



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

The Listing Committee Report 2006



INTRODUCTION

1. This is the first calendar year report of the Main Board and GEM Listing Committee of the Stock Exchange of Hong Kong Limited (the “SEHK” or “Exchange”). The Main Board and GEM Listing Committees have operated as a combined Committee since 2003, and membership of the Committees was fully unified in May 2006. Throughout this report the expressions Listing Committee and Committee refer to the combined Committees unless the context requires otherwise.
2. This report is an account of the work of the Listing Committee in contributing to the success of the Hong Kong Listing Regime.
3. This report has been prepared for the Board of the Exchange and the Board of its parent company, Hong Kong Exchanges and Clearing Limited (“HKEx”). The Committee is committed to being as transparent as possible. Consequently, as in previous years, this report will be forwarded to the Financial Services and Treasury Bureau, the Securities and Futures Commission (the “SFC”) and posted on HKEx’s website. In addition, it will also be distributed to all HKEx’s shareholders together with the annual report.
4. The Listing Committee has no staff and has not requested a budget from either the Exchange or HKEx and accordingly its members currently provide their services for free. The Committee notes that on 26 February 2007 HKEx announced proposals to pay allowances to members of the Committees.
5. In previous years the Committee’s report has covered an approximately twelve month period ending in May, coinciding with the term of office of its members. This year the Committee has determined that it would be more appropriate to prepare the report in respect of the calendar year; consequently this report is in respect of the year ended 31 December 2006.

MEMBERSHIP

6. Amendments to the Listing Rules in respect of the composition of the Committees came into effect on 19 May 2006 and since then the Main Board and GEM Committees have consisted of 28 members as follows:
 - At least eight individuals who the Listing Nominating Committee (“LNC”) considers will represent the interests of investors.
 - Nineteen individuals who the LNC 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.
 - The Chief Executive of HKEx as an ex officio member.
7. The Chief Executive of HKEx provides a bridge between the Committees, the senior executive of HKEx and the Board of HKEx. Members are appointed to the Committee annually or to fill casual vacancies. A list of members who served on the Committees during the year and their attendance record at the various different forms of meetings are set out below.

	Regular		Nature of Meeting				Review	
	No.	%	Policy	%	Disciplinary	%	No.	%
	No.	%	No.	%	No.	%	No.	%
Mr. Carlson Tong ¹	29	59	5	100	1	9	3	33
Mr. Moses Cheng ²	9	47	1	50	1	17	0	0
Mr. Gage McAfee ³	32	81	5	100	4	29	3	30
Ms. Teresa Ko ⁴	13	59	3	100	1	17	3	20
Mr. Roger Best	17	69	2	40	6	60	3	38
Mr. Stephen Hui	22	90	4	80	1	7	2	13
Mr. Ernest Ip	15	61	4	80	2	20	1	8

MEMBERSHIP (Continued)

	Regular		Nature of Meeting		Disciplinary		Review	
	No.	%	No.	%	No.	%	No.	%
Mr. Alex Ko	19	78	5	100	6	46	7	58
Mr. Raymond Lee	16	65	2	40	2	14	5	31
Mr. Frank Slevin	11	45	1	20	6	46	3	25
Mr. David Stannard	8	33	2	40	3	25	3	21
Mr. David Sun	15	61	4	80	0	0	3	25
Mr. Tony Tsoi	45	184	2	40	6	43	6	55
Mr. Stephen Hunt	26	106	5	100	6	43	9	64
Mr. Michael Lee	22	90	4	80	3	21	8	47
Mr. Roy Chen	19	78	4	80	1	20	4	25
Mr. Jamie Allen ⁵	7	47	2	67	1	14	4	27
Ms. Melissa Brown ⁵	11	73	1	33	5	63	5	33
Mr. Stephen Brown ⁵	17	113	2	67	1	13	9	90
Mr. Robert Bunker ⁵	11	73	2	67	7	88	6	55
Mr. David Cheung ⁵	7	47	2	67	2	29	1	7
Dr. S K Fung ⁵	19	127	3	100	4	50	6	43
Mr. Joseph Longo ⁵	11	73	2	67	3	38	4	27
Prof. C K Low ⁵	10	67	2	67	2	25	4	29
Mr. Alex Ng ⁵	8	53	2	67	0	0	0	0
Mr. Alexander Schrantz ⁵	14	93	1	33	1	13	8	53
Mr. Chang Sun ⁵	7	47	1	33	0	0	7	39
Mr. Adrian Wong ⁵	15	100	3	100	1	14	8	62
Mr. V-Nee Yeh ⁶	15	158	1	50	1	17	0	0
Mr. Anthony Lo ⁶	9	95	0	0	2	29	0	0
Mr. Peter Wong ⁶	6	63	1	50	0	0	1	33
Mrs Angelina Lee ⁶	2	21	1	50	1	20	0	0
Mr. Henry Cheong ⁶	5	53	2	100	4	57	1	33
Mr. Allan Lam ⁶	6	63	1	50	2	29	0	0
Mr. Paul Chow ⁸	38	78	5	100	0	N/A	0	N/A

