

**From:**  
**Sent:** 18, October, 2016 11:04 PM  
**To:** Listing Regulation  
**Subject:** Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

Dear Sir,

I am responding to the above consultation paper. I am a former employee of HKEX, involved for more than 20 years into researching the Hong Kong and international securities markets, including the listing function.

I do not support the proposals. There is certainly a need to reform the structure of listing regulation in Hong Kong, but the paper does not make its case and the proposal does not make sense.

Firstly, the problem the paper is trying to address is not clearly articulated. There are vague references to the growth of the market and to conflicts of interest and inefficiency in the existing process, but the issues cited - for which remedies are in place that the paper admits have served the market well - do not seem significant enough to warrant structural reform.

Secondly, the solution proposed - to create two joint SFC-HKEX committees on top of the existing set-up - seems extraordinary. How can the creation of two new committees be the solution to anything? Far from streamlining the listing process, the additional committees would surely create additional layers of bureaucracy. They would create new conflicts - for example, the SFC members of the committee would hardly be able to review the committee's decisions from the SFC's viewpoint afterwards. And how could the SFC members serve on what appear to be HKEX committees? The two committees are supposed to operate mainly by consensus, but it is far from clear how consensus would arise between the two 'camps' on the committee - they might be in perpetual deadlock. And the Listing Policy Committee is supposed to approve the Listing Division's remuneration, which appears a departure from basic governance principles. On multiple levels, the proposal appears ill-conceived and unworkable.

Thirdly, and disturbingly, there is no reference in the paper to international practice. The question of how best to design and operate an exchange listing function is hardly unique to Hong Kong - there are dozens of functioning stock markets around the world. Surely the paper should include a review of how overseas exchanges and regulators manage their relationship? We need not necessarily follow overseas practice, but at least we should know what overseas practice is, and why we are different (if we are) so that we avoid repeating the mistakes of others. This is surely the minimum one would expect of an international financial centre.

My own analysis would be along the following lines. For historical reasons, listing regulation in the Hong Kong market departs from international practice in two ways:

- Listing decisions and policy are made by practitioner committee rather than by executive staff. This means that although outright conflicts on individual listing applications are generally avoidable through conflict identification procedures and by virtue of the sheer size of the committee, there is a bias towards the sell-side. So, for example, it is very difficult to delist underperforming companies (either individually or at a policy level) because many practitioners on the committee make money recycling shells. There has been some effort to address the bias by bringing buy-side representatives into the committee, but they remain a minority and because of the diffuse and tiered nature of the buy-side may have conflicts of their own. More fundamentally, balancing conflicts does not resolve the issue - the conflicts remain and find unexpected outlets. Most overseas markets have long recognised this and have removed practitioner committees from listing regulation altogether, the listing review being conducted by executive staff who are disinterested and can more readily be subject to proper governance and probity controls.

- The statutory power of prospectus authorisation has been delegated by the SFC to the (non-statutory) Exchange. This is, I suggest, the source of much of the discord between the Exchange and the SFC. It has led to unsatisfactory work-arounds like Dual Filing. In most overseas markets, the statutory regulator looks after the public offering (prospectus) regime, while the exchange looks after listing. This was the case in Hong Kong prior to the early 1990s (when the delegation took place). I suggest that it is a better way of managing the natural tension between the commercial drive to expand the market by winning listings and the concern to protect investors. In overseas markets, the former is the natural province of the exchange, the latter that of the commission. I suggest further that there should be tension between the two, even conflict on occasion, and that attempting to achieve premature 'consensus' through the proposed joint committee would not be desirable even if it could be achieved.

Hong Kong has enjoyed great success as an IPO market over the years, and the quality of its listing regulation has played an important part in that, for which due credit should be given. However, during this time Hong Kong enjoyed a natural 'monopoly' of Mainland listings. As this monopoly declines in future, the effectiveness and efficiency of the listing function will come more sharply into focus. Improvements are needed, and I believe that the greatest impact would come from addressing the above two departures from international practice. Short of that, there is a great deal of room to improve and coordinate the workings of the two regulators at operational level, not by creating new committees but by streamlining procedures, improving transparency and accountability for decisions, and focusing on risk rather than box-ticking.

I hope that these comments are helpful.

Regards,  
Matthew Harrison