

BY POST AND BY EMAIL (response@hkex.com.hk)

12 October 2018

Hong Kong Exchange and Clearing Limited  
12<sup>th</sup> Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong


Dear Sirs,

**RE: CONSULTATION PAPER ON REVIEW STRUCTURE IN RELATION TO LISTING COMMITTEE DECISIONS**

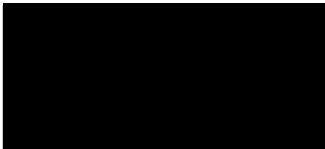
1. Reference is made to the captioned consultation paper and the invitation to interested parties to respond to the Consultation Paper on Review Structure in relation to Listing Committee Decisions. On behalf of Asian Capital Limited, attached herewith as **Appendix I** and **Appendix II** are the questionnaire and our responses to the Consultation Paper.
2. We, Asian Capital Limited, together with its predecessor Asian Capital (Corporate Finance) Limited, have been, in the past two decades, engaged in the provision of advisory services in the areas of corporate restructuring and resumptions. We are licensed by the Securities and Futures Commission to carry out Type 1 (dealing in securities), Type 4 (advising on securities) and Type 6 (advising in corporate finance) regulated activities. Our roles as financial adviser to distressed companies allow us to offer views and suggestions to the captioned Consultation Paper in a perspective vastly different from regulators as below.
3. Whilst we appreciate the Stock Exchange's intention to streamline and simplify the review structure, our foremost concern is that the proposed amendments to establish a new independent review committee to replace the Listing (Review) Committee (the **LRC**), the Listing (Disciplinary Review) Committee (the **LD(R)C**) and the Listing Appeal Committee (the **LAC**) (under Consultation Questions #1) would have far reaching and unintended consequences and would unreasonably deter white knights looking to rescue a listed issuer on the verge of being delisted by increasing the completion risk substantially. More importantly, genuine self-rescue cases would fall victim of the amendments in the review structure. As this particular change effectively shortens the time allowed to attempt any corporate rescue, only few, if any at all, financial restructuring of listed companies could successfully be conducted.
4. We have no objection to the proposed change that review of application for new listing can be streamlined as there are no public shareholders at stake, but to shortcut the review process for delisting decisions is, in our view, a blatant disregard of shareholders' interests who have already invested in the Issuers at risk of being delisted. Issuers subject to delisting decisions may have thousands of public shareholders who have invested their money in them whilst new listing applicants naturally have a much smaller shareholders base and none of them are public shareholders. Typically new listings will have banks lifting personal guarantees, signifying that banks look to the Stock Exchange to offer a level of corporate governance to listed borrowers. To delist companies that have internal control problems or financial difficulties, and unreasonable denying viable companies an opportunity to restructure as seen in many cases

through the assistance of professional insolvency practitioners would, in our view, be a most irresponsible act on the part of the Stock Exchange.

5. As such, we submit that the Stock Exchange should afford delisting decisions more opportunities to be reviewed as a better safeguard that protect existing shareholders (and creditors) from any possible faults and errors or simply premature decisions on the part of the Stock Exchange. Thus we propose to the Stock Exchange that delisting decisions should remain with the two levels of review. With reference to the Stock Exchange's Consultation Paper on Delisting, the time allowed for completing a restructuring has been reduced to 18 months by dropping the three stages of delisting. We have concerns that the 18 months period is already insufficient for any viable restructuring of troubled Issuers as illustrated by empirical evidence in **Appendix III**. By removing the "two-tier" review structure, Issuers will no longer have the opportunities of any interim review.
6. To further elaborate our view on the Consultation Paper, we have prepared and attached a detailed response to specific consultation questions the Stock Exchange presented in the Consultation Paper as **Appendix II**.

Should you have any queries, please feel free to contact the undersigned at 

Yours faithfully  
For and on behalf of  
**Asian Capital Limited**



Patrick K.C. Yeung  
Chief Executive Officer

Encl.

**APPENDIX I - QUESTIONNAIRE**

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## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. 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?

Yes

No

Please give reasons for your views.

Please refer to Appendix II for details.

2. 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?

Yes

No

Please give reasons for your views.

Please refer to Appendix II for details.

- (b) the size and composition of the new independent review committee (including the mix of members' representation)?

Yes

No

Please give reasons for your views.

Please refer to Appendix II for details.

3. 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?

Yes

No

Please give reasons for your views.

Please refer to Appendix II for details.

