



## **Consultation Paper on Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules**

### **The Law Society's Submissions**

The Securities and Futures Commission (the “SFC”) on 28 March 2025 issued a consultation paper on “Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules” (“Consultation Paper”).

In response, the Law Society provides the following submissions. Unless otherwise defined, the same abbreviations and definitions appearing in the Consultation Paper are used in this submission.

*Q1. Please comment on the proposal to allow for the imposition of continuing conditions on a listing applicant which will be applicable upon and after listing. Please state and provide reasons for your views.*

#### **Law Society's response:**

We agree with the proposal to allow the SFC to impose conditions on listing applicants that will continue to apply after listing. However, we are concerned that section 6(3)(b) SMLR<sup>1</sup> does not specify the circumstances in which the SFC is entitled to impose conditions on listing applicants. According to paragraph 23 of the Consultation Paper, the proposed SFC power to impose conditions on listing applicants that will continue after listing is intended to apply “*where certain identified concerns warrant regulatory attention and intervention, but do not constitute statutory grounds for objection to listing*”.<sup>2</sup> In situations where the SFC has concerns of this type (i.e., concerns that are not sufficiently serious to justify it objecting to listing), the imposition of conditions should allow the SFC to manage the relevant issues while ensuring that potential investors are informed of the issues. Since a breach of a condition post-listing could result in listing suspension if the issuer fails to rectify the breach, the proposal should provide an incentive to listed companies to comply with the conditions imposed.

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<sup>1</sup> Securities and Futures (Stock Market Listing) Rules (Cap. 571V)

<sup>2</sup> SFC Consultation Paper at paragraph 23

As noted in the Consultation Paper, the SMLR were introduced as “*a tool to prevent or reduce imminent financial harm to [the] investing public*”.<sup>3</sup> It is important that the SFC’s powers under the SMLR are not broadened excessively to allow continuous commenting and the raising of potentially spurious concerns which would further delay an already lengthy listing process. We therefore suggest revising section 6(3)(b) of the SMLR to specify the circumstances in which the SFC can impose conditions on listing applicants as follows:

“(b) *it does not object to the listing of any securities to which an application relates subject to such conditions as the Commission may think fit to impose where it appears to the Commission that it would not be in the interest of the investing public or in the public interest for the securities to be listed without the imposition of such conditions.*” (Added wording is underlined)

The Consultation Paper gives as an example of a situation where it currently cannot impose conditions that continue after listing, a case where a listing applicant’s ex-management members with criminal convictions continued to influence the listed company’s management and operations post-listing because of their relationships with its directors and substantial shareholders.<sup>4</sup> In this situation, our suggested revision to section 6(3)(b) would allow the SFC to impose conditions continuing post-listing to prevent the ex-management members being appointed to the board post-listing.

As regards the situations given in paragraph 19 of the Consultation Paper to support the SFC’s need to be able to impose conditions on listing applicants that continue after their listing, neither of these situations are within the listing applicant’s control. The share placement and price discovery process on an IPO referred to in paragraph 19(a) of the Consultation Paper are the responsibility of the overall coordinator under the SFC Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“**Code of Conduct**”) and the Listing Rules. If there are deficiencies in the share placement and price discovery process, it is difficult to imagine how this could be rectified by the issuer through the imposition of a condition. Moreover, share placement and price discovery are complete on listing — this is not a situation that would be remedied by a condition that extends after the applicant’s listing.<sup>5</sup> The Hong Kong Stock Exchange is also consulting on new Listing Rule requirements for the price discovery and share placement process on Hong Kong IPOs, which include a requirement to allocate 50% of the IPO shares to the bookbuilding tranche.<sup>6</sup> If implemented, these changes may mitigate the problems the SFC has identified.