Notes:

- 1 Mr. Carlson Tong was appointed as Chairman of the Listing Committees on 19 May 2006 having previously been Deputy Chairman.
- 2 Mr. Moses Cheng was Chairman of the Listing Committees until he retired from the Committees on 19 May 2006.
- 3 Mr. Gage McAfee became Deputy Chairman on 19 May 2006 having previously been an ordinary member of the Listing Committee.
- 4 Ms. Teresa Ko was appointed to the Committees on 19 May 2006 and was appointed as an additional Deputy Chairman on 22 September 2006.
- 5 Members appointed on 19 May 2006.
- 6 Members retired on 19 May 2006.
- 7 Save as disclosed above, all other members served throughout the year.
- 8 Mr. Paul Chow is the Chief Executive of HKEx, an ex-officio member of the Listing Committee.
- 9 Prior to amendments announced on 3 February 2006 the Listing Rules provided that the Chief Executive of the Exchange, Mr. Patrick Conroy, was the Chief Executive of HKEx's alternate on the Listing Committee. In accordance with those amendments on 19 May 2006 the Chief Executive of HKEx ceased to have an alternate. Mr. Conroy did not attend any meetings during the year.
- 10 For regular meetings, percentage attendance is calculated based on a member attending half the meetings in the period in accordance with the pooling schedule. A percentage in excess of 100 indicates a member attending more meetings than allocated under the pooling schedule. For the chairman, deputy chairmen and the Chief Executive the percentage is calculated based on total number of meetings in the period.

MEMBERSHIP *(Continued)*

- 11 *For review and disciplinary meetings percentage attendance is based on the number of meetings a member was eligible to attend having regard to potential conflicts of interest and whether the member had attended the meeting reaching the decision that was being reviewed. The members' unavailability due to other commitments on a scheduled date has not been taken into account in the table above. The Chief Executive does not participate in review and disciplinary meetings.*

ROLE AND MODE OF OPERATION OF THE LISTING COMMITTEE

8. The Listing Committee acts both as an independent administrative decision maker and an advisory body for the Exchange. The Listing Committee has four principal functions:
- To oversee the Listing Division (to the extent that this is practicable given the Committee's mode of operation)
 - To provide policy advice to the Listing Division on listing matters and to approve amendments to the Listing Rules
 - To take decisions of material significance for listing applicants, listed companies, sponsor firms and the individuals concerned
 - To act as a review body (in its role as the Listing (Review) Committee) for decisions made by the Listing Division and by the Listing Committee
9. A more detailed description of the role and mode of operation of the Listing Committee and its approach to handling conflicts of interest is set out on HKEx's website.

Transparency

10. It is important for the listing decision making process to operate fairly and consistently. The following measures represent progress made in enhancing transparency in the listing decision making process:
- The Listing Division explains the decision-making process relating to key decisions or novel matters by publishing on an anonymous basis Listing Decisions and Rejection Letters so that the principles and rationale behind them are communicated.
 - The Listing Division encouraged by the Listing Committee has been moving towards establishing operational standards which will provide practitioners and listed companies with greater certainty about the relevant listing decision process.
 - Detailed biographies of Committee members are published on HKEx's website to provide parties who will appear before the Committee with more details about members' business and other interests to assist in the identification of possible conflicts arising from those interests.
 - The publication of this Annual Report gives an account of the more important issues that the Listing Committee has considered in the year, some statistics about the decisions made and activities of the Listing Committee.
11. The need to maintain confidentiality, for reasons related to natural justice or because of statutory secrecy provisions applying, means that it is often difficult or inappropriate for the Committee to comment on individual cases including disciplinary matters until these have been concluded. This can present a particular challenge where matters attract media coverage. Individual Committee members and staff of the Exchange are seldom in a position to respond to media enquiries about specific cases. Nonetheless, the Committee is committed to operating in as transparent a manner as these constraints permit.
12. The Listing Committee is always open to suggestions of what further information could be published which would enable the investing public, practitioners and listed companies to make a better informed assessment about how well the listing decision making process is working.

