



Hong Kong General Chamber of Commerce
(Incorporated in Hong Kong)

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Helping Business thrive 1881

6 September 2016

Mr Carlson Tong, SBS, JP
Chairman
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Carlson,

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

The purpose of writing to you is to request an extension to the existing deadline for submitting responses to the joint consultation paper on listing regulation ("Joint Paper"). This request is made in view of the far-reaching implications of the proposed reforms and the resultant misgivings, some of which quite serious, that have arisen since the launch of the consultation exercise.

We appreciate that stakeholders have been given three months to consider and comment on the consultation. However, given that the exercise is being conducted over a period when many in Hong Kong were away and in view of the profundity of the proposals, our members have requested that they be given more than the two weeks that remain from today to review the Joint Paper and provide informed responses whether individually or through the Chamber.

The proposals as provided in the Joint Paper are of such significance that we feel a reasonable extension of the deadline to be necessary in ensuring that the business community has enough time to comment.

We very much hope that you will give our request your favourable consideration and look forward to a fruitful discussion with SFC CEO Ashley Alder on 13 September at the Chamber.

You may wish to note that we are also sending this letter to the HKEx Chairman, Mr C K Chow.

Yours sincerely,

Stephen Ng
Chairman

cc: Prof K C Chan, Secretary for Financial Services and the Treasury
Mr Andrew Wong, Permanent Secretary for Financial Services & the Treasury (Financial Services)
Mr Ashley Alder, CEO, Securities and Futures Commission



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Helping Business since 1861

25 October 2016

Mr Ashley Alder, JP
Chief Executive Officer
Securities and Futures Commission
35/F, Cheung Kong Centre
2 Queen's Road Central
Hong Kong

Dear Ashley,

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

I am pleased to enclose for your consideration the Chamber's response to the captioned consultation.

The Chamber's position was reached after taking into account the views of members, who were generally not persuaded that the proposed measures would have the intended outcome as claimed. Rather, there were concerns that the proposals would have a retrograde effect on Hong Kong's listing market.

We are most grateful to you and your colleagues for taking the time to meet with us in September and are at your disposal should you have any enquiries or clarifications on our submission.

Yours sincerely,

CEO

Encl.

c.c. Mr Carlson Tong, Chairman, Securities and Futures Commission
Sir C K Chow, Chairman, Hong Kong Exchanges and Clearing
Mr Charles Li, Chief Executive, Hong Kong Exchanges and Clearing

**Hong Kong General Chamber of Commerce (“HKGCC”)
Response to Joint Consultation Paper by the Securities and Futures
Commission and The Stock Exchange of Hong Kong Limited “Proposed
Enhancements to The Stock Exchange of Hong Kong Limited’s Decision-
Making and Governance Structure for Listing Regulation” (“the CP”)**

Executive Summary

1. HKGCC welcomes this opportunity to respond to the CP.
2. Hong Kong’s economic success and attraction as a place to do business is due in large part to its free market and light-touch approach to regulation, the Government and regulators intervening only where necessary. As the CP itself states “Hong Kong has always maintained an open market for international trade and investment”.¹ HKGCC strongly supports this approach. It has therefore consistently advocated that, before any new public intervention in the marketplace is made, a detailed Regulatory Impact Assessment (“RIA”) is conducted. The RIA should demonstrate that there is a clear need for public intervention, i.e. a problem that needs to be addressed, assess the different methods of solving the problem, and demonstrate why the method which is advocated is the best one. No such RIA is contained in the CP. HKGCC is therefore unable to support the proposals in the CP.
3. The case for intervention should be particularly strong, convincing and persuasive where the proposed intervention constitutes a major and fundamental change to a successful *status quo*. The CP’s proposals would constitute such a major and fundamental change, in spite of its efforts to present the proposals as mere “enhancements” to the current decision-making and governance structure. In particular, the SFC would take on the role as a frontline regulator on listing matters (in spite of statements in the CP to the contrary).
4. The CP does not explain why there is any perceived problem that needs to be addressed. On the contrary, the CP highlights Hong Kong’s worldwide success as a listing centre.² This in itself indicates that there is no need to intervene, or at least that the case for intervention should be strong, convincing, and persuasive. No such case is made in the CP.
5. The CP does not set out the different possible methods of intervention to meet the perceived need, or explain why the proposed method is the preferred one, based on a cost-benefit analysis and proportionality.
6. The CP’s proposals have clear potential pitfalls in these proposals. These include the following:
 - The introduction of two new committees, in particular the Listing Regulatory Committee (“LRC”) as an extra layer on top of the Listing Committee (“LC”), will

¹ Para 45.

