

## 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.

Bearing in mind that decisions of Material Significance relates to decisions on suitability of listing (including rejection of IPOs or cancellation of listing) and public sanctions, all of which has drastic consequences against the issuer in question, it appears to be draconian to remove the last right of appeal for expedience on the basis that giving two chances "unduly favours" the listing applicant or issuer. It ignores the fact that (i) the listing applicant/ issuer does not make direct submissions/ is not heard in the first Listing Committee decision and (ii) possibility that the Listing Committee members (as a whole) may possibly be pro Exchange to the extent that they are contributors to the policies implemented by the Exchange from time to time, against which the two "chances" can be regarded as a fair balancing of power and odds.

It also ignores the considerable resources that a listing applicant/ issuer would normally dedicate towards its fight to pursue an IPO and/or to retain the listing. One should not presume that every unsuccessful applicant and/or issuer is or is intended to be a "shell" - even though shell do exist. Deprivation of rights of an innocent party because of the misbehaviour of others through a rule amendment grinds against the fact that Hong Kong's success has been built upon the rule of law, the respect of rights and free trade.



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.

I can see the conceptual desirability structurally for a wholly separate and independent body to be established. However, on reflection, rules for new listing and continuation of listing are rules for retaining "membership" (i.e. its listing) with the Exchange and the challenges of finding suitable and willing candidates (para 81) for both the Listing Committee and the new committee to be created is not a good reason to deprive people of existing rights to appeal (see reply to question 1 above). The existing Listing Committee structure creates already a layer of independence (given its membership) (between those who are in daily operation at the Exchange while its supervisory/ policy contribution role allows the members to have a good degree of familiarity of and be grounded in the purpose and direction of the Exchange. If workload of members are considered too heavy, perhaps an idea should be to expand its membership pool so that there are more members to draw from for hearings.

I can see that creating an entirely separate body generated from a similar pool professionals/ lay people in the market (but not allowing overlap) would have the following effects:

(i) spread persons with appropriate experience or standing and are willing to take up such roles even thinner (since you need two instead of one pool of such resources) and therefore dilute the quality of the decision making tribunals both in terms of availability of candidates and also active experience of committee members (because the chances of sitting in a hearing is invariably reduced - this can create more uncertainty and inefficiency;

(ii) effectively allows the circumvention of the 6 year appoint + 2 years break rule (under LR2A.25) given that the membership is to be derived from former LC members (para 84) but create a body of persons who are likely to be more removed from the then current policies / directions of the Exchange. If the idea is for them to play a role in "check and balance", would that role not be better served by the SFC in view of its extensive statutory powers?

(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.

I am not commenting on size and composition to the extent that I do not agree that the independent review committee is necessary.

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.

I was under the impression that the current LAC membership was designed to recognise that the HKEC board should have some power to decide who is allowed to participate in the market operated by the Exchange (subject to ultimate oversight by the SFC as the securities regulator). This perspective is in my view reasonable.

I have no objection, however, to having LAC populated with independent members who are not drawn from the HKEC board, though I wonder whether the better way is to expand the pool of Listing Committee members instead of creating a separate and discreet pool of members except for the chairperson who are nominated from a chairperson panel with the composition described in paragraph 91.

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.

I expect that the LR will make clear that the reasons given by the SFC for the review request (see fn 53 and para 112) will be made available to the parties to the relevant decision/ hearing.

It would be helpful if SFC will confirm that it will exercise its right to initiate a review only in exceptional circumstances (and where there is new information unavailable to the parties / the Division/the relevant Committee) given that the SFC are privy, esp in the case of an IPO to all materials to which the Division is given in connection with a Listing Application.

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