



**By email (response@hkex.com.hk) and by post**

12 October 2018

Our Ref.: C/CFAP, M118520

Hong Kong Exchanges and Clearing Limited  
10th Floor, One International Finance Centre  
1 Harbour View Street, Central  
Hong Kong

Dear Sirs,

**Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions**

— Please find attached a submission from the Hong Kong Institute of Certified Public Accountants on the above consultation paper.

In general, we agree with the Exchange's proposals to streamline the review process for listing matters and enhance transparency in decision-making. However, we have some concerns about the perceived independence and competence of the proposed new independent review committee (ILRC) based on the composition proposed in the consultation paper.

More specifically, if the ILRC comprises mainly former Listing Committee members, there may be a perception that this is not sufficiently different from the present arrangement, particularly if the members are recent Listing Committee members, and that the ILRC would tend to uphold the decisions of the Listing Committee. Therefore, we suggest also inviting qualified senior and experienced market participants and professionals who are eligible to serve, but have not served, on the Listing Committee, to be the members of the ILRC. This would provide a stronger justification for the proposal in the consultation paper to establish the ILRC to replace the existing two-level review process.

In addition, we support the proposal to routinely publish the decisions of the ILRC for non-disciplinary matters, on the basis explained in the consultation paper. To further enhance transparency, the Exchange should consider indicating whether there were dissenting views and, if so, the number of any dissenting views.

Lastly, it would seem that, in cases where the Securities and Futures Commission (SFC) requests a review of a Listing Committee decision, and the ILRC makes a different decision, the applicant/ issuer can seek a further review by a second group of members of the ILRC. In substance, therefore, this would amount to retaining a form of two-level review process, and also the perceived disadvantages of having a second-level review conducted by a committee drawn from the same pool of people as the first-level review, notwithstanding the Exchange's proposal to do away with this arrangement. For this reason, provided that the ILRC is formed from independent and suitably qualified members, there is a case for saying that decisions of the ILRC should be treated as final and conclusive. This assumes that the applicant/issuer will be fully informed of the SFC's grounds for seeking a review and will also be invited to make submissions to the ILRC.



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

Should you have any questions on this submission, please feel free to contact me at the Institute.

Yours faithfully,

Peter Tisman  
Director, Advocacy & Practice Development

PMT/NCL/pk

Encl.



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

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## QUESTIONNAIRE ON REVIEW STRUCTURE IN RELATION TO LISTING COMMITTEE DECISIONS

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We invite interested parties to respond to the Consultation Paper on Review Structure in relation to Listing Committee Decisions (**Consultation Paper**), which can be downloaded from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **12 October 2018** by one of the following methods:

By mail or  
hand delivery to: Hong Kong Exchanges and Clearing Limited  
10th Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

**Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions**

By fax to: (852) 2524-0149  
By e-mail to: [response@hkex.com.hk](mailto:response@hkex.com.hk)  
Please mark in the subject line:

**Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions**

Our submission enquiry number is (852) 2840-3844.

The names of person who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

## Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

### **Purpose**

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your

previous employers; and

6. other purposes directly relating to any of the above.

### **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, login name and details of the product and/or service you have subscribed.

### **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

### **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

### **Other transfers of your personal data**

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

### **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

### **Compliance with laws and regulations**

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

### **Corporate reorganisation**

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

### **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link <https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

## **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
50/F., One Exchange Square  
8 Connaught Place  
Central  
Hong Kong

By Email:  
[DataPrivacy@HKEX.COM.HK](mailto:DataPrivacy@HKEX.COM.HK)

## Part A General Information of the Respondent

- (1) Please state whether your response represents your personal or your company/entity's view by checking () the boxes below and filling in the information as appropriate:

Company/Entity view

Company/Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/Entity type*:	<input type="checkbox"/> Listed Company <input type="checkbox"/> HKEX Participant <input type="checkbox"/> Investment Management Firm <input type="checkbox"/> Corporate Finance Firm <input type="checkbox"/> Law Firm <input type="checkbox"/> Accountancy Firm <input checked="" type="checkbox"/> Professional Body / Industry Association <input type="checkbox"/> None of the above (Type _____ )		
Contact person*:	Mr	Peter Tisman	
Title:	Director, Advocacy and Practice Development		
Phone no.*:	22877084	Email address:	peter@hkicpa.org.hk

Personal view

Respondent's full name*:	Mr/Ms/Mrs		
Phone no.*:	_____	Email address:	_____
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed Company Staff	<input type="checkbox"/> HKEX Participant Staff	<input type="checkbox"/> Individual Investor	
<input type="checkbox"/> Investment Management Staff	<input type="checkbox"/> Corporate Finance Staff	<input type="checkbox"/> Lawyer	
<input type="checkbox"/> Accountant	<input type="checkbox"/> None of the above (Type _____ )		

**Important note: All fields marked with an asterisk (\*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.**



(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should check the box below:

I/We do not wish to disclose my/our identity to the members of the public.

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Signature (with Company/Entity Chop if the response represents company/entity view)

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review?

Yes

No

Please give reasons for your views.

We agree, in principle, as adopting one level of review should provide for a more efficient and streamlined process. However, we note that the existing second level of review "has been frequently utilised by the market" (as indicated in paragraph 66 of the consultation paper) and, therefore, if it is to be replaced, it will be important that the market has confidence in the independence and competence of the proposed independent review committee (ILRC). Hence the composition and qualifications of the IRC will be key issues.

2. Do you agree with:

(a) the proposal to establish a new independent review committee to replace the LRC and the LD(R)C respectively and to hear reviews currently conducted by them?