² Paras 2, 44.

make the system less efficient, not more efficient, and slow down the decision-making process on listing applications.

- The proposed new unlimited joint-decision-making power on the more complex cases which the SFC would, in contrast to its current limited power of veto, increase the risk that “doubtful” listing applications will be blocked by the SFC, because of its (arguably conflicting) role of protecting the investing public. In other words, it is likely to err on the side of caution by blocking the listing, rather than relying on its post-listing enforcement powers.
 - Creating unnecessary extra obstacles to obtaining a listing will make it difficult for many SMEs to raise capital for growth. Promoting the growth of SMEs is critical to Hong Kong’s prosperity. Creating unnecessary obstacles to the growth of SMEs in Hong Kong is not only bad for the businesses themselves, it is detrimental to Hong Kong’s competitiveness.
 - By creating such obstacles, the CP’s proposals would jeopardize Hong Kong’s position and reputation as a leading worldwide financial centre and free market economy.
 - The benefits of the experience and expertise of the 28 existing members of the Listing Committee in deciding on listing applications will be largely lost, since they will only have the sole right to decide on mundane cases which raise no suitability or policy issues. It is precisely in the more complex cases that their experience and expertise is required, and which they should be allowed to decide.
7. In conclusion, the CP’s proposals would likely result in a number of significant adverse consequences for Hong Kong’s businesses and economy, in return for no clear benefit. Interfering with Hong Kong’s international success as a financial centre is potentially damaging and unjustified. HKGCC cannot therefore support the CP’s proposals.

No regulatory impact assessment

Hong Kong's economic success and attraction as a place to do business is due in large part to its free market and light-touch approach to regulatory intervention. This approach has won international accolades. Both the Heritage Foundation and the Fraser Institute have recently ranked Hong Kong yet again as the world's freest economy - in the case of the Heritage Foundation for the 22nd year in a row. Amongst its highest rankings are regulation, regulatory efficiency and size of government.³ The Government is justifiably proud of this reputation, stating "The Government is well aware that economic freedom as enshrined in our institutional strengths is at the core of our competitiveness among the world's leading cities" but warning that "In a world of keen competition, we cannot afford to be complacent". Looking to the future, the Government stated "We will strive to uphold our traditions of an open and free trade and business environment".⁴ Similarly, the Financial Secretary has said, "Hong Kong's reputation as a business-friendly city is well-founded. We are determined to maintain this mainstay of our economy and it remains our resolve to make our business-friendly environment even friendlier, to all businesses."⁵

As part of this policy, the Government several years ago launched its "Be the Smart Regulator" programme, a key component of which is that policy interventions should be accompanied by a RIA. An RIA should identify clearly the problem which the intervention is designed to remedy. It should also "describe alternatives" and "analyse potential costs and benefits to all stakeholder groups: community, business and regulators". The Government described the policy behind the need for RIAs as follows: "Increasingly, governments around the world are focused on cutting red-tape to encourage vital investment and maintain competitiveness."⁶

No proper RIA is contained in the CP. There is no clear statement of why there is a need for change, namely, what is wrong with the current system, no assessment of alternative ways of addressing any perceived problem, and no cost versus benefits of the proposals as against alternatives. For this reason alone, HKGCC cannot support the CP's proposals.

Proposals constitute major and fundamental changes not mere "enhancements"

The need for a proper RIA is all the more important when the policy intervention would constitute major changes to the *status quo* as the CP's proposals would. The CP labels its proposals as "enhancements" to the Stock Exchange's "decision-making and governance structure for listing regulation". This grossly understates the significance of the proposals. In fact the proposal would constitute major and fundamental changes to the existing system, in particular by:

- removing from the LC its sole power (subject to a limited right of veto by the SFC) to decide on all listing applications;

³ www.heritage.org/index/country/hongkong

⁴ "Hong Kong once again ranked first in the world in economic freedom", Government Press Release 15 September 2016.

⁵ "Government's Commitment to Business Facilitation" <http://www.gov.hk/en/theme/bf/facilitation/>.

⁶ "Be the Smart Regulator", available at <http://www.gov.hk/tc/theme/bf/pdf/pamphlet.pdf>.

