



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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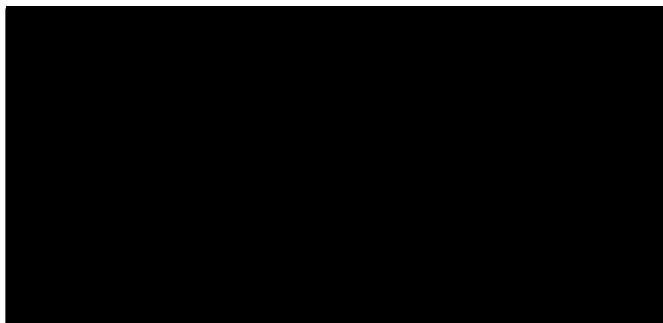
Corporate Communications Department
c/o Hong Kong Exchanges and Clearing Limited
12/F One International Finance Centre
1 Harbour View Street
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Dear Sirs

**Joint Consultation Paper on Proposed Enhancements to
The Stock Exchange of Hong Kong Limited's Decision-Making and
Governance Structure for Listing Regulation**

We are pleased to enclose a paper setting out our comments on the proposed enhancements which are the subject of the joint consultation that you are undertaking in conjunction with the SFC.

Yours sincerely,



Louis Loong
Secretary General



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Joint Consultation Paper on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation

The Real Estate Developers Association of Hong Kong is a trade body representing the property development sector in Hong Kong. Our members include real estate developers, both large and small, publicly listed and privately held companies.

We have studied the Joint Consultation Paper and remain unconvinced that the proposals outlined therein on the revamp of the decision-making and governance structure for listing regulation will deliver the results they are set out to achieve. On the contrary, we have reservations that such proposals may actually lead to a deterioration of the governing framework, undermining Hong Kong's competitiveness as a desirable market for IPOs and jeopardising Hong Kong's stature as an international finance centre.

Little justification for the two proposed new committees

Under the new proposals, two new bodies will be set up to oversee listing matters: the Listing Policy Committee which will set policy on a macro level at an early stage, and the Listing Regulatory Committee which will adjudicate on novel listing applications or applications with suitability issues. The stated objective of these two proposed committees is to achieve "structural and procedural enhancements".

What is implied but not clearly spelt out in the Joint Consultation Paper is that these two proposed committees will take over a significant portion of the functions now being served by the Listing Committee, with the effect of replacing Hong Kong's current well-functioning disclosure-based, two-tier regime by a regulator-led system, with little evidence being provided to justify the proposed change.

The functions of both proposed committees have actually been served well under the existing legal and operational framework governing the SFC/HKEx operation on listing matters. On the development of new listing policy and decision making on the macro level, it is well managed between the SFC and the HKEx through the monthly Listing Matters Liaison Meeting required by the Memorandum of Understanding



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Governing Listing Matters they entered into in 2003¹. On the vetting of listing applications, the enabling legislative framework of the SFC by virtue of the Securities and Futures Ordinance covers matters including market misconduct, inside information disclosure, takeovers, and buy-backs. Section 6 of the Securities and Future (Stock Market Listing) Rules in particular empowers the SFC to object to any listing application within 10 business days based on concerns arising from listing rules or interest of the investing public and the general public interest². On the concern of efficiency, substantial changes to the listing process were implemented in 2013, resulting in significant reduction in time for processing of listing applications³.

Beauty of the current two-tier regime

The current two-tier regime instituted since 2003 has proven to be a well-functioning model for Hong Kong. The beauty of it is a balance of regulation and market growth from the appointment of members to the Listing Committee to the SFC's role in overseeing listing applications. Thanks to the foresight of the Hay Davison Report, our current practitioner-based regulatory system was designed to "avoid the danger of straight-jacketing the securities market by a strict regulatory regime which might all too easily lead to insensitive or heavy handed over-regulation." Mindful that "market management and regulation by practitioners offers scope for flexibility and adaptability in a rapidly changing market" while "statutory regulators will not always have the necessary knowledge and expertise"⁴, the Hay Davison Report is resolute in its conclusion and recommendation that a practitioner-based regulatory system was best suited to Hong Kong.

¹ "Memorandum of Understanding Governing Listing Matters" entered into between the SFC and the HKEx in January 2003. https://www.hkex.com.hk/eng/rulesreg/regdoc/documents/mou_28jan03.pdf

² Cap 571V Securities and Futures (Stock Market Listing) Rules
http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/F4D61D3235BF3DA5482575EF001DC123?OpenDocument&bt=0

³ SFC's Periodic Report on the Securities and Future Commission's 2015 Annual Review of the Exchange's Performance in its Regulation on Listing Matters (June 2016)
http://www.sfc.hk/web/EN/files/ER/Reports/report_HKEX_audit_2015_en.pdf

⁴ Report of the Securities Review Committee on the Operation and Regulation of the Hong Kong Securities Industries, 1988 ("Hay Davison Report")
http://www.sfc.hk/web/doc/EN/speeches/public/consult/Report-Operation_and_Regulation_HK_Industry.pdf



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Whilst the composition of the Listing Committee by market practitioners is based on the rationale of keeping a quick response to the market and avoid rigid and excessive regulation, a dimension of regulation is brought in by the nomination of members into the Listing Committee, which is determined by the Listing Nominating Committee with half of its members from the SFC (its Chairman and two Executive Directors). This inherent vetoing power enjoyed by the SFC over any nomination of the Listing Committee members reflects its important role and early involvement in listing matters, and has thus far been ensuring that the nominated members will keep a keen sense of proportion about market growth and regulation.

