

**FIRST ADDENDUM TO THE
MEMORANDUM OF UNDERSTANDING
GOVERNING LISTING MATTERS**

Securities and Futures Commission

and

The Stock Exchange of Hong Kong Limited

9 March 2018

FIRST ADDENDUM TO THE MEMORANDUM OF UNDERSTANDING GOVERNING LISTING MATTERS

BETWEEN: Securities and Futures Commission (SFC) of
35th Floor, Cheung Kong Center, 2 Queen's Road Central, Hong Kong

AND: The Stock Exchange of Hong Kong Limited (SEHK) of
12th Floor One International Financial Centre, 1 Harbour View Street,
Hong Kong

1. BACKGROUND

- 1.1 The SFC and SEHK are parties to a Memorandum of Understanding Governing Listing Matters dated 28 January 2003 (MOU) which set out their respective roles and responsibilities in relation to listing matters.
- 1.2 On 15 September 2017, the SFC and SEHK published the *Joint Consultation Conclusions on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure for Listing Regulation (Conclusions paper)*.
- 1.3 The role of the SFC as a statutory regulator has evolved to have a more direct presence in more serious listing matters.
- 1.4 The Conclusions paper clarified the role of the SFC as the statutory regulator which administers the SFO and the Securities and Futures (Stock Market Listing) Rules (the **Rules**), and which supervises, monitors and regulates the activities carried on by SEHK, as well as SEHK's role as the regulator administering the Listing Rules.
- 1.5 SEHK is the primary front-line regulator and remains the contact point for all listing applications save in respect of concerns raised by the SFC under the Rules.
- 1.6 The parties have agreed to enter into this Addendum to reflect consequential amendments to certain provisions of the MOU resulting from the foregoing.
- 1.7 This Addendum is made pursuant to paragraphs 11.2 and 11.3 of the MOU. This Addendum is known as the "First Addendum to the Memorandum of Understanding Governing Listing Matters". This Addendum is supplemental to and forms part of the MOU, and shall be read in conjunction with the MOU unless otherwise stated; and the MOU as supplemented by this Addendum is referred to as the "**2018 MOU**". All references to "this MOU" in the MOU, including in paragraphs 11.2 and 11.3, shall hereafter mean the 2018 MOU.

1.8 Except as otherwise defined, words and expressions used in this Addendum shall have the same meanings as given to them in the MOU. Except as otherwise stated, references to particular sections and paragraphs in this Addendum shall mean those sections and paragraphs as set out in the MOU.

2. HIGH-LEVEL LIAISON

2.1 The parties agree to establish a Listing Policy Panel (LPP) to operate as an advisory, consultative and steering body to initiate and centralize discussions on listing policy with broader regulatory or market implications. The LPP will be established upon the signing of this Addendum.

2.2 The LPP will operate pursuant to its own terms of reference to be approved by the SFC and SEHK from time to time.

2.3 In view of the establishment of the LPP, the parties agree that the High-Level Group shall not continue.

2.4 Consequential changes to the MOU: The parties agree that:

(a) Paragraph 5.1 of the MOU shall be deleted in entirety and replaced with the following:

“5.2 The parties have established a Listing Policy Panel (LPP) that shall meet both on a regular basis and on an ad hoc basis as needed to serve as an advisory, consultative and steering body to initiate and centralize discussions on listing policy with broader regulatory or market implications. The membership of the LPP is set out in Appendix IIA. Any member may raise items for discussion by the LPP as a whole.

5.3 The LPP will operate pursuant to its own terms of reference as approved by the SFC and SEHK from time to time.”

(b) The words “and the High-Level Group” in the first sentence of paragraph 6.2 of the MOU shall be deleted.

(c) Appendix II of the MOU shall be deleted in entirety and replaced with Appendix IIA as set out in the Annex to this Addendum.

3. RULES AND POLICY FORMULATION

3.1 The parties agree that:

(a) The LPP may request the Listing Division to work on a proposal in relation to any matter under discussion by the LPP. The Listing Division may seek input from other parties, including any organisation represented on the LPP, as appropriate.