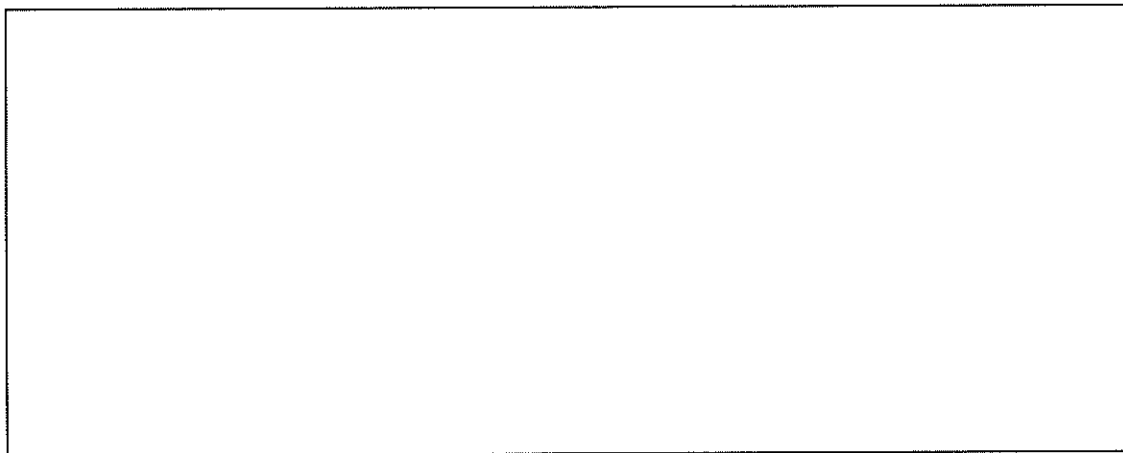
4. Do you agree with the proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters on the basis described in paragraphs 102 to 105 of the Consultation Paper?

Yes

No

Please give reasons for your views.

5. The Exchange does not consider that specific consultation is required in relation to the provisions for the SFC's power to request review of decisions as set out in Chapter 5 of the Consultation Paper (as they reflect the MOU and administrative procedures) but would be pleased to receive any comments from respondents.



- End -

**1. Consultation Question #1**

*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?*

Out of the three types of decisions of Material Significance, we have no objection to the proposal that the rejection of new applicants' listing applications solely on the ground of unsuitability for listing be streamlined and subject to one level of review. Normally, with new listing applications, it will only involve a much smaller shareholders base and none of them will be public shareholders and hence no public interest will be at stake.

Whilst we appreciate the Stock Exchange's intention to streamline and simplify the review structure, it is equally important to provide a fair and equitable review opportunity to Issuers at risk of an unjust delisting decision.

For decisions relating to a cancellation of listing, the Stock Exchange should always bear in mind shareholders' interests as they already have the misfortunes of investing in these companies. Issuers subject to delisting decisions will have considerable shareholder base. It should also be noted an inequitable delisting decision of any Issuer would unfairly deprive the shareholders' rights.

As with the Judiciary system, certain matters with grave public importance should be given two rights of review. The Listing Rules confer a significant degree of discretion upon the Stock Exchange and are intended to be flexible. In this respect, the Listing Rules allow the Stock Exchange to exercise its own judgment in respect of matters such as suitability for listing and cancellation of listing. With the high level of autonomy, it is critical for the checks and balance on such judgment be in place to ensure that such discretion is properly and fairly exercised.

Also considering that each review is by way of a hearing *de novo*, we do not consider it biased for listed issuers to be given two rights of review to ensure a fair decision is reached by three competent, independent and impartial committees.

In respect of delisting decisions, we are at odds with the logic displayed at paragraph 69 of this consultation paper. The listing status was granted after careful scrutiny by the Stock Exchange and the SFC with public shareholders thereafter invested and traded in the shares. The system for resumption is for the Issuer to 'convince' the Stock Exchange that its resumption proposal can fulfil Rule 13.24 requirements, amongst others. Convincing the Stock Exchange with a resurrected business, typically by means of published financial statements, needs time. With the earlier amendments, the time for conducting the restructuring of the Issuer has already been significantly curtailed to a most unreasonable period of 18 months. In this connection, we attach a list as **Appendix III** setting out the time required for successfully restructured PN 17 companies over the past 6 years, illustrating that only one out of those 21 companies could complete the resumption process within 18 months. The previous system allows each stage of delisting to be reviewed, whilst allowing the Issuer sufficient time to 'convince' the Stock Exchange of the Issuer's accomplishments of restructuring progress. It also gives chances, before going to the LAC, for wrong decisions to be corrected. We submit that the Issuer's right to have its shares traded should be considered as a given right. The regulators should not regard taking it away as a gambling stake, like 'to convince one of the three bodies in order to "win"



the case'; an illustration of a total disregard of the fact that the delisting decision was made by the Stock Exchange in the first place!