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<sup>3</sup> Ibid. at page 7

<sup>4</sup> Ibid. at paragraph 18

<sup>6</sup> Hong Kong Stock Exchange. (December 2024). “*Consultation Paper on Proposals to Optimise IPO Price Discovery and Open Market Requirements*”

Financial intermediaries' charging of excessive commissions and their use in facilitating the artificial satisfaction of the Listing Rules' criteria on minimum market capitalisation and adequate spread of shareholders is something that was a problem historically in Hong Kong. However, our understanding is that this has ceased to be an issue following the various regulatory changes made to tackle the problem. If it is a continuing problem, then similar to the problems the SFC has identified with the share placement and price discovery process, this is something the SFC can address through actions against the relevant overall coordinator and other financial intermediaries for breach of the Code of Conduct.

*Q2. Please comment on the proposal to allow for a withdrawal of an objection notice under section 6(2) of the SMLR. Please state and provide reasons for your views.*

**Law Society's response:**

We agree with this proposal to enable the SFC to withdraw an objection notice once a listing applicant has satisfactorily dealt with its concerns. The current position, which requires listing applicants to reapply for listing even after addressing the SFC's concerns, delays listings and increases the cost of an already expensive listing process. The proposal to allow listing applicants to proceed with their existing applications on receipt of notice from the SFC of the withdrawal of its objection notice makes sense and benefits companies seeking to list in Hong Kong.

*Q3. Please comment on the following proposals:*

- (a) to add a new section 7A to the SMLR pursuant to which the SFC may impose conditions on a listed issuer; and*
- (b) the grounds under which conditions could be imposed on a listed issuer under the new section 7A.*

**Law Society's response:**

Q3(a): We disagree with the proposed power of the SFC to impose conditions on listed issuers under new section 7A of the SMLR. The SFC already possesses robust statutory powers under the current framework to address the concerns referred to in the Consultation Paper. In situations where the SFC has concerns that the affairs or business of a listed company are being improperly conducted, it has the power to apply to the Court of First Instance under section 214 of the Securities and Futures Ordinance (Cap. 571) (the "SFO") for a range of orders including an order that the company should act or cease to act in the manner specified in the order (i.e., an injunction) or any other order the Court considers appropriate regarding the listed company's conduct or for the buy-out of the shares of specified shareholders.

The circumstances in which the SFC can apply to the Court of First Instance under section 214 of the SFO significantly overlap with the proposed situations in which the SFC would be entitled to impose conditions on listed issuers under proposed new section 7A(2) of the SMLR, as can be seen from the following summary of the situations in which the SFC's respective powers would be exerciseable.

**Comparison of the situations in which the SFC's powers under section 214 of the SFO and its proposed powers under proposed section 7A(2) of the SMLR would be exerciseable**

<b>Situations in which SFC can apply for remedial orders under s214 of the SFO</b>	<b>Proposed situations in which SFC could impose conditions on issuers under proposed s7A(2) of the SMLR</b>
<p>The issuer's business or affairs has been conducted in a manner:</p> <ol style="list-style-type: none"> <li>1. oppressive to some or all of its shareholders;</li> <li>2. involving fraud, misfeasance or other misconduct towards its shareholders;</li> <li>3. resulting in some or all of its shareholders not receiving all the information they might reasonably expect; or</li> <li>4. unfairly prejudicial to some or all of its shareholders.</li> </ol>	<ol style="list-style-type: none"> <li>1. Some or all of the issuer's shareholders are not given all the information they need to make an informed investment decision;</li> <li>2. The conduct of the issuer's business or affairs has involved misconduct, dishonourable conduct or improper practices; or</li> <li>3. The condition(s) to be imposed are in the interest of the investing public or necessary to protect the company's listed securities holders.</li> </ol>

As the above comparison demonstrates, the SFC already has the ability to seek a court order to direct the listed company's conduct of its affairs in the situations described in proposed section 7A(2). On top of seeking court remedies, the SFC also has broad enforcement powers under Cap 571 to obtain information, investigate and take action against fraud, market misconduct and disclosure failures.