To address any potential conflict of interest, the HKEx Board had also delegated all its powers and functions in respect of listing matters to the Listing Committee, an arrangement which highlights the independence and the integrity of the Listing Committee in decision-making concerning listing matters. In parallel with the Listing Committee, the SFC also retains powers over vetoing listing applications and amending listing rules. All the checks and balances are thus built-in.

This dynamic and flexible two-tier regime is of paramount importance to Hong Kong amid the current global market, with ever-increasing complications and sophistications. Technological advances and innovations bring about novel businesses every day. The Listing Committee, by virtue of its wide spectrum of representation, will continue to maintain a global perspective and stay responsive to these changes. This will ensure a balanced judgement on listing decisions that will facilitate market growth and protect investors at the same time.

Risk of over-regulation

If the proposed restructure of listing function is implemented, the authority over listing matters exercised by the Listing Committee with 28 independent market experts will be transferred to the two proposed new committees, each with only 8 and 6 members respectively and both a predominant representation by the SFC. Such regulator-led regime for Hong Kong is a step backward against the international trend of moving towards a disclosure-based regime.

With such changes, the risk appetite of the listing regime will be effectively controlled by the SFC. The SFC, being a regulatory body, will understandably hold a more conservative stance. In addition, as “statutory regulators will not always have the



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necessary knowledge and expertise”⁵, the pace of formulating listing policy will be easily overtaken by rapid economic changes, dragging our pace to usher in new opportunities afforded by new markets. And inasmuch as the regulators want to ward off risk and disruptions, there are bound to be irregularities in the market attracting public criticism, which will in turn drive regulators to an increasingly conservative attitude, not only to avoid risks of irregularities but also criticism, stifling the market and impeding growth as a result.

With these two proposed committees dominating policy formulation and decision making on complicated listing applications, the Listing Committee, with its expertise as market practitioners, will effectively be relegated to a structure for routine applications. We do not believe such changes could serve the best interest of Hong Kong.

Existing structures fully adequate to combat current market problems

We appreciate that there are irregularities in the market such as reverse takeovers or poor quality of newly listed companies including suspected “manufacturing” of listed shell companies, and in such circumstances intervention by the SFC is indeed warranted. The proposed structures however are considered unnecessary as the existing regulatory framework is already armed with the power to combat such activities. Hong Kong has a set of sophisticated and well established rules and codes to govern corporate behaviour and treatment of minority shareholders. The Securities and Futures Ordinance empowers the SFC with an arsenal of measures to monitor and rectify irregularities, by amending the listing requirements or imposing additional conditions such as extending the moratorium, increasing the shareholder base, or compulsory IPO with public offering rather than full share placements, coupled with tightening of rules, longer trading halts, more robust delisting policy and investigation and prosecution of wrongdoers. The SFC should therefore concentrate its focus on monitoring the market and punishing wrongdoers, while the fundamental listing policy and IPO approval matters should be left to the current Listing Regime.

⁵ Refer to Note 4.



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Conclusion

No convincing arguments have been advanced in the Joint Consultation Paper to justify the proposed changes. Issues that appear to warrant certain actions can actually be resolved readily under the existing mechanisms, either by reviewing the Listing Rules or by inviting the SFC representatives to attend Listing Committee meetings at which policy issues or thorny listing applications are discussed.

Under the existing regime, the HKEx ranks as the world's top IPO fundraising exchange in 2015, has ranked in the world's top 5 IPO-fundraising exchanges for the last 14 consecutive years⁶, and continues to rank as the world's top IPO fundraising market in the first half of 2016⁷. Amid this thriving and continuous growth, we have not seen any evidence of lapse in protection afforded to local and international investors⁸. We are therefore unable to support the proposed changes as detailed in the Joint Consultation Paper. The current two-tier regime, under which the Listing Committee works in parallel with the SFC to ensure a fine balance between market growth and regulation on listing matters, should be upheld.

The Real Estate Developers Association of Hong Kong

19 September 2016

⁶ HKEx "Market Statistics 2015"

<https://www.hkex.com.hk/eng/newsconsul/hkexnews/2015/Documents/1512202news.pdf>

⁷ PwC, http://www.pwchk.com/home/eng/pr_040716.html

⁸ Hong Kong is rated the first in 2016 by the World Bank on protection of minority investors' interest. The World Bank Report "Doing Business 2016, Measuring Regulatory Quality and Efficiency"
<http://www.doingbusiness.org/reports/global-reports/doing-business-2016>