

Consumer Council
Submission on Consultation Paper
on Proposals to Enhance the Regulation of Listing

INTRODUCTION

1. The Consumer Council welcomes the opportunity to offer its comments in response to the consultation paper seeking views on the regulation of listing of public companies in Hong Kong.

GIVING LISTING RULES STATUTORY BACKING

2. Given the unique feature of the Hong Kong's market that about 80% of the listed companies in Hong Kong are incorporated off-shore and hence are not governed by the Companies Ordinance, the Council fully supports the Government's proposal to give statutory backing for the Listing Rules as a principal tool for ensuring compliance for the benefit of investor protection.

3. On the issue of whether or not to turning all listing requirements into statutory provisions, the Council notes industry's concern that making the whole of the listing requirements statutory can be impractical as the requirements would need to be flexible enough to adapt to changes in the marketplace. Also, any amendments to statutorily backed listing provisions would have to go through legislative process hence may lag behind market changes.

4. In taking into account of the need to balance statutory enforceability and flexibility, the Council considers that certain fundamental listing requirements, such as initial and on-going disclosure obligations, should be made statutory. The Council entrusts that the Government would achieve a balanced mix of legislative instruments on the listing requirements.

5. The Council notes that the present system does not address matters of non-disclosure, late disclosure or selective disclosure of price sensitive or relevant information by listed companies. In view of the importance of information disclosure to investors, the Council strongly urges that there should be obligations placed on listed companies to disclose accurate, full and timely material information to the public. This does not only enable investors to make informed decisions but also boosts up the quality of the Hong Kong's market as a whole.

REGULATORY STRUCTURE GOVERNING THE LISTING FUNCTIONS

6. In the consultation paper views are specifically sought on a number of models that have been put forward as non-exhaustive examples of options of regulation that may be appropriate for the regulation of listing.

Principles of self-regulation

7. The Council has in the past offered views on this matter in the context of responding to the reports that were issued following the 'Penny Stocks Incident'. For example, the Council's Oct 2002 submission to the Expert Group to review the operation of the securities and futures market regulatory structure.

8. On the issue of regulating industry generally, the Council suggested at the time certain conditions that should be present in circumstances where co-regulation, or industry participation is determined to be appropriate. The Council's comments were as follows:

"The HKEx is essentially an industry association being vested with a self-regulatory function, comprised of competing market participants. One way of approaching the perceived problems with the manner in which HKEx is operated is to ensure that it follows 'best practice' principles of self-regulation. In the United Kingdom where self regulatory schemes are common, the schemes:

- a) are backed up by strong legislation and a well resourced regulator; and
- b) are sufficiently independent to avoid conflict of interest and undue influence by the trade, in that staff who administer the schemes are not directly controlled by particular members of the subject industry (e.g. funding of the schemes takes place through levies paid by members to trust funds which employ staff).

In recent years the concept of 'co-regulation' between the industry scheme and the government through relevant regulatory authorities, has also emerged. The Council has not examined the nature of the current two-tier (self) regulatory mechanisms, i.e., sharing of regulatory responsibilities in the operation of the HKEx and the SFC. The Council would only urge that self-regulatory principles along the lines outlined above play a part in monitoring the HKEx, particularly given its monopoly position."

Models of regulatory structure

9. In this consultation exercise, the Council notes that some of the models offered as options in the consultation paper include a form of co-regulation; whereby industry participation could play a part. The Council considers that if some form of co-regulation is eventually adopted for the regulation of listing, then conditions as noted above (para. 8) should be applied, so as to ensure appropriate safeguards are in place.

10. However, the Council's preferred form of regulation for providing oversight of listing, is for that function to be undertaken by the SFC; i.e. Model A in the consultation paper.

11. On the issues of 'branding' of the HKEx and product development, the Council can appreciate the investment that has been put into developing a strong brand image for the Hong Kong market. Accordingly, the Council has no objection to HKEx retaining a say as to which issuers should be allowed to use its trading platform, notwithstanding the fact that the issuers have fulfilled statutory public offering requirements.

12. The Council's reasons for favouring Model A are twofold, encompassing concerns with efficiency and investor confidence.

Efficiency

13. For reasons of efficiency it would be inappropriate for the Government to create another agency, with associated additional costs, that would add another layer of bureaucracy with which industry and the public would need to conduct business.

14. The SFC is the major focal point of contact for the public and industry regarding securities and futures regulation. It is therefore clearly suited to take up this additional and directly related function. Having the listing function within the organization would also mean that coordination between the related activities of listing and corporate oversight would be enhanced.

Investor confidence

15. Another reason the Council favours the option of transferring the regulation of listing to the SFC is that of investor confidence.

16. Whilst some comments have been made that the listing function might be compromised by the conservative approach that is assumed by government involvement, the Council believes that the investing public would welcome this more cautious approach, thereby avoiding ventures characterised by the 'penny stocks' that undermine the high standard of listings that is sought for Hong Kong.

Maintaining high quality of staff

17. Implicit in any discussion on the merits of different agencies that might be given responsibility for listing matters is the quality of the staff of the agency. The Council believes that staff quality is an important aspect that should not be overlooked in ensuring the effectiveness of exercising regulatory oversight for the listing functions.

18. Whilst it is important to ensure that those entrusted with listing functions are market savvy, the Council is of the view that staff of the agency should observe high professional standards that are reasonably expected from public officials.

19. In this regard, staff of the regulatory agency should be given clear formal guidance and instructions in discharging their duties. For example, with regard to listing decisions, staff should have clear guidelines to avoid conflicts of interest and to observe procedural fairness. In administering the regulatory functions of the listing authority, staff should be required to adopt processes that are user-friendly, fair and transparent to the public.

Consumer Council
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