The Hong Kong Stock Exchange as the frontline regulator also maintains comprehensive oversight of listed issuers. The types of post-listing conditions contemplated under the proposed section 7A(2), such as enhanced disclosures, provision of documents or corporate governance measures, are already well within the regulatory ambit of the Stock Exchange. This layered regulatory framework suggests that the proposed section 7A(2) would create unnecessary duplication rather than fill genuine gaps.

Our major concern regarding the proposed introduction of section 7A(2) is that it would empower the SFC to impose conditions on issuers where “*it appears to [it]*” that any of the circumstances specified in section 7A(2) exist. This is a subjective test and, in our view, sets an unacceptably low bar for the imposition of conditions on listed issuers. Section 7A(2)(b), for example, refers to “dishonourable or improper practice”. The word “dishonourable” lacks any clear statutory or judicial interpretation in Hong Kong securities laws and could encompass a wide range of legitimate business activities. By way of contrast, under section 214 of the SFO, it is a court that decides whether the grounds specified under section 214(1) exist. With all due respect to the SFC, it is not a judicial body, and we do not consider it right that it should be given powers which are already vested in the courts by section 214(2) of the SFO.

We are concerned that it could appear that the SFC’s proposed power to impose conditions directly on listed issuers under proposed section 7A(2) of the revised SMLR is intended to both pre-empt any misconduct of the types specified on the part of listed companies, and also enable the SFC to effectively control issuers’ conduct while bypassing the legal framework that exists under the SFO. The court procedures provide important protections for those who appear before it. This raises serious due process concerns as it allows regulatory action based on preliminary suspicions with no formal investigation, no right to be heard, no evidentiary threshold and no transparency as to the basis of decision. We therefore strongly object to what might be seen as an attempt by the SFC to bypass the courts by imposing its own requirements on listed companies in a situation where legislation already provides a route for the SFC to prevent listed companies from acting in a manner it perceives to be potentially detrimental to shareholders. Quite apart from the implications for issuers, there is a danger that multiple layers of overlapping regulations may negatively impact perceptions of the Hong Kong Stock Exchange as an attractive international listing venue. Rather than benefitting listed companies, the proposals seem to further complicate an already complex listing regime given the separate roles played by the SFC and the Hong Kong Stock Exchange and the extensive regulation, which includes the Stock Exchange’s Listing Rules and guidance, the SFO and its subsidiary regulations, and the SFC’s Codes on Takeovers and Share Buybacks. The additional SFC powers proposed under the SMLR amendments further risk being perceived as regulatory overreach on the part of the SFC.

The proposed SMLR revisions purport to enable the SFC to impose conditions on listed issuers as a less intrusive alternative to the current practice of suspending trading in listed issuers’ shares. Given the lack of an alternative trading platform in Hong Kong for the trading of suspended shares, we agree that trading suspensions should be reserved for the most egregious cases only. As noted in the Hong Kong Stock Exchange’s “*Consultation on Proposals to Optimise IPO Price Discovery and Open Market Requirements*”,<sup>7</sup> trading suspensions are particularly disadvantageous for minority shareholders who lose the opportunity to trade out of their positions. That

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<sup>7</sup> Hong Kong Stock Exchange. (December 2024). “[Consultation Paper – Proposals to Optimise IPO Price Discovery and Open Market Requirements](#)” paragraph 112

Stock Exchange consultation sought market views on the establishment of an OTC<sup>8</sup> market in Hong Kong, and we hope that this is pursued, not least because of the potential opportunity it would offer shareholders of suspended and delisted shares to exit their investments. That consultation also sought views on whether the Hong Kong Stock Exchange should cease or continue its current practice of suspending trading in the shares of listed companies whose public float falls below the required minimum. As a general comment, we consider that because trading suspensions are so detrimental to minority shareholders, they should only be imposed where they are urgently needed to protect shareholders' interests or the reputation or orderliness of the Hong Kong market. Avoiding trading suspensions does not, however, require the SFC to be given additional powers under the SMLR to impose conditions. The SFC can simply adopt a practice of only suspending trading when it considers this to be absolutely essential. In situations where it has concerns regarding a listed issuer's conduct of its business or a proposed transaction, as explained in the Consultation Paper, it can already in conjunction with the Stock Exchange, raise queries of the particular listed issuer. We suspect that in the vast majority of cases, issuers will be keen to cooperate with the regulators and ensure that they do not inadvertently breach any of the regulatory requirements which could result in disciplinary actions.