- giving the SFC a joint power, via the proposed LRC - along with the LC's representatives on the LRC - to decide on applications which "raise suitability concerns or broader policy implications", i.e. the most important cases;
- relegating the LC's role by leaving it with sole power (subject to the SFC's limited power of veto) to decide only on the other, mundane or straightforward cases. Although it would be able to express views in the more important cases, the SFC (through the LRC) has no obligation to take them into account;
- removing from the LC its sole power to make decisions on listing policy matters (where appropriate after consultation with the SFC) by requiring it to share this power jointly with the SFC through the proposed Listing Policy Committee ("LPC"); and
- replacing the LC by the LPC as the body responsible for oversight of the listing function, including the appraisal of the Listing Department's senior executives' performance, and indirectly their remuneration.

A joint decision-making power for the SFC is clearly very different to its current limited power of veto in terms of the way it would operate, not least because the latter has to be exercised within ten days of the application, whereas the former is not subject to any time limit. It is also clearly very different from being simply a consultee on listing policy matters. The net effect will be that the SFC would become a frontline regulator on listing matters, in spite of the CP's statement that "the listing function will remain within the Exchange which will continue to be the frontline regulator for listing matters."⁷

No harm that needs to be rectified

To justify such a major change, one would expect there to be something seriously wrong with the current system, i.e. some harm that needs to be rectified. But the CP points to no such harm. On the contrary, it states that the current structure "has served the market well"⁸ and that the arrangements with the SFC under the Listing MOU "have worked well to reduce unnecessary duplication and administrative burden and costs to the market"⁹ and highlights Hong Kong's international success as a listing centre, particularly for IPOs.¹⁰ Hong Kong has once again been ranked as the world's top listing centre for the first nine months of 2016,¹¹ and is expected to maintain this position by the year end.¹² The SFC's media briefing also states that the CP's proposals "are *not* about specific market or regulatory issues - for example, the untoward volatility we have seen recently in a number

⁷ Para 1.

⁸ Para 6.

⁹ Para 50.

¹⁰ Paras 2, 44.

¹¹ <http://www.scmp.com/business/companies/article/2022139/hong-kong-still-leads-worlds-ipo-market-first-nine-months>

¹² <http://www.scmp.com/business/companies/article/2022652/deloitte-figures-show-mainland-ipos-fall-hong-kong-more-foreign>

of stocks". There is no suggestion that the LC is not doing its job properly, or any evidence that it cannot continue to do so.

Moreover, it is entirely inappropriate that the SFC should be able to exercise joint control (via the LPC) of the performance appraisal and remuneration of Listing Department staff: this is a clear conflict of interest and is unnecessary.

In other words, the evidence suggests that there is no need for change, let alone such major ones.

No consideration of alternatives

Even if there was something wrong with the existing system that needed to be fixed (which as submitted above is not the case), a proper RIA should address different ways of resolving the problem, and conduct a cost benefit analysis of each, before concluding that the proposed solution is the best one. The CP does none of these things.

For example, it seems that improving the efficiency of the listing process is one of the stated objectives of the proposals.¹³ If efficiency is a legitimate concern, how could the formation of two new committees to make decisions on top of the existing one - the solution proposed in the CP - be more efficient than one committee? It seems self-evident that more committees mean more bureaucracy, less efficiency and slower decisions. If efficiency is indeed a legitimate concern, surely the most obvious solution is to look at whether the processes of the existing LC can be made more efficient, not to add two more committee structures? However, the CP does not mention this as a possible alternative.

The same applies with even more force to "increasing transparency". It seems from the SFC's media briefing that this is another objective (although this is not stated in the CP, and even the media statement itself recognises that the LC has published guidance on the factors it takes into account in making decisions). If transparency is an issue, surely it does not require the formation of two new committees to make listing decisions more transparent? This is a *non sequitur*.

The same also applies to the comment that the listing market is getting bigger:¹⁴ this does not require the formation of two new committees, although it might justify an increase in the size of the LC. Even if there was a need for closer coordination between the SFC and LC (and as noted above the CP has not shown any), why not simply add two SFC representatives to the LC?

One should not use the proverbial "sledgehammer to crack a nut". If there is scope for improvement, it should be done proportionately, incrementally, and within the existing LC structure, in accordance with the Government's stated policy of light-handed regulation.

¹³ Para 1.

¹⁴ Para 27

Definite downsides

While no need has been demonstrated for the CP's proposals, HKGCC strongly believes that there are definite pitfalls in them. Decisions on listing applications will be slower; more listing applications are likely to be delayed or rejected; SMEs in Hong Kong will find it harder to raise capital for growth; Hong Kong's international position as a listing centre and reputation for light-touch regulation will be jeopardized, and the professional expertise and experience of the existing multi-disciplinary LC will be largely wasted. We deal with each of these significant downsides in turn.

