

Chapter 2A

GENERAL

COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE LISTING COMMITTEE, THE LISTING APPEALS COMMITTEE AND THE LISTING DIVISION

General

- 2A.01 The Board has arranged for all of its powers and functions in respect of all listing matters to be discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in this Chapter. Any function which under the Exchange Listing Rules may be performed by the Exchange or any power which under the Exchange Listing Rules may be exercised by the Exchange may, therefore, be performed or exercised by the Listing Committee and/or its delegates. Accordingly, the Listing Committee and, in relation to certain powers of review, the Listing Appeals Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Board, unless and until the Board revokes these arrangements.
- 2A.02 The Listing Committee has arranged for most of these powers and functions to be discharged by the Listing Division and the Chief Executive of the Exchange, subject to the reservations and review procedures set out in this Chapter. In the first instance, therefore, all matters concerning the Exchange Listing Rules will be dealt with by the Listing Division. The Listing Division will also interpret, administer and enforce the Exchange Listing Rules subject to the review procedures set out in this Chapter.
- 2A.03 In discharging their respective functions and powers the Listing Appeals Committee, the Listing Committee, the Listing Division and the Chief Executive of the Exchange are required to administer the Exchange Listing Rules, and otherwise to act, in the best interest of the market as a whole and in the public interest.
- 2A.04 All references in Chapters 2A and 2B to decisions and rulings of the “Listing Division” include decisions and rulings made by the Chief Executive of the Exchange.

Application Procedures

New Applicants

2A.05 Subject to rule 2A.05A and rule 2A.05B, every application for listing by a new applicant should be submitted to the Listing Division which may reject it or recommend the Listing Committee to approve or reject it. However, the Listing Committee has reserved for itself the power to approve all applications for listing from a new applicant and this means that even if such an application is recommended by the Executive Director – Listing or the Chief Executive of the Exchange, it must still be approved by the Listing Committee. The Listing Committee may at the request of the Listing Division give an “in principle” approval, that a particular issuer or its business, or a particular type of security is suitable for listing, at an early stage in the application process (but will again consider the full application after the Listing Division has processed it). Otherwise the Listing Committee will not consider an application from a new applicant until the Listing Division has processed the application. If the Listing Committee approves a listing the Listing Division will normally issue a notification of approval in principle, and then issue a formal approval letter, in due course.

2A.05A The Listing Committee has delegated to the Executive Director – Listing the power to approve any application for listing of debt securities under Chapter 37 (debt issues to professional investors only) and any application issued or guaranteed (in the case of guaranteed issues) by the following issuers or (in the case of guaranteed issues) guarantors:—

- i) States;
- ii) Supranationals;
- iii) State corporations;
- iv) banks and corporations having an investment grade credit rating; and
- v) issuers whose equity securities are listed on the Exchange and which have a market capitalization, at the time of the application, of not less than HK\$5,000,000,000.

2A.05B The Listing Committee has delegated to the Executive Director - Listing the power to approve an application for listing of interests in any Collective Investment Scheme which has been authorised by the Commission pursuant to the Securities and Futures Ordinance and the respective codes applicable to Collective Investment Schemes issued by the Commission from time to time.

Listed Issuers

- 2A.06 Applications for listing by a listed issuer will be dealt with by the Listing Division and it is the Executive Director – Listing who will normally approve the listing and issue the formal approval letter, in due course. However, the Listing Committee may determine the matter in the first instance at the request of the Listing Division where it considers it appropriate to do so.

Guidance

- 2A.07 Prospective issuers, and in particular new applicants, are encouraged to contact the Listing Division to seek informal and confidential guidance as to the eligibility of a proposed application for listing at the earliest possible opportunity.

Cancellation Procedures

- 2A.08 The Listing Committee has reserved to itself the power to cancel the listing of a listed issuer. This means that a listed issuer will not have its listing cancelled unless the Listing Committee has considered the matter.

Disciplinary Procedures

- 2A.09 In addition to its powers to suspend or cancel a listing, if the Listing Committee finds there has been a breach by any of the parties named in rule 2A.10 of the Exchange Listing Rules it may:—
- (1) issue a private reprimand;
 - (2) issue a public statement which involves criticism;
 - (3) issue a public censure;
 - (4) report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of Banking or any professional body) or to an overseas regulatory authority;
 - (5) ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;
 - (6) require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;

- (7) in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the Exchange Listing Rules, state publicly that in the Exchange's opinion the retention of office by the director is prejudicial to the interests of investors;
- (8) in the event a director remains in office following a public statement pursuant to paragraph (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;
- (9) in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the Exchange Listing Rules, order that the facilities of the market be denied for a specified period to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;
- (10) take, or refrain from taking, such other action as it thinks fit, including making public any action taken pursuant to paragraphs (4), (5),(6),(8) or (9) above.