MAIN ISSUES ARISING IN THE YEAR

13. This section of the Report contains a summary of the issues the Listing Committee has dealt with during the year which we believe will be of greatest interest to the investing public, practitioners and listed companies, and outlines the position or action the Listing Committee has taken.

Listing Committee Structure Conclusions

14. In October 2005 the Committee had considered the submissions made in response to Consultation Paper on New Structure for Listing Decision Making published in May 2005. At that time there were two significant uncertainties affecting the issues consulted on:

- A judicial review, since resolved in the Exchange's favour, concerning the Committee's procedures.
- Consideration, which continues, by the Administration and the SFC about which of the current obligations in the Listing Rules will be given statutory backing.

In light of these uncertainties, the Committee resolved to address the consultation proposals in two phases.

15. In the first phase a limited number of amendments were made to the Listing Rules to address the most significant concerns of respondents to the consultation. These amendments came into effect in the current year and had the following effect:

- (a) Expanding the Listing Committee and the GEM Listing Committee to at least 28 members (from 25 and 21, respectively).
- (b) Changing the composition of the Committees to include at least eight investor representatives, the HKEx Chief Executive and, otherwise, 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.
- (c) Increasing the maximum term for Listing Committee and GEM Listing Committee members to six years (from three years for regular Committee members and four years for the Committee Chairman and Deputy Chairman).
- (d) Changing the composition of the LNC, to make it more independent of the Exchange Executive.

16. The second phase will take place once further progress is made in settling the content of the proposed Stock Market Listing Rules, which will give statutory backing to some of the obligations currently in the Listing Rules. In the second phase the Listing Committee will revisit the original consultation proposals and determine which of the remaining proposals continue to be appropriate.

17. During the year the LNC suggested that the Committee considers amending the Listing Rules to permit the appointment of an additional deputy chairman of the Committee. The Committee approved an appropriate amendment to the Listing Rules which came into effect on 22 September 2006. The appointment of an additional deputy provides the Chairman and Deputy Chairmen with greater flexibility to manage their workload.

Abolition of Paid Announcements

18. Information about listed issuers is very important in maintaining a fair, orderly and efficient market. Information helps to support investment decisions and hence is one of the fundamentals in the price discovery mechanism of the stock market. Main Board issuers are currently required to publish announcements in newspapers. The Committee is committed to making publication of announcements on HKEx's website the primary means by which information is disseminated.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Abolition of Paid Announcements *(Continued)*

19. In July 2006 HKEx published *Exposure Conclusions on Abolition of Requirement for Main Board Issuers to Publish Paid Announcements in Newspapers and Related Matters*. This set out the conclusions reached following the receipt of comments on an exposure paper published in November 2005. Some of the key conclusions reached were:
 - There will be a transitional period of six months before the abolition of the requirement to publish announcements in the newspapers. It is currently expected that this period will commence in the middle of 2007.
 - During the transitional period issuers will be required to publish notification announcements in newspapers. Those notification announcements must indicate where the full announcement may be viewed.
 - Issuers without their own website will still be required to publish full announcements in the newspapers.
 - Twelve months after the commencement of the transitional period all issuers will be required to have their own website where the public may access information free of charge. That site may be hosted on a third-party domain.
20. Amendments to the Listing Rules that support the change in requirements for publishing announcements are available on HKEx's website. However, this major project involves more than just rule changes:
 - The initiative is subject to operational readiness. The initiative will result in HKEx being the central location for public access to information about issuers. HKEx has sought to ensure that the website will be robust and reliable to support this important role. Backup and recovery arrangements are being strengthened, capacity upgraded and security and access controls enhanced.
 - Internal work practices are being reviewed and adapted to bring them into line with the new issuer information dissemination model.
 - In September 2006 new features were added to HKEx's website to improve investors' access to listed company documents.
 - Market readiness is an important part of the project. Issuers will be required (and advisers invited) to participate in hands-on familiarisation sessions. There will also be briefing sessions for issuers and their advisers.
 - Because of the enhanced security arrangements users of the existing electronic submission system will be required to re-register as users of the new system.
21. The abolition of the paid advertisement requirement will lay the foundation for an information dissemination model (being considered for the medium term) whereby issuers' announcements are released at any time during the day, including trading hours – and where the majority of announcements are not vetted prior to their release. This will facilitate full and timely disclosure of price-sensitive information, as well as reduce the incidence of trading suspensions, thereby contributing to enhanced investor confidence in the market.