(b) On matters that are or will be discussed by the LPP, the Listing Division will consult the LPP from an early stage when formulating proposed Listing Rule amendments or other policy proposals; and the LPP’s recommendations will be taken into account by the Listing Division in such work.

- (c) SEHK will make provision for the Chairperson of the Listing Committee to, on a regular basis (a) seek the views of the Listing Committee as a whole on matters that are or will be discussed by the LPP, and (b) report back to the Listing Committee on the LPP's discussions.
- 3.2 The parties agree that the Head of Listing will serve as the Secretariat for the LPP and will attend LPP meetings. The Secretariat in attendance at a LPP meeting may, after stating his or her intention to do so to the chair of that meeting, speak in his or her capacity as the Head of Listing; and the minutes of the meeting shall record the capacity in which he or she had spoken.
- 3.3 The parties agree that a summary report of the LPP's policy work and recommendations will, on a regular basis, be published and made available on the websites of the SFC and HKEX.
- 3.4 The parties agree and acknowledge that:
 - (a) The Listing Committee Chair and Deputy Chairs will represent the views of the Listing Committee (including any differing views among Listing Committee members). The non-executive Directors of HKEX and the Chief Executive of HKEX will represent the broader interests of HKEX in LPP discussions. The non-executive Directors and Chief Executive Officer of the SFC will represent the views of the SFC (including, where applicable, input from different SFC divisions).
 - (b) the LPP will have no rule-making powers, and its advice or recommendations will not be binding on the organisations represented on the LPP.
 - (c) the establishment of the LPP does not limit the SFC's powers under section 23, section 24 and section 36 of the SFO.
 - (d) the establishment of the LPP does not limit SEHK's power under section 23 of the SFO.
 - (e) the delegation of authority and powers by the board of directors of SEHK to the Listing Committee, and by the Listing Committee to the Head of Listing, remain unchanged by the Conclusions paper or this Addendum.
- 3.5 Consequential changes to the MOU:

Not applicable.
- 4. CO-ORDINATION BETWEEN THE SFC AND SEHK ON TRANSACTIONS AND CASES**
- 4.1 The parties agree that SEHK remains responsible for administration of the listing process, but are making changes to paragraph 7.8 of the MOU to:
 - (a) clarify the role of the SFC as the statutory regulator which administers the SFO and the Rules, and the role of SEHK as the regulator which administers the Listing Rules; and

- (b) reflect the understanding between the parties that SEHK remains the contact point for the market for all listing applications, save in respect of concerns raised by the SFC under the Rules, and that the SFC is the contact point for the market for concerns raised by the SFC under the Rules.

4.2 Consequential changes to the MOU: The parties agree that, in view of the foregoing, paragraph 7.8 of the MOU shall be repealed in entirety and replaced by a new paragraph 7.8A as set out below:

- "7.8A SEHK to remain responsible for administration of the listing process under the Listing Rules while the SFC is responsible for regulation of matters provided for under the SFO and the Rules. The parties acknowledge and agree that:
- (a) SEHK shall continue to be responsible for conducting all vetting of the materials referred to in paragraph 7.3 above and for administering the listing process under the Listing Rules.
 - (b) The SFC does not intend to comment upon matters of, and shall not be responsible for ensuring, compliance of a listing application with the specific requirements of the Listing Rules; for the avoidance of doubt, the foregoing does not limit or modify the SFC's powers and functions under subsections 6(2)(a) and 6(2)(b) of the Rules.
 - (c) If the SFC decides to exercise any of its power and functions under the Rules, it shall use reasonable endeavours to do so within SEHK's timetable for processing the listing application so as to avoid any unreasonable delay.
 - (d) To avoid administrative duplication and in accord with SEHK's role as the primary front-line regulator for all listing applications, SEHK shall remain the primary point of contact for all listing applicants and their advisers except as provided below. If the SFC has any comments on a listing application, it shall, save in exceptional circumstances, pass them in writing to SEHK as soon as is reasonably practicable for SEHK to raise with the applicant and its advisers except:
 - (i) if the SFC forms the view, in relation to a listing application, that it is more likely than not that, given the known facts and circumstances, it would raise an objection to that application under the Rules, it may promptly issue a letter of mindedness (LOM) directly to the listing applicant setting out in detail the reasons for the SFC's concerns.
 - (ii) if, prior to the issue of an LOM, the SFC sees potential grounds for issuing an LOM in relation to a listing application, but requires further clarification from the listing applicant before forming a definitive view, the SFC may directly ask the applicant for the necessary information.

