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**From:** 16, November, 2016 10:40 AM  
**Sent:** Listing Regulation; [response@hkex.com.hk](mailto:response@hkex.com.hk)  
**To:** Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making  
**Subject:** and Governance Structure for Listing Regulation

**By Email Only:** [ListingRegulation@sfc.hk](mailto:ListingRegulation@sfc.hk)

**Corporate Finance Division**

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Dear Sirs,

**Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation**

**About HKICS**

The Hong Kong Institute of Chartered Secretaries (**HKICS**) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with around 5,800 members and 3,200 students. HKICS is rooted with the Institute of Chartered

Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions internationally and over 30,000 members and 10,000 students. It is also a Founder Member of the Corporate Secretaries International Association (CSIA), an international organisation comprising 16 national member organisations to promote good governance globally.

## **SFC/HKEx Joint Consultation Paper**

We refer to the above captioned consultation paper (**Joint Consultation Paper**) of June 2016 issued by The Securities and Futures Commission (SFC) and The Stock Exchange of Hong Kong Limited (**Exchange**) and we will adopt the definitions thereunder. In accordance with paragraph 141 of the Joint Consultation Proposals, we will set out our Members' views under the requested headings after our 'Overall Comments'.

At the outset, given the divergent views amongst our Members to the Proposals, we cannot, as an Institute be attributed to having taken a position as whether we are for or against the Proposals. More importantly, we feel that the Members views we collated are valuable, and as such, it is of added value to set forth our collated Members' views herein.

## **Overall Comments**

We surveyed our Members, including under various panels, on the Proposals under the Joint Consultation Paper and the following are our Members' views.

The majority of those responding believes that there are issues that need to be considered from the governance perspective under our current listing regime. In this connection, they found that while the Proposals do focus on the processes and efficiencies relating to listing in terms of suitability and/or policy considerations, they do not seem to adequately address the key issue as to how the *quality of listing* would be enhanced which is the key to the acceptability of the Proposals. Their views are that the aims of the Proposals must be to tell the international community that Hong Kong is a quality and regulated market which cares about investor protections.

Also, the majority felt that the Listing Division should be left to do its job and not be under the direct purview of the Listing Policy Committee (LPC). They felt that the Listing Division is to execute a mix of business and policy and should not *per se* be an extension of the LPC. They further believe that the SFC is in the driving seat for both the LPC and the Listing Review Committee (LRC) whatever semantics are used under the Proposals as these committees work by consensus and the SFC retains its existing powers in case of stalemate. They saw nothing wrong with the committee structures as the SFC is regulator of the Exchange.

The majority's views include that the Listing Division should continue to work with the Listing Committee on the vast majority of cases not involving suitability and/or policy considerations as explained under the Proposals. Their consensus is that the Listing Committee is the repository of significant market understanding and practices and have real added value in determining the vast majority of cases. As such, there must be thoughts as to how, in this case, to enhance the efficiencies and processes, such that an IPO applicant could know with a high degree of certainty as to whether

the application will involve suitability and/or policy considerations. This provides certainty to all concerned, but has not been focused upon under the Proposals.

We also must make it clear that we do have strong and divergent minority Members' views centered on the premise that the current three-tier regulatory structure has served the market well. Their views include that the Listing Committee represents a comprehensive market voice of different sectors of the financial industry. This unique feature under the current regime has been instrumental to the success of Hong Kong as an international financial centre and should be preserved. Any fundamental change of the environment of the current regulatory system should require proper consultation, discussion and relevant rule changes.

Further, their views are that in terms of track record, Hong Kong's current regime has demonstrated its economic and regulatory strength against world standards. The Exchange was ranked the first in the world in 2015 for IPO funds raised (following a second place ranking in 2014 and third place in 2013). Of equal significance, in terms of the Exchange's regulatory role, Hong Kong was also ranked the first in the world for protecting minority investors. Any suggestion for a significant structural change of the current regime commands well-justified rationale and reasons and should be treated with extreme caution.

Then we have other minority Members' views that potentially and unavoidably, the Exchange is under a conflict of interest in relation to its handling of approval of new IPO applications. As a business organization, it is subject to high pressure to maximize its profit, but yet it is also a front line regulator.

They further suggest that the regulatory framework should tend towards those of USA, UK and Australia for IPOs. That is, there needs to be recognition that the SFC is in fact the front line regulator and the Exchange its delegate; and that for the IPO applications, the Exchange's role should be confined to giving recommendations to the SFC for its final approval. A processing committee comprising a majority of professional independent committee members should be set up under SFC, and the term of these committee members should, in line with committees for statutory bodies, be initially three years renewable for another three years.

## **The Roadmap Ahead**

The majority Members' views are that reform is to be welcome if it leads to the enhancement of governance but even then there are issues like the quality, an enhanced process for early determination as to whether a listing application involves suitability and/or policy considerations, along with the reporting lines of the Listing Division that need further considerations. While the roadmap ahead should probably address these issues raised by our majority Members, again, we make it clear that our Institute's position is neither for or against the Proposals, but as best regarded as offering valuable Members' views which we expended significant efforts to collate.

### **(a) Policy development**

We have articulated the Members' views of those for and those against the Proposals. Whatever approach adopted, we, as an Institute, hope that additionally, the costs and

administrative burdens of compliance must be considered, in order not to price out the Hong Kong market.

**(b) Listing applications by new applicants**

According to majority Members' views, the intervention into the market place should be in problem areas and/or where wider policy dictates. These Members feel that the worst case scenario would be with too many being escalated by the Listing Committee to the LRC, and where matters are escalated, to enhance efficiencies back-to-back Listing Committee and LRC meetings could be considered to refer matters as raised by the Listing Committee to the LRC.

**(c) Matters involving listed issuers**

In this connection, as an Institute, we must remind all parties that the costs of compliance is already high, and the Proposals should not materially increase these.

**(d) Reviews of listing decisions**

We have explained the collated Members' views in the above submission.

**(e) Disciplinary matters**

Our Members offering their views have not particularly honed in on this matter.

**(f) Oversight of the listing function**

We have explained the collated Members' views on this issue in the above submission.

**(g) Publication of decisions**

We have no particular comment on this matter except to say as an Institute, that, in general, transparency is welcome and conducive of good governance.

**(h) Composition and Procedures of the Listing Policy Committee**

For the majority Members offering their views, the important issue is that in their workings, the committees are not dominated by one particular party, there is a genuine dialogue amongst the members, and decisions should in the main be achieved by consensus. Nevertheless, the structure of the committees will result in the SFC being in the driving seat of the committees especially as the SFC retains its residual statutory powers.

**(i) Composition and Procedures of the Listing Regulatory Committee**

See comments under paragraph (h) above.

**(j) Composition and Procedures of the Listing Regulatory (Review) Committee**

See comments under paragraph (h) above.

**(k) Composition and Procedures of the Listing (Disciplinary) Committee, the Listing (Disciplinary Review) Committee and the Listing Disciplinary Chairperson Group**

The majority Members offering their views understand the rationale of the proposed compositions.

**(l) Other matters**

We, as an Institute, hope that if the Proposals are implemented the diversity of perspectives of the Listing Committee members are respected, and further safeguards on this matter are welcome.

If there are any questions, please contact

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Yours faithfully,

**The Hong Kong Institute of Chartered Secretaries**

*Ivan Tam FCIS FCS(PE)*  
*President*