

## REGULATOR ROLES CLARIFIED IN HONG KONG LISTING CONSULTATION

The Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (SEHK) have published the consultation conclusions of their joint consultation on proposed enhancements to the decision-making and governance structure for listing regulation. The SFC will no longer routinely pass on its comments on listing applications via the SEHK, rather it will bring itself to the frontline and interact with the applicants directly on what it describes as "more serious listing matters".

### SFC's "targeted intervention" approach

The regulators [concluded](#) that the Listing Committee will continue with its current role under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (Listing Rules). Listing applicants should continue to file their listing applications with the SEHK and the SEHK will process and vet such applications as the primary front-line regulator in accordance with the existing procedures.

However, the SFC will adopt a new and enhanced approach in performing its dual-filing function on listing regulation. Under this approach:

- the interpretation of the Listing Rules (including the "suitability" test) will be determined solely by the SEHK; and
- the SFC will focus on the grounds for objection under sections 3 and 6(2) of the Securities and Futures (Stock Market Listing) Rules (SMLR) or the Securities and Futures Ordinance (SFO) more generally - the so-called "more serious listing matters".

In other words, the SFC will concentrate its resources on those listing applications that are most relevant to its statutory objectives as set out in the SFO. Under sections 3 and 6(2) of the SMLR, the SFC may raise objection to a listing application if it appears to the SFC that:

- (a) it does not comply with the Listing Rules (unless a waiver has been sought) or applicable law;
- (b) it does not contain such particulars and information which is necessary to enable an investor to make an informed assessment of the applicant;
- (c) it is false or misleading as to a material fact or is false or misleading through the omission of a material fact;

### Key points

- The Listing Committee's role will remain unchanged.
- SFC will directly intervene in IPO and post-IPO matters which involve SMLR issues.
- SFC will publish its listing decisions.
- A Listing Policy Panel will be formed.

- (d) the applicant has failed to supply to the SFC such further information as the SFC may reasonably require, or such further information provided is false or misleading in any material particular; or
- (e) it would not be in the interest of the investing public or in the public interest for the securities to be listed (collectively, SMLR grounds).

It is difficult to tell exactly how the SMLR grounds (which have always existed in the SFO) would differ from the "suitability" requirements under the Listing Rules that the SEHK would normally consider in approving or objecting a listing application. The conclusions do not elaborate on what the regulators mean by the term "more serious listing matters", but the SFC has set out in its [Regulatory Bulletin: Listed Corporations](#) some examples of those issues that will be brought within the definition:

- false or misleading information in the prospectus eg applicant's relationship with its largest supplier;
- applicant's reliance on its directors or controlling shareholders;
- accuracy of the applicant's financial information during the track record period (TRP);
- termination of reporting accountant's engagement during preparation of listing application;
- applicant's extremely high concentration of shareholding upon listing; and
- insufficient disclosure of the close relationship between the applicant and its former-controlling shareholders during the TRP.

We believe the SMLR grounds listed above may also give rise to (or at least involve) the issue of "suitability". It remains to be seen as to how these two streams of regulation will interact (or overlap) with each other in practice, and how the regulators will resolve their differences in situations where they disagree as to how the relevant SMLR or suitability concerns should be addressed. The SFC has said it will apply its "real time" and "targeted" intervention policy to follow-on equity offerings by listed issuers.

## **Gatekeeping**

With immediate effect, the SFC will contact the applicant directly to seek clarification whenever they see there are any potential SMLR grounds for issuing a "letter of mindedness to object" (LOM). The SFC will cease to review and comment on a listing application once it determines that the case does not raise concerns under the SMLR. However, if an applicant's response to SFC's queries is considered inadequate, the SFC will issue a final decision notice (FDN) within the time specified in the SMLR. The SFC has indicated in the conclusions that they will endeavour to work within the SEHK's timetable for processing listing applications.

## **Listing Policy Panel**

The regulators abandoned the idea of establishing the Listing Policy Committee. Instead, the LPP will be established as an advisory, consultative and steering body on listing policy with broader regulatory or market implications. The SEHK and SFC will jointly publish the terms of reference of the LPP at a later date. The body will have no rule-making powers, and its recommendations will not be binding on the organisations represented on the panel. Any panel member can raise items for discussion by the LPP as a whole.

## **Publication of listing decisions**

The SFC will routinely publish on its website all FDNs (along with the detailed reasons) issued under the SMLR. The SFC has the discretion to publish a decision notice either on a "no-names" basis or on a delayed basis if it is demonstrated that disclosure of the applicant or issuer's identity would be unduly prejudicial to its interests or that the decision is price sensitive. Any decision that is pending appeal to the Securities and Futures Appeal Tribunal will not be published until the appeal process has ended.

## **Pre-IPO enquiries**

Where a pre-IPO enquiry made directly to the SFC relates to a Listing Rule issue, the SFC will refer the potential applicant to the Listing Division; conversely, where a pre-IPO enquiry made to the SEHK relates to an SMLR issue, the Listing Division will refer the potential applicant to the SFC.

## **Conclusion**

Lacking a clear delineation on what will fall under the SFC's or the SEHK's radar, a listing applicant and its sponsor(s) can expect to receive two different sets of enquiries from the SFC and SEHK on very similar (if not the same) issues. It poses a challenge to the listing applicant to provide consistent and satisfactory answers to address the concerns raised by the regulators.

## CONTACTS

**Amy Lo**  
Partner

**T** +852 2826 3420  
**E** amy.lo  
@cliffordchance.com

**Tim Wang**  
Partner

**T** +86 10 6535 2266  
**E** tim.wang  
@cliffordchance.com

**Frank Yuen**  
Partner

**T** +852 2825 8084  
**E** frank.yuen  
@cliffordchance.com

**Virginia Lee**  
Partner

**T** +852 2825 8084  
**E** virginia.lee  
@cliffordchance.com

**Jean Yu**  
Partner

**T** +86 21 2320 7226  
**E** jean.yu  
@cliffordchance.com

**Fang Liu**  
Partner

**T** +852 2825 8919  
**E** fang.liu  
@cliffordchance.com

**Jean Thio**  
Partner

**T** +86 21 2320 7229  
**E** jean.thio  
@cliffordchance.com

**Xiang Tianning**  
Consultant

**T** +852 2826 2432  
**E** tianning.xiang  
@cliffordchance.com

**Christine Xu**  
Consultant

**T** +852 2826 3515  
**E** christine.xu  
@cliffordchance.com

**Liao Yu Fei**  
Counsel

**T** +86 10 6535 2298  
**E** yufei.liao  
@cliffordchance.com

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Clifford Chance, 27th Floor, Jardine House,  
One Connaught Place, Hong Kong

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