- (iii) if, following the issuance of an LOM, the SFC forms the view that the listing applicant's submissions in response to the LOM are inadequate to address the SFC's concerns, the SFC may object to the listing application by issuing a final decision notice within the specified time period under the Rules.
 - (iv) if, following the issue of an LOM, the SFC forms the view that the listing applicant's submissions in response to the LOM have adequately addressed the SFC's concerns, the SFC shall notify the listing applicant as soon as reasonably practicable.
- (e) The SFC and SEHK shall keep each other apprised of their respective comments and queries in relation to a listing application, and their respective discussions with the applicant and its advisers. In particular:
 - (i) staff of the SFC shall notify the Listing Division as soon as reasonably practicable of any decision to issue an LOM and the grounds for doing so, and the Listing Division shall notify staff of the SFC as soon as reasonably practicable if it decides to reject a listing application and its grounds for doing so;
 - (ii) staff of the SFC shall notify the Listing Division as soon as reasonably practicable if the SFC forms a view that a listing applicant's submissions in response to an LOM have adequately addressed the SFC's concerns, and the Listing Division shall notify staff of the SFC as soon as reasonably practicable if it decides that any concerns that may cause SEHK to reject a listing application have been addressed satisfactorily;
 - (iii) the SFC and SEHK shall copy each other on all of their respective correspondence with a listing applicant and its advisers; and
 - (iv) for the avoidance of doubt, SEHK may comment to the SFC on any matter in an LOM that is relevant to the Listing Rules at any time before the final decision is made by the SFC under the Rules if SEHK considers appropriate.
- (f) Unless the SFC has indicated its objection in accordance with this paragraph 7.8A, SEHK may proceed to complete the listing process and list the securities for trading in accordance with its normal procedures. For the avoidance of doubt, notwithstanding the issue of an LOM by the SFC, SEHK will continue to have the discretion to suspend, resume or continue its own vetting process regardless of whether the SFC's concerns in the LOM have been addressed.
- (g) The SFC shall as soon as reasonably practicable after receiving the materials referred to in paragraph 7.3(b) above provide SEHK with as clear an indication as is reasonably practicable of its position in relation to the exercise of its powers and functions under the Rules.

- (h) The SFC shall take into account Listing Committee's decision or guidance in relation to approving or disapproving a listing application, if any.
- (i) If, in relation to a listing application, the staff of the SFC form a view that there are no apparent grounds for issuing an LOM, they shall as soon as reasonably practicable notify the Listing Division, and shall thereafter cease to vet the application in question (including any materials subsequently transmitted to the SFC in accordance with paragraph 7.3(b) above). Following such a notification, SEHK will bring any material changes potentially raising concerns under the Rules to SFC's attention for consideration of whether there are grounds for issuing an LOM.
- (j) Any actions taken (or any non-action) by the SFC in relation to its powers and functions under the Rules shall not be interpreted to limit or modify SEHK's own duty and obligations in relation to vetting listing applications.
- (k) To the extent that a pre-IPO enquiry made directly to the SFC in relation to a potential listing application relates to a Listing Rule issue, the SFC shall refer the potential applicant to the Listing Division. To the extent that a pre-IPO enquiry made to SEHK relates to an issue under the Rules, the Listing Division shall refer the potential applicant to staff of the SFC.

4.3 The parties agree that paragraph 7.11 of the MOU shall be repealed and be replaced by a new paragraph 7.11A set out below.