Q3(b): We do not agree with the proposed grounds for the SFC's imposition of conditions on listed issuers. As outlined in our response to Question 3(a) above, the circumstances in which the SFC could impose conditions on issuers under proposed section 7A(2) are virtually identical to the circumstances in which the SFC can seek orders under section 214 of the SFO for the business or affairs of a listed company to be conducted, or not conducted, in the manner specified in the order. In conclusion, the additional SFC powers proposed are superfluous. The SFO already provides an effective framework for dealing with situations in which listed issuers improperly conduct their businesses or affairs to the detriment of their shareholders.

Q4. *Do you think that the explanatory note in Appendix 2 will help issuers and their advisors to understand the scope and purpose of the proposed amendments to the SMLR? Please provide any comments on the draft explanatory note in Appendix 2 to this Consultation Paper.*

**Law Society's response:**

While Appendix 2 contains some useful information regarding the scope of the changes to the SMLR, it fails to adequately justify why the SFC requires the additional powers proposed. As outlined in our response to Question 3 above, the SFO contains a framework for dealing with listed companies whose conduct is potentially detrimental to the interests of their shareholders and the general interest of the investing public. That framework is not mentioned in Appendix 2 or in the

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<sup>8</sup> Over-the-Counter

Consultation Paper. If the Consultation Paper's proposals are to be implemented, there should be a full explanation of the situations in which the SFC would impose conditions under the SMLR and the situations in which it would wait, and pursue actions through the court under section 214 of the SFO.

Q5. *Please comment on the proposals to add new sections 6(3A)(a), 7A(3) and 9(2)(a) to the SMLR pursuant to which the SFC may amend or revoke any conditions imposed by it and new sections 6(3A)(b) and 9(2)(b) to allow the SFC to impose new conditions. Please state and provide reasons for your views.*

**Law Society's response:**

Proposed section 6(3A)(a) of the SMLR: SFC power to amend conditions imposed on listing applicants

We would agree with the proposal to allow the SFC to revise any conditions imposed on a listing applicant if there has been a change in circumstances or relevant considerations that reasonably justifies the revision. We would therefore suggest revising draft section 6(3A)(a) to clarify that there must have been some change in circumstances or relevant considerations since the SFC imposed the original condition to justify its amendment.

Proposed section 6(3A)(b) of the SMLR: SFC power to impose new conditions on listing applicants

For the reasons set out in our response to Question 3(a), we strongly oppose the proposed introduction of an SFC power to impose conditions on listed companies under proposed section 6(3A)(b) of the SMLR.

Our principal reason for objecting to an SFC power to impose conditions post-listing on companies perceived to be improperly conducting their businesses is that the SFC is already empowered under section 214 of the SFO to seek a court order directing the issuer's conduct in these circumstances. As already noted, we consider that it should be for the courts to determine whether a company is acting improperly and the orders that need to be made to rectify the situation.

However, if the SFC decides to proceed with its proposed amendments to the SMLR, we would make the following points:

- Section 6(3)(b) of the SMLR does not set out any grounds for imposing conditions on listing applicants. As explained in the proposed Explanatory Note,<sup>9</sup> the SFC's powers under this section are not without limits as it is obliged (as it always is when exercising its statutory powers) to act reasonably

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<sup>9</sup> Paragraph 4.3 of the draft Explanatory Note on the application of sections 6(3)(b) and 7A(1) of the Securities and Futures (Stock Market Listing) Rules

and proportionately in exercising its powers under that section. Nevertheless we have misgivings about a situation in which the SFC is free to impose conditions on listing applicants without any guardrails setting out when it is appropriate for it to exercise this power. Moreover, this position contrasts with the proposed power of the SFC to impose conditions on listed issuers (under proposed section 7A(1)) which would be exercisable only if one or more of the situations specified in proposed section 7A(2) exist.

