

Chapter 38

LISTING OF HKEC

- 38.01 This Chapter sets out requirements that must be satisfied for the securities of HKEC to be listed on the Exchange. HKEC is the holding company of the Exchange and a recognized exchange controller within the meaning in Division 4 of Part III of the Securities and Futures Ordinance. The Exchange is a company of which HKEC is the controller within the meaning in Division 4 of Part III of the Securities and Futures Ordinance.
- 38.02 In the context of the listing of HKEC, and as contemplated by section 74 of the Securities and Futures Ordinance:
- (1) the Exchange has included this chapter in the Exchange Listing Rules; and
 - (2) HKEC and the Exchange have entered into a memorandum of understanding with the Commission.

Powers and functions of the Commission and the Exchange

- 38.03 Without limitation of the Commission's general powers and functions in relation to listing matters, the Commission has the following powers and functions in relation to HKEC's application for listing and status as a listed issuer:
- (1) the powers and functions that the Exchange has in relation to an applicant for listing. The Exchange must not exercise powers or perform functions in relation to HKEC's own application, except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action were taken or decision made by the Exchange;
 - (2) if HKEC's application for listing is approved, the powers and functions that the Exchange has in relation to a listed issuer, except the power to make listing rules. The Exchange must not exercise powers or perform functions that this rule gives to the Commission, except in the case of any action or decision in respect of which the Commission states in writing that it is satisfied that a conflict of interest will not arise if that action were taken or decision made by the Exchange.
- 38.04 In circumstances where the Commission has stated in writing that a conflict of interest will not arise if an action or decision were to be taken or made by the Exchange, the Exchange shall have, and be entitled to exercise, its normal powers and functions in taking the relevant action or making the relevant decision.

**The SFC (HKEC Listing) Committee, SFC (HKEC Listing)
Appeals Committee and SFC (HKEC Listing) Executive**

38.05 The Commission has established a framework for exercising its listing related powers and functions with respect to HKEC. The framework comprises committees established by the Commission pursuant to section 8 of the Securities and Futures Ordinance and persons who will exercise with respect to HKEC applicable powers and functions, in so far as is practicable and applicable, in a like manner to the Listing Committee, Listing Appeals Committee, Listing Division and the Chief Executive of the Exchange, respectively. The relevant committees and persons are:

- (1) the SFC (HKEC Listing) Committee, which shall exercise applicable powers and functions equivalent to those of the Listing Committee including applicable powers and functions equivalent to those of the Listing (Review) Committee;
- (2) the SFC (HKEC Listing) Appeals Committee, which shall exercise applicable powers and functions equivalent to those of the Listing Appeals Committee;
- (3) the SFC (HKEC Listing) Executive, comprising the Executive Director in charge of the Corporate Finance Division of the Commission and the members of staff of the Corporate Finance Division of the Commission, which shall exercise applicable powers and functions equivalent to those of the Listing Division;
- (4) the Executive Director in charge of the Corporate Finance Division of the Commission, who shall exercise applicable powers and functions equivalent to those of the Executive Director - Listing and the Chief Executive of the Exchange; and
- (5) the Secretary to the SFC (HKEC Listing) Committee and/or to the SFC (HKEC Listing) Appeals Committee, who shall exercise applicable powers and functions equivalent to those of the Secretary to the Listing Committee and/or Listing Appeals Committee.

38.06 The SFC (HKEC Listing) Committee shall consist of not less than 10 members, comprising at least five representatives from the Commission (each being an "SFC representative") and at least five individuals (not being directors or employees of the Commission) with experience of the securities market in Hong Kong appointed by the Commission (each of the latter individuals being a "market representative"). The SFC representatives shall consist of all Executive Directors of the Commission from time to time (except the Chairman of the Commission and the Executive Director in charge of the Corporate Finance Division) and such Senior Directors or Directors of all or any of the divisions of the Commission (except the Chairman's Office and the Corporate Finance Division) as the Commission shall appoint from time to time. The SFC representatives shall not be subject to any fixed term of appointment. The market representatives shall normally hold office for a one-year term and shall be eligible for re-appointment at the end of a term. The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Committee shall be three