2A.10 The sanctions in rule 2A.09 may be imposed or issued against any of the following:

- (a) a listed issuer or any of its subsidiaries;
- (b) any director of a listed issuer or any of its subsidiaries or any alternate of such director;
- (c) any member of the senior management of a listed issuer or any of its subsidiaries;
- (d) any substantial shareholder of a listed issuer;
- (e) any professional adviser of a listed issuer or any of its subsidiaries;
- (f) [Repealed 1 January 2007]
- (g) any authorised representative of a listed issuer;

- (h) any supervisor of a PRC issuer; and
- (i) [Repealed 1 January 2007]
- (j) any independent financial adviser of a listed issuer.

For the purposes of this rule “listed issuer” includes an issuer of listed structured products and “professional adviser” includes any financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the Exchange Listing Rules. It does not include sponsors or Compliance Advisers.

Notes: (1) The scope of any disciplinary action taken, in particular any ban imposed on a professional adviser pursuant to rule 2A.09(5), shall be limited to matters governed by or arising out of the Exchange Listing Rules.

- (2) *In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 2A.10. In particular, professional advisers’ obligations to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the Exchange Listing Rules are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member.*

2A.11 The Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 2A.09 and 2A.10 (an “appellant”) give its reasons in writing for the decision made against that appellant pursuant to rules 2A.09 and 2A.10 and that appellant shall have the right to have the decision against him referred to the Listing Committee again for review. If the Listing Committee modifies or varies the ruling of the earlier meeting, it will, if requested by the appellant, give its reasons in writing for the modification or variation and, in respect of decisions pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9) only, the appellant shall have a right to a further and final review of the decision against the appellant by the Listing Appeals Committee. The decision of the Listing Appeals Committee on review shall be conclusive and binding on the appellant. If requested by the appellant, the Listing Appeals Committee will give reasons in writing for its decision on review.

- 2A.12 A request for a review of any decision of the Listing Division or the Listing Committee made pursuant to rule 2A.11 must be notified to the Exchange within seven days of the Listing Division's or the Listing Committee's decision unless written reasons for a decision are requested, in which case a request for a review of that decision must be notified within seven days of the receipt of the written reasons.
- 2A.13 Any request for the Listing Division, the Listing Committee or the Listing Appeals Committee to give its reasons in writing for its decision shall be made within three business days of its decision. Where requested, written reasons for a decision will be provided by the Listing Division, the Listing Committee or the Listing Appeals Committee (as the case may be) as soon as possible and, in any event, within fourteen days of the request.
- 2A.14 Any person, other than an issuer, its sponsor and authorised representatives, who is aggrieved by a decision of the Listing Division or the Listing Committee may express his views, in writing, to the Chairman of the Listing Committee. The Listing Committee may, in its sole discretion, decide to fully review the matter, having regard to the rights of any third party which may have been created in reliance upon the earlier decision.
- 2A.15 The Listing Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings as it may think fit.

Rights of Parties to be Heard

- 2A.16 In any disciplinary proceedings of the Listing Committee and on any further review of the decision resulting from those proceedings by the Listing Committee or the Listing Appeals Committee, the party the subject of such proceedings shall have the right to attend the meeting, to make submissions and to be accompanied by its professional advisers. In all disciplinary proceedings the Listing Division will provide the parties with copies of any papers to be presented by it at the meeting, in advance of the meeting.

Composition of the Listing Committee

- 2A.17 Subject to casual vacancies from time to time the Listing Committee shall consist of 28 members or such greater number of members as the Board may from time to time agree, comprising:—

- (1) at least eight individuals who the Listing Nominating Committee considers will represent the interests of investors;
- (2) nineteen individuals who the Listing Nominating Committee considers will be a suitable balance of representatives of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and Exchange Participants or officers of Exchange Participants; and
- (3) the Chief Executive of HKEC acting as ex officio non-voting member.

2A.18 [Repealed May 2006]

Appointment and Removal of Members of the Listing Committee

2A.19 [Repealed 1 January 2016]

2A.20 Members of the Listing Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 2A.21.

2A.21 The persons eligible for appointment or re-appointment in each year as members of the Listing Committee shall be nominated by a Listing Nominating Committee comprising three non-executive members of the board of HKEC and the Chairman and two Executive Directors of the Commission. In their deliberations the Listing Nominating Committee shall seek the views of the current Chairman and Deputy Chairmen of the Listing Committee.

2A.22 The Chairman and Deputy Chairmen of the Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The Listing Nominating Committee may choose to nominate one or more than one Deputy Chairman and the Board may choose to appoint one or more than one Deputy Chairman. The Chief Executive of HKEC may not be elected as either Chairman or Deputy Chairman of the Listing Committee.

2A.22A Members of the Listing Committee shall normally be appointed for a term of approximately twelve months.