IPO Applications – Industrial and Commercial Bank of China (“ICBC”)

22. In the course of the year the Committee approved the listing application of ICBC, Mainland China's largest commercial bank. The subsequent public offer was also the world's largest IPO, raising over US\$21 billion through simultaneous listings in Hong Kong and Shanghai.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

IPO Applications – Industrial and Commercial Bank of China (“ICBC”) *(Continued)*

23. One of the features of the ICBC IPO was the release on HKEx’s website of two information packs. These were published on 22 and 27 September 2006 – before publication of the prospectus on 16 October 2006. The packs gave public investors access to information about the IPO before publication of the legal prospectus in much the same way that a “red-herring” provides professionals with information about an upcoming IPO. The ICBC IPO was the first time that this approach had been adopted for an IPO in Hong Kong and it appears to have been well received by investors. The Committee welcomes the decision of ICBC to provide information to potential investors in this manner and supports its adoption in other IPOs.

IPO Applications – Procedures

24. Listing applications are generally presented to the Committee when the Listing Division has fully resolved all material issues associated with an application to its satisfaction. This well established practice ensures that applications are thoroughly reviewed by the Listing Division before being considered by the Committee allowing the Committee to focus on applications which are at an appropriate stage for its consideration.
25. A consequence of this approach is that the Committee’s views on an application may not be reflected early in the application process. Where the Committee’s views on an application are later found to differ from those of the Listing Division this practice might be seen as being to the disadvantage of individual applicants. To overcome this, at the July 2006 policy meeting, the Listing Division presented proposals to the Committee giving the Listing Division additional flexibility in presenting cases to the Committee.
26. The Committee endorsed those proposals. Consequently, the Listing Division now has discretion to present a listing application to the Committee in the following circumstances:
- (a) The Listing Division has reviewed the application for at least 50 business days;
 - (b) The applicant has submitted the documentation required by the Listing Rules;
 - (c) All material issues relating to eligibility for listing have been addressed to the satisfaction of the Listing Division;
 - (d) All the Listing Division’s comments and queries have been substantively addressed by the sponsor and applicant, even if not to the full satisfaction of the Listing Division;
 - (e) The sponsor and the applicant have requested a hearing date that can be accommodated by the Listing Division and the Listing Committee.
27. Applications presented in this manner are generally subject to more extensive drafting changes after the Committee hearing. The Committee considers that this is more than offset by the advantages to applicants of receiving the Committee’s views on an application earlier in the application process.

IPO Applications – Listing of Overseas Companies

28. At present four jurisdictions (Hong Kong, Mainland China, Bermuda and Cayman Islands) are recognised in the Listing Rules. The Listing Rules do not prohibit the listing of companies from outside the recognised jurisdictions. However, when applications are received from companies incorporated outside those jurisdictions it is necessary for the applicant to demonstrate that the standards of shareholder protection afforded by the applicant’s place of incorporation are at least equivalent to those provided in Hong Kong – a process that is cumbersome and burdensome for the applicant.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

IPO Applications – Listing of Overseas Companies *(Continued)*

29. At the policy meeting in July 2006 the Committee expressed its support in principle for doing more to facilitate the listing of companies incorporated outside the approved jurisdictions. The Committee subsequently endorsed the Listing Division's recommendations to accept Australia and British Columbia, Canada as approved jurisdictions of incorporation for the purposes of primary and secondary listing under Chapter 19 of the Listing Rules. Further details are set out in Listing Decisions LD57-1 and LD 58-1 published in October 2006 and November 2006 respectively.
30. Subsequent to the period under review the Committee has approved further proposals to increase transparency about the Exchange's expectations on overseas applicants from outside the recognised jurisdictions.
31. The Exchange will shortly publish a statement to clarify the Listing Rules requirements governing the listing of overseas companies and provide a clear roadmap to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions (Mainland China, Bermuda and the Cayman Islands) and their advisers when seeking a primary listing either on the Main Board or the Growth Enterprise Market (the "GEM"). The roadmap is intended to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions seeking a primary listing on the Exchange's markets by reducing the absolute amount of work needed to file with the Exchange and allowing companies to focus attention on fewer more relevant issues.