Yes

No

Please give reasons for your views.

We agree, in principle. One of the reasons that the existing system may not be ideal, as indicated in paragraph 53(b), is the fact that the LRC and the LD(R)C comprise members of the Listing Committee, which may give rise to the perception that these committees are not as independent as they can or should be. Even though Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case, or have participated in either the initial decision or the first review by the Listing Committee, conceptually, there may still appear to be an element of "self-review" within the existing procedures. This could foster a perception that the review committees would tend to uphold the decisions of the Listing Committee, because the members are drawn from the same pool, and there are no additional requirements of experience or expertise required for LRC or LD(R)C members.

Under the circumstances, to ensure that listing applicants/ issuers will not feel disadvantaged by moving a new single-level review process, the ILRC must give them confidence that it will be unbiased and capable of reviewing decisions of the Listing Committee fairly and objectively.

(b) the size and composition of the new independent review committee (including the mix of members' representation)?

Yes

No

Please give reasons for your views.

The proposed size and make up of the ILRC seem to be reasonable. However, we have some reservations about the emphasis on forming the membership from former Listing Committee members, as suggested in paragraph 84 and elsewhere. Establishing an ILRC of e.g., recently retired Listing Committee members runs the risk of replicating the disadvantages of the current system, referred to above (and at paragraph 76(b) of the consultation paper). While it may be acceptable to include some former Listing Committee members, preferably they should not be members who have just stood down. Furthermore, establishing an ILRC would seem to be an opportunity to broaden horizons and identify a pool of, for example, fairly senior and experienced market participants and professionals who would be eligible to serve, but who have never served, on the Listing Committee. A more mixed composition of this kind would be more likely to be seen as independent and a suitable replacement for the existing two-level review process.

3. If the Exchange decides to retain two levels of review for decisions of Material Significance made by the Listing Committee, do you agree that the LAC is to be replaced by a review committee with members being drawn from the proposed new independent review committee and chaired by a member of a separate chairperson panel? Are there any additional process or safeguards that you would suggest to enhance this aspect of the review structure for such decisions of Material Significance?

Yes

No

Please give reasons for your views.

In our view, this could compound the disadvantages of the existing review system, by having three levels of decision making and reviews conducted, essentially, by Listing Committee and former Listing Committee members - if the composition proposed for the ILRC in the consultation paper were to be adopted.

If the alternative composition that we have suggested in response to question 2(b) were to be adopted, this would be preferable, but concerns similar to those referred to above, and in paragraphs 76(b) and 76(d) of the consultation paper, might still arise; i.e., (i) the perception that there is an element of "self review" within in the procedures and a lack of independence, and (ii) that ILRC members who sit on a second-level review could appear to be no more, or perhaps even less, qualified to consider the issues than those participating in the first-level review. These perceptions may engender the view that the ILRC members in the second-level review would be inclined to uphold the decision of their peers at the first level.

If the second-level review were to be chaired by a member of a separate chairperson panel, this could go some way towards mitigating the perception referred to above. However, as the chairmen would also be drawn from the same pool as each other, any doubts would not be completely dispelled .

4. Do you agree with the proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters on the basis described in paragraphs 102 to 105 of the Consultation Paper?

Yes

No

Please give reasons for your views.

We support the proposal for the reasons explained in the consultation paper regarding the importance of transparency.

We agree that, to avoid any misinterpretation by the market, the Exchange should make clear that the decisions do not represent binding precedents and do not constrain the discretion of the Exchange in the future. Also that decisions of the new ILRC should be sufficiently detailed to enable readers who were not involved in the review proceedings to understand the issues, essential facts and the reasoning of the ILRC in reaching its decision, albeit the decisions will necessarily represent only a summary of the ILRC's analysis (as explained in paragraphs 104-105 of the consultation paper).

While it is proposed that there be no requirement for dissenting views from a decision to be included in the analysis, for maximum transparency, we would suggest that it be indicated whether there were dissenting views and, if so, the number of any dissenting views.

5. The Exchange does not consider that specific consultation is required in relation to the provisions for the SFC's power to request review of decisions as set out in Chapter 5 of the Consultation Paper (as they reflect the MOU and administrative procedures) but would be pleased to receive any comments from respondents.

Further clarification may be needed but, prima facie, it would seem that:

(i) if it is agreed, as a result of this consultation, that there will be only one level of review, the SFC will consider requesting a review of Listing Committee decisions only and will accept any decision of the ILRC; and

(ii) where the SFC requests a review of a Listing Committee decision, the procedure may then revert to two levels of review, because, if the ILRC overturns, modifies or varies the decision of the Listing Committee, the applicant or issuer will have the right to seek a further review by a second group of members of the ILRC (as indicated in paragraph 117 of the consultation paper).

If this is correct, the effect of (ii) will be that the potential disadvantages mentioned in our response to question 3, which exist within the current system, i.e., the perception of "self review" by the ILRC of its own decisions, albeit by a different group of members, will re-emerge. It will perpetuate in some form the existence of a procedure involving two levels of review, which the Exchange is proposing to remove, and it will not address the argument raised, in paragraph 69 of the consultation paper, that the two-level review system is loaded in favour of the applicant or issuer.

Under the circumstances, assuming the ILRC is composed of sufficiently independent and suitably qualified members, it could be argued that its decisions should be accepted as final, regardless of who has initiated the review, particularly given that the applicant or issuer will be invited to make submissions to the ILRC and will, presumably, also be informed of the grounds on which the SFC has requested the review.

- End -