- Accordingly:
  - (i) As there is no logical reason for having pre-conditions for the SFC's power to impose additional conditions, but not for its power to impose the original conditions, we suggest amending section 6(3)(b) to specify the circumstances in which the SFC can exercise its power to impose conditions on listing applicants;
  - (ii) Proposed section 6(3A)(a) of the SMLR should be revised so that the SFC's power to amend any condition previously imposed under section 6(3)(b) is conditional on: (a) the continued existence of the grounds for the imposition of the original conditions; and (b) there having been some changes in circumstances or relevant considerations that make the SFC's amendment of the relevant condition reasonably justifiable in the circumstances;
  - (iii) Proposed section 6(3A)(b) of the SMLR should be revised so that the SFC's power to impose any new condition is conditional on the existence of the same circumstances as are required for the SFC to impose conditions on new listing applicants under section 6(3)(b); and
  - (iv) The SMLR should be amended to require the SFC to first notify the issuer of its concerns that give rise to any proposed exercise of its powers to revise any existing condition or impose any additional condition and allow the issuer to address those concerns before it actually exercises these powers. Otherwise, the new sections risk giving the SFC the power to revise or impose a condition in a situation where this could have been avoided if the SFC had engaged with the issuer to address the SFC's concerns.

Proposed section 7A(3) of the SMLR: SFC's power to amend any condition imposed on a listed issuer

In relation to proposed section 7A(3), the SFC's power to amend any condition should be limited to situations in which:

- (i) one or more of the circumstances specified in section 7A(2) exist; and



- (ii) there has been a change in the circumstances or relevant considerations that makes the SFC's amendment of the condition reasonably justifiable in the circumstances.

Proposed section 9(2)(b) of the SMLR: SFC's power to impose additional conditions on listed issuers

As noted above, we strongly disagree with the proposal to allow the SFC to impose conditions on listed issuers and, for the same reasons, we also oppose the proposal under proposed section 9(2)(b) to allow the SFC to impose additional conditions on listed issuers that are already subject to conditions imposed on the re-commencement of dealings in their shares under proposed section 9(1)(a).

If, however, the SFC proceeds with this proposal, proposed section 9(2)(b) should be revised to state:

(b) impose any new conditions it thinks fit to impose in respect of the permission, being conditions of the nature specified in subsection (3), if there has been a change in the circumstances or relevant considerations that reasonably justifies the imposition of such new conditions. (additional wording is underlined)

Q6. *Please comment on the proposals to add a new section 7B to the SMLR under which the SFC may require listed issuers to supply information to the SFC that it may reasonably require for the performance of its functions. Please state and provide reasons for your views.*

**Law Society's response:**

We have no objection in principle to this proposal. However, issuers are already required under Listing Rule 2.12A to provide the SFC with any information it “*reasonably considers appropriate to protect investors or ensure the smooth operation of the market*” or “*reasonably requires for the purpose of investigating a suspected breach of or verifying compliance with the Exchange Listing Rules or the Securities and Futures Ordinance*”. The Listing Rules thus already give the SFC the power to require issuers to provide information in a wide range of circumstances, which leads us to question whether the proposed additional power under section 7B of the SMLR is actually necessary.

Further, the broad circumstances in which the SFC would be able to require the production of information—being “*any information the Commission reasonably requires for the performance of its functions under*” the SMLR—makes it imperative that the circumstances in which the SFC can exercise its various powers under the SMLR are circumscribed and set out in the SMLR. As already noted, existing section 6(3)(b) does not set out the situations in which the SFC can impose conditions on a listing applicant, giving it unacceptably broad discretion to impose conditions. We

have therefore suggested in our response to Question 1 that the SFC should only be entitled to impose conditions if it considers that listing the securities without the proposed conditions would be contrary to the interests of the investing public or public interest. As regards the collection of information, it is important to specify the situations in which the SFC can require the production of information to prevent the SFC engaging in a fishing expedition.