IPO applications – delineation of business

32. Rule 8.10 requires specific information to be disclosed concerning excluded businesses owned by controlling shareholders of listed issuers, but does not clearly establish that such businesses raise eligibility concerns under Rule 8.04. While in certain cases excluded businesses may raise suitability issues, regardless of whether this is the case it is the current practice of the Exchange to review three areas that appear frequently as issues in such cases:
 - delineation of the new applicant's business from that of the controlling shareholder;
 - independence of the new applicant's business from that of the controlling shareholder; and
 - arrangements for managing conflicts of interest in light of the controlling shareholder's interest in the competing business.
33. It is not the ordinary practice of the Exchange to request the use of a non-competition undertaking where one is not proposed to exist. However, the Listing Division does review the delineation arrangement and arrangements for managing conflicts whether memorialized in non-competition agreements or in other ways, and the comments of the Listing Division often have a substantive effect on the corporate governance of the new applicant in this area. In addition to non-competition agreements, other arrangements have been adopted by applicants on a case by case basis to memorialise how two companies controlled by a single controlling shareholder intend to manage their affairs. These arrangements are also subject to review and commentary from the Exchange and include:
 - *Independent director review* – the independent directors undertook to review options, pre-emptive rights or rights of first refusal granted by the controlling shareholder over its existing or future competing businesses and decide whether to exercise these rights. This practice is consistent with the principles in the Code on Corporate Governance Practices which promote a strong independent element on the board.
 - *Increased transparency* – the controlling shareholder undertook to provide all information necessary for the enforcement of the options, pre-emptive rights or rights of first refusal. This is particularly relevant where the listed issuer holds rights of first refusal over future opportunities. This practice is consistent with the principles concerning access to information in the Code on Corporate Governance Practices.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

IPO applications – delineation of business *(Continued)*

- *Public disclosure of decisions* – the listed issuer explicitly agreed to disclose decisions on matters reviewed by the independent directors relating to the exercise or non-exercise of options, pre-emptive rights or rights of first refusal either through the annual report, or by way of announcements to the public.
34. Following a request for guidance by the Listing Division in the year under review, the Committee agreed that the current practices of the Listing Division should continue. In appropriate circumstances measures adopted by listing applicants may also be considered by the Committee to be conditions necessary for the listing applicant to be considered suitable for listing under Rule 8.04. Such cases would be identified by the Committee at the time listing approval is granted and appropriate disclosure would be required in the Company's listing documents.
35. Delineation of an applicant's business was a factor taken into account in the Committee's decision to reject an application for listing on the Main Board in the course of the year. In that case the Committee considered that the applicant's relationship with its controlling shareholders was fundamental and the applicant was unable to demonstrate that it was capable of carrying on business independently of the controlling shareholder. The Committee also considered that the arrangements to manage the conflicts between the group and its controlling shareholders were inadequate.

Preferential terms of private equity investments made immediately before or on listing

36. During the year the Committee noted that a number of pre-IPO placings to private equity investors shortly before listing afforded preferential terms to pre-IPO investors that would not be available to other equity investors after listing. These preferential investment terms included various combinations of guaranteed discounts to the IPO share price; put options that would continue after listing; payment provisions that were conditional on in-principle approval for listing being granted; and changes to the terms of pre-IPO investments made after in-principle approval for listing had been granted.
37. While the Committee does not consider pre-IPO placings shortly before listing to be objectionable¹, the Committee considered that preferential investment terms available only to pre-IPO investors may at times be inconsistent with the principle that all holders of listed securities are to be treated fairly and equally, memorialized in Rule 2.03. This would particularly be the case in circumstances where the terms of the pre-IPO investment meant that private equity investors would not have experienced equity risks significantly different from those experienced by public investors, or would be protected from certain types of equity risks after listing in a manner that was significantly different from that experienced by public investors. In such cases the Committee considered it appropriate to require the preferential terms to be removed or altered prior to listing in order to satisfy the principles of Rule 2.03.
38. To enable the market to further understand the rationale behind the decisions of the Committee, the Listing Division has published a new series of Listing Decisions under references HKEx-LDs 55-1 to 55-3 in June 2006.