Slower Decisions

It is self-evident that the necessity for the LC to refer applications which raise "suitability concerns or broader policy considerations" (whatever these terms might mean) to a separate committee for decision, rather than deal with such applications itself, will delay the process of obtaining a decision on a listing application, a process which is already lengthy and complex. This is exacerbated by the facts that (a) faced with the prospect with an application which might be considered to fall within this category, the LC is naturally likely to err on the side of caution and refer the application to the LRC, and (b) the SFC (through the LRC) is also likely to err on the side of caution by engaging in greater scrutiny and rejecting in cases of doubt, given its primary role of policing the market and protecting the investing public.

More applications will be delayed or rejected

The promotion of the SFC to the role of a decision-maker on many listing applications is likely to mean that, given its primary role of policing the market and protecting the investing public, it will scrutinize applications even more closely and ask more questions than under the existing system, and reject "doubtful" applications in the interests of caution. (This is a particular concern for SMEs, as explained below). The SFC has almost conceded as much in its media briefing, emphasizing that enforcement is "no substitute for effective gatekeeping". This seems to imply that the LC has not done its job of gatekeeping properly, which would in HKGCC's view be unjustified, although the CP itself does not mention this as being a problem which the proposals are designed to rectify.

SMEs will find it harder to raise capital for growth

Hong Kong depends on SMEs, accounting as they do for more than 90 per cent of its businesses (and much of HKGCC's membership). Allowing SMEs to grow and prosper is therefore critical to Hong Kong's economy. Raising capital through a listing is one of the few means of raising capital that they have - which was one of the reasons for creating GEM in the first place - especially given that banks are increasingly risk averse due to tougher regulations. One market analyst has been recently quoted as saying: "... we need to launch a third board or revamp the Growth Enterprise Market as soon as possible to attract more technology firms to list here. The existing IPO market relies on the traditional

banking and securities industries, and we have not seen many technology firms listing here. This is a problem as this shows our market is not diversified enough.”¹⁵

The listing process already imposes significant costs on SMEs relative to their size. HKGCC is extremely concerned that the combined effect of the above two factors - slower decisions and a more “precautionary” approach by the SFC - will make it even harder for SMEs to raise capital by way of a listing. This would be damaging to Hong Kong’s economy. It would also be contrary to government policy. For example, the Government is currently engaging in “a new drive to position the city as the premier centre in Asia for Fintech companies and start-ups looking to grow their business as well as for accelerators, incubators and investors searching for Fintech innovation.”¹⁶ How can making it more difficult for SMEs to raise capital for growth through a listing be consistent with this policy objective?

Damage to Hong Kong’s international position and reputation

Making it unnecessarily more difficult for companies to raise capital through a listing can only serve to undermine Hong Kong’s leading international position as a listing centre - a position that the CP itself highlights. Moreover, the introduction of major unjustified changes such as this, without any proper RIA, is contrary to government policy and can only serve to jeopardize Hong Kong’s international reputation for free trade and light touch regulation, a reputation which the Government cherishes, as mentioned above.

Wasting the expertise and experience of the 28-member Listing Committee

Leaving the LC with a right to decide only mundane cases, i.e. those which do not raise suitability or broader policy implications, seems perverse. It is precisely in the more difficult cases that the expertise and experience of the 28 LC members is required, not just the six members of the LRC, half of whom are representatives of a regulator (the SFC) rather than industry experts. While the LC can express views on these more difficult applications, the SFC is not obliged to take them into account, and as noted above, can be expected to err on the side of caution.

Conclusions

In conclusion, HKGCC opposes the CP’s proposals because:

- They do not contain any proper RIA explaining the perceived need for the changes, the alternatives for addressing the perceived need, and the respective costs and benefits of those alternatives.
- In fact, there is no need for the proposals: the existing system is working well, as the CP itself recognizes.

¹⁵ See n 11 above.

¹⁶ Government Press Release “InvestHK turns spotlight on city as Asia’s Fintech hub with launch of first Fintech Week Hong Kong” 21 September 2016.

- The proposals will result in slower decisions, fewer successful applications, difficulties for SMEs in raising capital for growth, and potential damage to Hong Kong's leading position as a listing centre and reputation for light-handed regulation. They would also waste the experience and expertise of the 28- member LC; and contravene the Government's policies of intervening in the market only where necessary, and establishing Hong Kong as Asia's leading Fintech hub.

HKGCC Secretariat
October 2016