- 2A.23 All members of the Listing Committee shall vacate office at the end of their term unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment. Subject to rule 2A.25, all members of the Listing Committee are eligible for re-appointment.
- 2A.24 The Board may fill any casual vacancies that may occur in the Listing Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 2A.17 as the member who has vacated office. The term of a member appointed to fill a casual vacancy in an office shall end on the same date as the term of the member whose vacation from that office created the casual vacancy.
- 2A.25 Members of the Listing Committee may only remain in office for a maximum of six consecutive years in addition to any period of appointment pursuant to rule 2A.24 for the purpose of filling a casual vacancy. A member who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of two years from the date on which he last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the Listing Nominating Committee shall have the discretion to nominate a person for re-appointment at any time before the lapse of two years from the date such person vacates office and the Board shall have the power to appoint such person.
- 2A.26 The office of a member of the Listing Committee shall be vacated if any one of the following events occurs:—
- (1) if a receiving order is made against him or he makes any arrangement or composition with his creditors;
 - (2) if he becomes insane or is found to be of unsound mind within the meaning of the Mental Health Ordinance (Cap. 136);

- (3) if by notice in writing to the Board and the Listing Committee, he resigns from his office; or
- (4) if by reason of serious misconduct he is removed by the Board and a written statement setting out the reasons for his removal has been delivered to the Commission,

provided that the acts of such member shall nevertheless be treated as valid and effectual in all respects up to and until an entry of the vacation of office shall be entered in the minutes of the Listing Committee.

Functions and Powers of the Listing Committee

2A.27 The Listing Committee shall exercise all the powers and functions of the Board in relation to all listing matters. The Listing Committee's exercise of such powers and functions is only subject to the powers of review in the Listing Appeals Committee.

Conduct of Meetings of the Listing Committee

2A.28 The Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 2A.28. The quorum necessary for the transaction of any business by the Listing Committee shall be five members present in person. The Chief Executive of HKEC will not attend meetings of the Listing Committee at which the Listing Committee is determining a matter in the first instance or on review pursuant to any disciplinary proceedings. At any meeting held to review an earlier decision of the Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.

Composition of the Listing Appeals Committee

- 2A.29 The Listing Appeals Committee shall consist of the chairman and two other members of the board of HKEC.
- 2A.30 The Chairman of the Listing Appeals Committee shall be the chairman of the board of HKEC.
- 2A.31 The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the members of the board of HKEC, except the Chief Executive of HKEC. The Chairman of the Listing Appeals Committee shall vacate office upon a new chairman of the board of HKEC being appointed by the members of the board of HKEC and approved in writing by the Chief Executive of Hong Kong or upon his earlier removal from the chairmanship of the board of HKEC. The Deputy Chairman of the Listing Appeals Committee shall vacate office upon (i) the expiry of his term as a director of HKEC unless he is re-appointed or re-elected as a director of HKEC (as the case may be) and re-appointed by the Chairman of the Listing Appeals Committee as Deputy Chairman; or (ii) his earlier removal as director of HKEC.
- 2A.32 The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman of the Listing Appeals Committee as and when the Listing Appeals Committee is required to review a decision of the Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the board of HKEC, except the Chief Executive of HKEC.
- 2A.33 In the event that either the Chairman or the Deputy Chairman of the Listing Appeals Committee is materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member appointed must be a member of the board of HKEC, except the Chief Executive of HKEC.

- 2A.34 In the event that both the Chairman and the Deputy Chairman of the Listing Appeals Committee are materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or are otherwise unavailable to hear a particular review the board of HKEC shall appoint a temporary Chairman of the Listing Appeals Committee from the members of the board of HKEC. The temporary Chairman shall appoint a temporary Deputy Chairman and a third member of the Listing Appeals Committee from the members of the board of HKEC to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation whichever is the sooner. The provisions of rule 2A.33 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.
- 2A.35 The Chairman of the Listing Appeals Committee may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as an Exchange Participant or a member of the board of HKEC and, where applicable, of the Board).

Functions and Powers of the Listing Appeals Committee

- 2A.36 The Listing Appeals Committee shall be the review body in respect of any decision of the Listing Committee on any of the following matters:—
- (1) [Repealed 1 January 2007]
 - (2) that the role of an authorised representative appointed under rule 3.05 must be terminated;
 - (3) that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;

- (4) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;
- (5) that the listing of a listed issuer be cancelled; or
- (6) any decision pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9).
- (7) [Repealed 1 August 2018]

Conduct of Meetings of the Listing Appeals Committee

2A.37 The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 2A.37. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be three members present in person.

Bona Fide Acts of Committee Members

2A.38 All bona fide acts of a member of the Listing Committee or any member of the Listing Appeals Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member or that such member was for some reason ineligible for appointment, be deemed to be valid as if every member had been duly appointed and was qualified to be a member of the relevant Committee.