

# Chapter 2A

## GENERAL

### COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE LISTING COMMITTEE, THE LISTING REVIEW 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 and Chapter 2B. Any function which under the Listing Rules may be performed by the Exchange or any power which under the 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 Review 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 and Chapter 2B. In the first instance, therefore, all matters concerning the Listing Rules will be dealt with by the Listing Division. The Listing Division will also interpret, administer and enforce the Listing Rules subject to the review procedures set out in this Chapter and Chapter 2B.
- 2A.03 In discharging their respective functions and powers the Listing Review Committee, the Listing Committee, the Listing Division and the Chief Executive of the Exchange are required to administer the 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 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 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 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 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 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 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 (a “review applicant”), give its reasons in writing for the decision made against that review applicant pursuant to rules 2A.09 and 2A.10 and that review applicant shall have the right to have the decision against him referred to the Listing Review Committee for a further and final review. The Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting. Subject to rule 2A.16A, the decision of the Listing Review Committee on review shall be conclusive and binding on the review applicant. If requested by the review applicant, the Listing Review 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 Review 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 to all parties to the proceedings by the Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 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 and the Listing Review Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings of the respective Committee as they may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

### **Rights of Parties to be Heard**

- 2A.16 In any disciplinary proceedings of the Listing Committee and on any further and final review of the decision resulting from those proceedings by the Listing Review 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.

### **Disciplinary Reviews Initiated by the Commission**

- 2A.16A(1) The Commission shall have the right to request in writing a review of any disciplinary decision of the Listing Committee by the Listing Review Committee under this rule.
- (2) In reviewing a matter, the Listing Review Committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.

- (3) The Commission may request written reasons for a decision of the Listing Committee or the Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 2A.13. The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 2A.13. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The Listing Review Committee and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the Listing Review Committee, and the Listing Review Committee shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 2A.16A(7).
- (7) Where the Listing Review Committee overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by a second Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the Listing Review Committee. In the event there are insufficient persons available to make up the required quorum for the Listing Review Committee, the proposed Chairman of the Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

### **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 the 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 Review 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.

2A.29 [Repealed 6 July 2019]

2A.30 [Repealed 6 July 2019]

2A.31 [Repealed 6 July 2019]

2A.32 [Repealed 6 July 2019]

2A.33 [Repealed 6 July 2019]

2A.34 [Repealed 6 July 2019]

2A.35 [Repealed 6 July 2019]

2A.36 [Repealed 6 July 2019]

2A.37 [Repealed 6 July 2019]

### **Composition of the Listing Review Committee**

2A.37A Subject to casual vacancies from time to time the Listing Review Committee shall consist of 20 members or such greater number of members as the Board may from time to time agree. An individual who was a member of the Listing Committee may be eligible for appointment as a member of the Listing Review Committee after the lapse of two years from the date on which he last vacates office of the Listing Committee.

2A.37B The Listing Review Committee shall comprise:

- (1) at least six individuals who the Listing Nominating Committee considers will represent the interest of investors; and
- (2) the remaining members who the Listing Nominating Committee considers will represent a suitable balance of representatives of listed issuers and market practitioners, including lawyers, accountants, corporate finance advisers and Exchange Participants (or their officers), and who have experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee.

No current Listing Committee members or representatives of the Commission or the HKEC shall be members of the Listing Review Committee.

### **Appointment and Removal of Members of the Listing Review Committee**

2A.37C Members of the Listing Review Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 2A.37D.

2A.37D The persons eligible for appointment or re-appointment in each year as members of the Listing Review Committee shall be nominated by the Listing Nominating Committee.

2A.37E Members of the chairmen pool of the Listing Review Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The chairmen pool shall comprise at least four members of the Listing Review Committee.

2A.37F Members of the Listing Review Committee shall normally be appointed for a term of approximately twelve months.

2A.37G All members of the Listing Review 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.37I, all members of the Listing Review Committee are eligible for re-appointment.

2A.37H The Board may fill any casual vacancies that may occur in the Listing Review 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.37B 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.37I Members of the Listing Review Committee may only remain in office for a maximum of six consecutive years in addition to any period of appointment pursuant to rule 2A.37H 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.37J The office of a member of the Listing Review 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 Review 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 Review Committee.

### **Functions and Powers of the Listing Review Committee**

2A.37K The Listing Review Committee shall be the review body in respect of any decision of the Listing Committee and, where the Commission had requested a review by the Listing Review Committee of a decision made by the Listing Committee, the further and final review body for decisions of the Listing Review Committee as provided in rules 2A.16A(7) and 2B.16(7).

### **Conduct of Meetings of the Listing Review Committee**

2A.37L The Listing Review 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.37L. The quorum necessary for the transaction of any business of the Listing Review Committee shall be five members present in person. All review hearings shall be heard *de novo*. The Listing Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the Listing Review Committee. The Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

### **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 Review 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.

### **Transitional**

2A.39 All disciplinary review hearings for disciplinary proceedings commenced before the implementation of the new rules will be conducted under Chapters 2A and 2B of the Listing Rules in force as at the time of commencement of disciplinary proceedings. The Committees in existence before the implementation of the new rules will continue in existence until all such proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of these matters.

*Note: (1) Disciplinary proceedings are commenced upon the Listing Division submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely.*

*(2) For the purpose of this rule, the reference to "new rules" refers to the amendments to this Chapter and Chapter 2B which came into effect on 6 July 2019.*