Listing Gaming Companies

39. Rule 8.04 provides that an issuer and its business must be suitable for listing. (GEM Rule 11.06 contains a similar provision.) An issuer and its business would not be suitable if, amongst other things, the listing were against the public interest. Consequently, from time to time the Listing Committee considers whether certain types of business are against the public interest. Gambling-related activities are one such type of business which has been subject to periodic review.

¹ See *Listing Decisions Series 36* published in October 2003.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Listing Gaming Companies *(Continued)*

40. The Exchange's position regarding gambling-related activities is set out in a press release that was published on 11th March 2003 (the "2003 Press Release"). The 2003 Press Release states that it would not be against public policy for an issuer to be involved in the operation of a gambling activity which: (1) is not unlawful under the Gambling Ordinance (i.e. an activity that takes place outside Hong Kong and for which the bookmaking transactions and the parties to the transactions are outside Hong Kong); and (2) does not violate any applicable laws in the area where such activity operates (the "Relevant Area").
41. At policy meetings in January 2006 and November 2006 the Committee re-visited and endorsed the policy set out in the 2003 Press Release. As set out in the Listing Committee annual report published in July 2006, in January 2006 the Committee noted that in order for it to be comfortable that a gambling activity does not violate any applicable laws in the Relevant Area it would expect to be given evidence, in the form of independent third party verification, to the effect that the activity is being carried out under the express authority of the Government of the Relevant Area. For example, in the case of a Macau casino, the Listing Committee would require independent third party verification that the casino is expressly authorised (e.g. licensed or in some other way directly authorised) by the Macau SAR Government. The Listing Committee noted that internet or online gambling companies would generally not be authorised in the Relevant Area; even where they are licensed or otherwise authorised in one jurisdiction they generally operate beyond that jurisdiction e.g. they may be licensed in one country but have customers based in part or whole outside of that country.
42. In the case of issuers operating or being involved in activities that are not expressly authorised as described above, the Listing Committee will consider suitability on a case by case basis. That might include gambling activities carried on in a jurisdiction where the Government does not have a system for authorisation and regulation of gambling activities. Amongst other things, the Committee will seek to understand how the issuer avoids offending section 25 of the Organised and Serious Crimes Ordinance, Cap. 455, which is concerned with dealing in the proceeds of an indictable offence where an "indictable offence" may include conduct that would be criminal if it occurred in Hong Kong even if it is not criminal in the place where it occurs e.g. operating an unauthorised gambling establishment.
43. Since publishing the 2003 Press Release the Listing Committee has considered only a few applications for listing to which the 2003 Press Release applies. The policy position set out above was reached after the Committee's experience in considering one such application. That application was made by an issuer principally engaged in the management and operation of a casino. The Listing Committee initially rejected the application on the basis that the issuer was not considered to be suitable for listing as it had not put in place throughout the track record period the required controls and procedures on which it was relying for listing eligibility purposes. The rejection decision was reversed by the Listing (Review) Committee on review. (For more details see HKEx rejection letter RL 15-06 available on HKEx's website at <http://www.hkex.com.hk.listing/staffint/RL 15-06.doc>.)
44. Subsequently, the Listing Committee considered another application for listing (the "Second Application"). The Second Application was made by an issuer which the Listing Division and the Listing Committee considered to be indirectly involved in gambling. The Committee upheld a decision by the Listing Division to reject the Second Application. The Listing Committee considered that the issuer was not suitable for listing under GEM Rule 11.06 because:
 - (a) as a result of the particular circumstances of the case, the issuer would have little or no control over the relevant gambling activities; and

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Listing Gaming Companies *(Continued)*