Q7. *Please comment on the following proposals:*

- (a) *amendments to sections 9 and 10 to (i) simplify and streamline the procedures for lifting a suspension (with or without conditions); and (ii) provide an issuer with a reasonable opportunity of being heard before the SFC makes a decision leading to the refusal of trading resumption or cancellation of listing; and*
- (b) *removing the restriction under the current section 9(6) of the SMLR on non-delegability of the SFC's powers under section 9.*

*Please state and provide reasons for your views.*

**Law Society's response:**

Q7(a)(i) Proposals to simplify and streamline the process for lifting a suspension

As noted above, the suspension of trading is disadvantageous for shareholders, particularly minority shareholders, since they are denied an avenue for trading out of their position. Keeping any period of suspension as short as possible is therefore beneficial for listed issuers' shareholders. Accordingly, a faster process for lifting suspensions is welcome.

We therefore agree with the proposals set out in paragraph 47 of the Consultation Paper aimed at avoiding the extensive procedures currently involved in allowing suspended issuers to resume trading.

Q7(a)(ii) Proposal to provide an issuer with a reasonable opportunity to be heard before the SFC makes a decision leading to the refusal of trading resumption or cancellation of listing

We also agree that issuers should have the right to be heard before the SFC may refuse to lift a suspension or direct a cancellation of an issuer's listing as proposed under revised section 9(1). This is consistent with comparable provisions in the SFO and necessary to ensure the fair treatment of listed issuers.

Q7(b) Proposal to remove the restriction under the current section 9(6) of the SMLR on non-delegability of the SFC's powers under section 9

We agree with the proposal to allow the delegation of resumption decisions as this should speed up the resumption process. However, as proposed in the Consultation Paper at paragraph 49, we consider that:

- (i) the power to delegate resumption decisions should exist only in uncontroversial cases: and
- (ii) delegation should be allowed only to an SFC Executive Director or Executive Committee.

For this to be achieved, a specific provision should be included in the SMLR specifying that the SFC may delegate resumption decisions in uncontroversial cases to an Executive Director or an Executive Committee of the SFC. This provides greater protection to listed issuers than simply removing the current restriction on delegation as proposed.

*Q8. Please comment on the proposal for the SFAT<sup>10</sup> to assume the role of the review body for the SFC's decisions under the SMLR as set out in paragraphs 52 and 53 above. Please state and provide reasons for your views.*

**Law Society's response:**

We agree with the proposal that the SFAT should act as the review body for all SFC decisions under the SMLR. We agree, in particular, with the SFC's view that the SFAT, as an independent review body, is a more appropriate body to review decisions of the SFC than, say the SFC Board.<sup>11</sup> We also agree with the logic of having the same body to review all SFC decisions under the SMLR.

*Q9. Please comment on the proposal to remove the circumstances relating to pre-emptive issuance pro rata to existing shareholders and exercise of options under employee share option schemes under sections 4(b) and 4(d) of the SMLR so that they would fall within the scope of a "listing application"? Please state and provide reasons for your views.*

**Law Society's response:**

We agree with this proposal which appears to be aimed at preventing abuse of the exemption for rights issues and employee share option schemes and should not therefore impact listed issuers conducting rights issues and granting share options for genuine reasons.

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<sup>10</sup> The Securities and Futures Appeals Tribunal

<sup>11</sup> SFC Consultation Paper at paragraph 51

Q10. *Please provide comments on the proposed amendments to the SMLR in the indicative draft at Appendix 1 to this Consultation Paper.*

**Law Society's response:**

Please see our proposed amendments to section 6(3A)(a) and (b) of the SMLR in our answers to Questions 5 and 1, respectively.

**The Law Society of Hong Kong  
3 June 2025**