individuals including at least one Executive Director of the Commission and one market representative. Not more than five members shall normally attend any meeting of the SFC (HKEC Listing) Committee. Any meeting of the SFC (HKEC Listing) Committee convened to review an earlier decision or ruling of the SFC (HKEC Listing) Committee (i.e. where the SFC (HKEC Listing) Committee is performing a role equivalent to that of the Listing (Review) Committee) shall consist of members who were not present at the meeting which made the earlier decision or ruling.

- 38.07 The SFC (HKEC Listing) Appeals Committee shall consist of the Chairman of the Commission and the non-Executive Directors of the Commission. The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Appeals Committee shall be the Chairman of the Commission and two non-Executive Directors of the Commission or, in the absence of the Chairman of the Commission from Hong Kong or where he has a conflict of interest, three non-Executive Directors of the Commission.
- 38.08 Each of the SFC (HKEC Listing) Committee and the SFC (HKEC Listing) Appeals Committee may elect any of its members to be chairman and may regulate its own procedures and business subject to any directions given to it by the Commission for this purpose. In so doing, each such committee may have regard to (but shall not be bound by) the practices and procedures of the Listing Committee or Listing Appeals Committee as set out in Chapters 2A and 2B, as the case may be. The Chief Executive Officer of the Commission shall from time to time appoint a person or persons, who may be an employee or employees of the Commission, to act as Secretary of the SFC (HKEC Listing) Committee and/or SFC (HKEC Listing) Appeals Committee.

Rights and obligations of HKEC as an applicant for listing and listed issuer

- 38.09 HKEC as an applicant for listing has all the rights and obligations that any other applicant for listing has, except that the Commission acts in the place of the Exchange.
- 38.10 HKEC as a listed issuer has all the rights and obligations that any other listed issuer has, except that the Commission acts in the place of the Exchange.

Rights and obligations of the Commission

- 38.11 The Commission acting in the place of the Exchange has all the rights and obligations in relation to HKEC that the Exchange has in relation to any other applicant for listing or listed issuer.

Procedures regarding forms, information and documents

- 38.12 HKEC must complete any form, application or other document under the Exchange Listing Rules that it gives to the Commission with any necessary adaptation including to reflect that the Commission is acting in the place of the Exchange.

- 38.13 Where the Exchange Listing Rules require documents or information to be filed with or delivered to the Exchange, such documents or information shall be filed with or delivered to both the Commission and the Exchange in accordance with any procedures issued by them respectively from time to time.

The Commission's role in relation to other applicants for listing and listed issuers

- 38.14 Conflicts of interest may arise between the Exchange and persons whom the Exchange regulates, including applicants for listing and listed issuers. Any person that considers a conflict of interest may exist or may come into existence, or may have existed and may continue or be repeated, between the interests of HKEC, the Exchange or any other company of which HKEC is the controller and the interests of the proper performance of any regulatory function performed by the Exchange should bring the facts of the matter to the attention of the Executive Director in charge of the Corporate Finance Division of the Commission.

The Commission's powers and functions in the event of a conflict of interest

- 38.15 Pursuant to section 74 of the Securities and Futures Ordinance the Commission shall have those powers and functions in relation to conflicts of interests or potential conflicts of interest as are set out in this chapter and in the memorandum of understanding referred to in rule 38.02(2).
- 38.16 Where, pursuant to section 74 of the Securities and Futures Ordinance and this Chapter, the Commission exercises powers and functions with respect to other applicants for listing or listed issuers in place of the Exchange:
- (1) the provisions of rules 38.03, 38.04 and 38.09 to 38.13 shall apply as between the Commission and the Exchange and such applicant or issuer as if references to HKEC were replaced with references to the relevant applicant or issuer;
 - (2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08.