- (b) it was necessary for the issuer to establish that it had some control over the gambling business or to provide comfort that the essential controls were in place with respect to the gambling business, but the Committee had not been provided with sufficient information to determine whether the relevant regulatory regime ensured that the gambling activities would meet the standards suggested at paragraph 42 above.
45. On review, the GEM Listing (Review) Committee overturned the Listing Committee's decision. Instead, it allowed the issuer to proceed with its listing application subject to certain conditions. The conditions related to additional due diligence to be undertaken by the sponsor, and disclosure to be made in the prospectus, in respect of the legal framework and regulatory arrangements governing gambling activities in the relevant jurisdiction – in particular, any laws, rules, regulations or government policies that provide for, or impose controls on, gambling activity, prevention of money laundering and other serious criminal activity on premises where gambling activities are conducted. The GEM Listing (Review) Committee emphasised that its decision in this case was specific to the circumstances and would not serve as a precedent for any other issuers. (HKEx expects to publish further details of this decision, in the second quarter of 2007, on its website at <http://hkex.com.hk/listing/listdec/listdec.asp>.)

Transfer of Domestic Shares and Listing on the Exchange

46. In the course of the year two of the applications from Mainland companies considered by the Committee raised issues in respect of the listing or possible listing on the Exchange of domestic shares. In the first case² the company had established a clear methodology for the transfer of domestic shares to H shares and that methodology was fully disclosed in the prospectus. The Committee determined that:
- Subject to prior approval by the CSRC and compliance with the transfer procedures duly established and announced by the company the domestic shares could be transferred to Hong Kong, listed on the Exchange as H shares and sold in the open market.
 - The transfer of domestic shares to Hong Kong would be required to meet the established administrative procedures for listing on the Exchange.
 - The company could apply to list all or any portion of its domestic shares on the Exchange as H shares in advance of any proposed transfer to ensure that the transfer process could be completed promptly on notice to the Exchange and delivery of shares for inclusion in the Hong Kong share register. As the listing of shares after an initial listing is normally considered as an administrative matter the Committee did not require prior application as a condition for transfer, listing and sale of the shares in the form of H shares.
47. In the second case the share capital of the applicant would comprise A shares, listed on the Shanghai Stock Exchange, and H shares. That company's articles of association provided that the A shares might be transferred to overseas investors and that any such transferred shares could be listed on an overseas exchange. To provide clarity the Committee endorsed proposals from the Listing Division to require the mechanism to transfer A shares to H shares to be fully disclosed in the applicant's prospectus.

Connected Transaction Waivers after listing

48. Many listing applicants engage in transactions during their track record period which, if continued after listing, will become connected transactions and hence subject to shareholders' approval and disclosure requirements. On listing an applicant will often apply for and be granted a waiver from these requirements. The waiver will generally be for a limited period and be subject to an annual cap or limit. Full details of the transactions and the terms and conditions of any waiver granted will be disclosed in the prospectus.

² For a full discussion of this case see Listing Decision HKEX-LD56-1 published in September 2006.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Connected Transaction Waivers after listing *(Continued)*

49. Although these waivers are often granted for a period of three years each waiver application is considered on a case by case basis and where the Committee considers it is appropriate it will vary the length of the waiver.
50. During the year the Committee considered a listing application from a company that had placed deposits with a finance company that was a subsidiary of its parent company during the track record period. The applicant intended to continue with this practice after listing when it would constitute a connected transaction and had applied for a three-year waiver from the shareholders' approval requirement. The Committee endorsed the Listing Division's view that the applicant had not put forward a compelling case for granting a three-year waiver. The principal purpose of the deposits was to pay for purchases under a supply agreement. However, the terms of the supply agreements did not require such deposits to be made. In addition, the applicant had its own treasury function and thus had the capacity to arrange its finances so that payments for supplies were made as and when those payments fell due. There appeared to be little financial risk to the applicant's shareholders in light of the finance company's credit rating. Nonetheless the Committee considered that it was appropriate to err on the side of caution and minority protection. In light of this the Committee agreed to grant a waiver for one year only, after which the arrangements would be subject to shareholders' approval.

