b>Retired this year (Note 6)</b>								
Mr John Ho	11/28	39	0/2	0	2/10	20	4/15	27
Mr Sean Ma	8/17	47	0/2	0	1/6	17	2/9	22
Mr John Maguire	14/17	82	1/2	50	2/4	50	4/5	80
Mrs Alexandra Tracy	20/18	111	2/2	100	3/8	38	3/6	50
Ms Helen Zee	11/17	65	2/2	100	5/6	83	7/11	64



Notes:

1. Percentage attendance at regular meetings is calculated based on actual attendance and the number of meetings that the member was pooled for (i.e. scheduled to attend) during the year in accordance with a pooling schedule. The Chairman and Deputy Chairmen are pooled to attend all regular meetings. Other members are pooled to attend approximately half of the regularly scheduled meetings. In all cases the number of meetings that a member is pooled for will be reduced by one if:
  - A meeting that the member is pooled for is cancelled; or
  - The member is conflicted on all substantive matters to be considered at a meeting that the member is pooled for.
2. Percentage attendance at review and disciplinary meetings is based on the number of meetings a member was eligible to attend having regard to potential conflicts of interest and whether the member had attended the meeting reaching the decision that was being reviewed. Members' unavailability due to other commitments on a scheduled date has not been taken into account in the table above. Unlike regular meetings that are scheduled on the same day and at the same time every week, review and disciplinary meetings are scheduled on an ad hoc basis. Therefore, conflicts with members' other commitments are more likely as it is not possible for members to block out a regular time in their diaries to attend these meetings. Also, some review and disciplinary meetings have to be scheduled on short notice due to their nature. The Chief Executive does not participate in review and disciplinary meetings.
3. The HKEX Chief Executive attends Committee meetings as a non-voting member representing the HKEX's board only where listing policy matters were discussed, and does not attend Listing Committee meetings on individual cases.
4. Mr Daniel Swift resigned from the Committee with effect from 1 January 2020 due to relocation from Hong Kong to the U.S.
5. Members were appointed on 5 July 2019.
6. Members retired on 5 July 2019.
7. For policy meetings and regular meetings at which policy matters were discussed, attendance includes participation by telephone.

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