



17th December 2003

By Post

Financial Services Branch,
Financial Services and the Treasury Bureau,
18/F, Admiralty Centre, Tower I,
18 Harcourt Road,
Admiralty,
Hong Kong

(Attention: Proposals to Enhance the Regulation of Listing)

Dear Sirs,

**Response to the Consultation Paper on Proposals
to Enhance the Regulation of Listing**

We refer to the above-mentioned Consultation Paper published in October 2003. We have considered the points contained therein and would like to present our views as follows:

Whether statutory backing should be extended to some of the requirements in SEHK's Listing Rules?

We agree, in principle, that certain fundamental requirements of the Listing Rules should be given statutory backing in order to allow for more effective investigations of a suspected breach and enable the imposition of a wider range of sanctions. However, as pointed out in the Consultation Paper, those parts of the Listing Rules that are given statutory backing would lose flexibility and any changes thereto would need to go through a laborious legislative process, requiring more time to adjust to changing market conditions. In our view, a large part of the Listing Rules needs to be regularly reviewed and amended in order to react to market conditions and investors' demand.

Having regard to the above, we believe that those fundamental requirements of the Listing Rules which should be made statutory are those relating to disclosures. Requirements to make full and non-misleading disclosures are particularly important in a "disclosure-based" regime, which we believe the Hong Kong market should continue to apply.



As pointed out in the Consultation Paper, the “dual filing” system already empowers the SFC to take statutory action against false or misleading disclosures both during the IPO process and post-IPO. But it also pointed out that the SFO does not impose a “positive obligation” on listed companies to disclose information.

We sympathise with this and therefore propose that those parts of the Listing Rules which impose obligation on listed issuer to make disclosures should be given statutory backing. These include:

- Paragraph 2 of the Listing Agreement; and
- The relevant clauses in Chapter 14 of the Listing Rules imposing requirement to disclose.

Such statutory backing should be extended in the form of a subsidiary legislation in order to preserve some form of flexibility.

What types of disclosure requirements in the ‘Red Book’ should be given statutory backing?

The following types of disclosure requirements, many of which are already regulated by the current SFO, should be given statutory backing (to the extent they are not already statutorily backed under the current “dual filing” process) by building on the “dual filing” process:

- (a) disclosure in prospectuses and other listing documents;
- (b) disclosure in periodic reports by listed issuers;
- (c) disclosure of price sensitive or material events and information; and
- (d) disclosure of particular transactions e.g. connected and larger transactions.

Whether there are fundamental requirements in the “Red Book”, other than those on disclosure, which should be statutorily backed?

Ongoing obligations – limited to obligations to obtain prior shareholder approval for certain connected party transactions, major transactions or very substantial acquisitions.

Types of statutory sanctions to be imposed on breaches of statutory listing requirements

We believe civil sanctions are adequate as deterrent and criminal sanctions should not be imposed whatsoever.

The civil sanctions can be in the form of:



- Civil fines up to a specific amount;
- Compliance orders;
- Disqualification orders or
- Disgorgement orders.

Whether existing safeguards to prevent conflict of interest in relation to HKEx's role should be improved?

We believe that the existing safeguards, which were put into place after a thorough deliberation at the time HKEx was demutualised, are sufficient to prevent any conflict of interest and provide a reasonable division of responsibilities between HKEx and the SFC. We also believe that the Listing Committee is essential to the avoidance of conflict of interest and to provide market savvy to the listing function and that it has proved to be professional, independent and of value-added. The practice of having an independent Listing Committee within the confine of the HKEx is an adequate safeguard against any conflict of interest and should be continued.

However, in order to enhance the perception of independence and professionalism of the Listing Committee, it may be worthwhile to increase its transparency, particularly in its decision of the more unusual and difficult cases. Obviously, this should be done without compromising confidentiality.

How the existing regulatory structure governing the performance of listing functions should be improved after certain fundamental listing requirements are provided with statutory backing?

Our view of the various proposed alternative structures are set out below:-

- Model A – We believe this will entrust too much power in the SFC and will take away the market efficiency and market savvy from the listing process.
- Model B - Since we believe, so long as there is an independent Listing Committee and the current Chinese Wall arrangement within HKEx continues, there is no conflict of interests within HKEx, there is no need to transfer the listing functions to a new HKEx subsidiary.
- Model C - Not necessary. Same reasoning as in Model B.
- Model D - We believe this is the best structure. It is familiar to the market practitioners and avoids over-complicating the regulatory structure because it does not involve adding another layer or entity to the structure.



SFC should regulate and oversee all the listing requirements which have been provided with statutory backing and the HKEx should do the same in respect of the non-statutorily backed requirements. This model will preserve market savvy and facilitate market development. It will be beneficial to the public if clearer division of responsibility is revealed to the public. We do not accept the argument that this model will not remove any conflict of interests of HKEx for the simple reason that we believe any conflict of interests within the HKEx has been satisfactorily resolved through the current regulations, MOUs etc. and the proper functioning of the Listing Committee.

Your due consideration given to the above views is much appreciated.

Yours faithfully,
For and on behalf of
VC CEF Capital Limited

Henry Ko
Director