"7.11A *Placements, Share Transactions, Schemes of Arrangement etc.* The parties acknowledge that the listing of securities arising from certain transactions as set out in Appendix IV is subject to detailed Listing Rules concerning conduct. The parties also acknowledge and agree that nothing in this MOU is intended to or shall be interpreted to restrict or affect the SFC's discretion in administering matters within its jurisdiction under the SFO and the Rules. The parties agree to use reasonable efforts to coordinate and cooperate throughout the listing process to reduce duplication to the extent reasonably practicable and to facilitate the other party's performance of its functions. Unless the SFC has indicated its objection in relation to a listing application, SEHK can proceed to complete the listing process and list the securities for trading in accordance with the Listing Rules and its own procedures."

4.4 The parties agree that paragraph 1 of Appendix IV of the MOU shall be repealed and be replaced by a new paragraph 1A set out below:

"1A. **Placements**

Listing of shares issued or allotted under a placing by an existing listed issuer which complies with the relevant requirements set out in Chapters 7 and 13 of the Main Board Listing Rules or Chapters 10 and 17 of the GEM Listing Rules;"

5. SFC OVERSIGHT OF SEHK'S LISTING FUNCTION

5.1 As part of an overall review of the procedures in relation to listing matters, the parties agree to update the practices and procedures in relation to regular reporting by the Exchange, and to revise paragraph 10.1 of the MOU as follows:

- (a) "on or before the 15th of each month" in paragraph 10.1(a) of the MOU shall be deleted and replaced by "on or before the 14th of each month";
- (b) "annexed to the Activity Report" and "relating to the preceding month" in paragraph 10.1(b) shall be deleted and "as soon as practicable and, in any event, within the time prescribed in the MOU or as agreed from time to time" shall be inserted after "the following copy materials";
- (c) a new sub-paragraph (iii) shall be inserted in paragraph 10.1(b) as follows:

"(iii) any agendas for and records of action items from meetings of the Listing Liaison Forum;"

- (d) paragraph 10.1(c) of the MOU shall be deleted in entirety and replaced by "(c) [deleted]";

5.2 The parties agree that paragraph 10.3(b) of the MOU shall be deleted in entirety and replaced by "(b) [deleted]".

5.3 In auditing or reviewing the performance of SEHK in its regulation of listing-related matters as referred to in paragraph 10.4 of the MOU, the SFC will focus on:

- (a) whether SEHK, in carrying out its listing regulatory function, has discharged and is discharging its duties under the SFO; this will include assessing SEHK's work in developing, administering and implementing its Listing Rules as well as the monitoring and enforcement of compliance with those rules;
- (b) the adequacy of SEHK's systems, processes, procedures and resources for performing its listing function; and
- (c) the effective management of conflicts of interest within SEHK as a regulator and as part of a for-profit organisation; including the supervisory functions performed by the Listing Committee.

5.4 The SFC will publish its supervisory audit or review reports from time to time in accordance with current procedures.

6. EFFECTIVE DATE

6.1 This Addendum has effect from the date hereof.

DATED this 9th day of March 2018

SIGNED FOR AND ON BEHALF OF)
THE SECURITIES AND FUTURES)
COMMISSION)
BY ALDER, Ashley Ian)
authorized so to do by resolution of the)
Securities and Futures Commission)
on the date hereof)

SIGNED FOR AND ON BEHALF OF)
THE STOCK EXCHANGE OF HONG KONG)
LIMITED)
BY LI Xiaojia, Charles)
authorized so to do by resolution of the Board)
of The Stock Exchange of Hong Kong Limited)
on the date hereof)

MEMBERSHIP OF THE LISTING POLICY PANEL

Chairperson of the Listing Committee

Two Deputy Chairpersons of the Listing Committee

Chief Executive of HKEX

Two non-executive directors of HKEX¹

Chairperson of the Takeovers and Mergers Panel

Chief Executive Officer of the SFC

Two non-executive directors of the SFC²

Executive Director of the Corporate Finance Division, SFC

A Senior Director of the Corporate Finance Division, SFC³

¹ To be appointed by the board of directors of HKEX

² To be appointed by the board of directors of the SFC

³ To be appointed by the board of directors of the SFC