We concur with the Stock Exchange's view that "it is important that the decision-making and review processes are robust and afford adequate opportunity to correct any decision which is wrong." The availability of a second level of review ensures that any identified procedural or other defects in relation to the initial decisions of the Listing Committee or subsequent decision of the LRC can be corrected before the decision is final. The existing "two-tier" review structure has worked well for decades. There is no evidence that conflicts have resulted in decisions contrary to the public interest.

**2. Consultation Question #2(a)**

*Do you agree with 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?*

We respectfully disagree. It was noted that the SFC is of the view that, to enhance governance within the Stock 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 submit that delisting decisions are so vital to the Issuers and investors that they cannot be entirely delegated to non-board members.

**3. Consultation Question #2(b)**

*Do you agree with the size and composition of the new independent review committee (including the mix of members' representation)??*

We respectfully disagree with the structural change. We note that the proposed new independent review committee will comprise at least 15 members, who are market participants with no current Listing Committee members or representatives of the SFC or HKEX, but could be former Listing Committee members. We have concerns that the reduced number of investor representatives of the new independent review committee may not have sufficient market-driven input being considered before making a decision taking into account the practicalities of the Issuer's situation on a case by case basis.

**4. Consultation Question #3**

*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?*

We respectfully disagree with the structural change. Under the current review system, the LAC is the highest review body and comprises the Chairman and two other members of board of Hong Kong Exchanges and Clearing Limited (the HKEC). Under the terms of reference and

modus operandi of the board of the HKEC, members of the board of the HKEC, and accordingly members of the LAC, should “lead and supervise the Group’s management to act in the interest of the public as well as its shareholders...” (Clause 11(c)). The current system of a final appeal in front of the highest authority of the Stock Exchange which has a public interest obligation cannot and should not be delegated to a committee where no board members of the HKEC will participate. The arguments for streamlining in this regard are patently faulty.

**APPENDIX III – FULL LIST OF RESUMED PN17 COMPANIES FROM 2012 TO 2018**

**Full list of Resumed PN17 Companies from 2012 to 2018**

Code Stock	Company Name	Date of Suspension	Resumption Date	Duration (Days)
01007	Longhui International Holdings Limited	22/3/2012	06/07/2018	2,297
00948	Z-Obee Holdings Limited (Provisional Liquidators Appointed)	27/6/2014	30/11/2017	1,252
00865	First Mobile Group Holdings Ltd.	27/11/2009	27/10/2016	2,526
01192	Titan Petrochemicals Group Ltd.	19/6/2012	15/7/2016	1,487
00186	Grande Holdings Ltd., The	30/5/2011	30/5/2016	1,827
00334	Proview International Holdings Ltd.	2/8/2010	25/6/2015	1,788
01201	Kith Holdings Ltd.	18/12/2013	27/3/2015	464
00356	Incutech Investments Ltd.	13/6/2008	29/9/2014	2,299
02339	Norstar Founders Group Ltd.	19/1/2009	27/1/2014	1,834
02358	Mitsumaru East Kit (Holdings) Ltd.	14/2/2008	31/12/2013	2,147
00607	Wardenly International Holdings Ltd.	14/5/2007	16/12/2013	2,408
00627	U-RIGHT International Holdings Ltd.	17/9/2008	23/9/2013	1,832
01175	FUJI Food and Catering Services Holdings Ltd.	29/7/2009	8/7/2013	1,440
01076	First Natural Foods Holdings Ltd.	15/12/2008	6/9/2012	1,361
01139	Victory Group Ltd.	27/9/2006	11/6/2012	2,084
02326	BEP International Holdings Ltd.	20/10/2008	18/5/2012	1,306
00439	Chimax International Co. Ltd.	23/9/2008	7/5/2012	1,322
00875	Ever Fortune International Holdings Ltd.	28/4/2005	28/2/2012	2,497
02336	Sunlink International Holdings Ltd.	2/12/2008	28/2/2012	1,183
00456	New City (China) Development Ltd.	30/12/2003	23/2/2012	2,977
01220	Ocean Grand Holdings Ltd.	17/7/2006	11/1/2012	2,004