Profit Forecasts

51. A listing applicant is not required to include a profit forecast in its prospectus. However, if a forecast is included it should be prepared after due and careful enquiry and the assumptions in the forecast should be realistic. In the course of the year a listing applicant which was a property developer had proposed to present a profit forecast where one of the assumptions was that there would be no change in the fair value of the company's investment properties on the basis that there was no reliable basis for estimating the fair values at a future date. The Committee determined that this approach was not acceptable. The applicant was required to provide additional information to demonstrate that the forecast had been prepared after due and careful enquiry.
52. The applicant subsequently submitted a revised profit forecast which included a revaluation gain. The applicant proposed to include a risk factor to the effect that gains and losses might arise on the revaluation of investment properties and that the forecast involved assumptions in this regard which might prove to be incorrect. In accordance with Listing Decision HKEx-LD-35-2 a prospectus should not contain any disclaimer warning investors not to rely on a profit forecast. The Committee determined that the statement proposed to be included in the prospectus was acceptable because it did not disclaim information in the forecast; rather it drew attention to a specific uncertainty.
53. The Committee also considered the current provisions in the Listing Rules in respect of profit forecasts at its policy meetings during the year. The Committee considered that the requirement for forecasts in listing documents and announcements or circulars in respect of notifiable transactions to be reported on by reporting accountants continued to be appropriate. In September 2006 an announcement was published clarifying the formal reporting requirements for profit forecasts by Main Board issuers.

Suspensions

54. As set out in Rule 2.01 the principal function of the Exchange is to provide a fair, orderly and efficient market for the trading of securities. Rule 6.05 provides that any suspension of trading should be for the shortest possible period and Rule 6.07 provides that the Exchange shall have the power to direct a resumption of trading of listed securities. During the course of the year the Committee considered two cases which touch on these Rules.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Suspensions *(Continued)*

55. In the first case, the Committee considered a request from a company for a five-day suspension of trading in connection with a proposed privatisation by way of a scheme of arrangement. The suspension had been requested to prevent certain investors from frustrating the privatisation with a view to making arbitrage profits. In that case, whilst recognising the theoretical possibility of abuse arising from a separation of economic interests from voting rights, the Committee considered that it was not appropriate to accede to the request solely to ensure that a proposed privatisation would not be frustrated by what were essentially market forces.
56. In the second case the Committee considered whether to exercise its power to direct a resumption of trading. At the time the Committee met the company concerned had been suspended for approximately two weeks. It had published an announcement in respect of a restructuring that affected an overseas listed subsidiary and an overseas listed associated company. The company had sought a continuation of the suspension to allow terms of the restructuring to be finalised. The Committee considered that the announcement had contained sufficient information for the market in the company's shares to operate on a fair and orderly basis. The Committee determined that the Exchange should exercise this power in the prevailing circumstances and indicated this intention to the issuer. Subsequently, the company agreed to the immediate restoration of trading and it became unnecessary for the Exchange to formally exercise its powers in this area.
57. At the Policy Meeting held in January 2006, the Listing Committee noted that a lack of cooperation or responsiveness from listed issuers was a main cause for the prolonged suspension of a listed issuer and the lack of transparency in the process. The majority of such suspended listed issuers either delayed the provision of relevant information or provided incomplete and piecemeal information regarding the problem that led to the suspension. Without the full co-operation of the listed issuers, the Exchange would be denied information necessary to form a complete picture of the extent of the problems faced by a listed issuer. Furthermore, an appropriate regulatory response would be a balancing act of on the one hand ensuring that a suspended listed issuer is allowed to resume trading after investors are fully informed and, on the other hand, ensuring that the listed issuer's suspension is for the shortest possible period. To provide greater transparency about suspensions the Listing Committee supported the Listing Division considering whether or not to apply one or more of the following options; (a) the Exchange publishing the conditions imposed for resumption; (b) requiring the suspended issuer to publish a weekly update for temporary suspensions or a monthly or quarterly update for long suspensions; and/or (c) automatically invoking the delisting procedure if a security has been suspended for a prolonged period of time without the issuer taking steps to achieve resumption.

Acquisitions of Land or Property Development Projects

58. The Listing Rules prescribe various requirements in respect of notifiable transactions including disclosure obligations and, where certain thresholds are exceeded, shareholder approval. Transactions of a revenue nature in the ordinary and usual course of business of an issuer are not regarded as notifiable transactions. Transactions that are in the ordinary and usual course of business of a listed issuer that contain a capital element are not exempt. Acquisitions by way of joint venture arrangements are subject to the notifiable transaction rules and will also be subject to the connected transaction rules if a joint venture partner is a connected person.

MAIN ISSUES ARISING IN THE YEAR *(Continued)*

Acquisitions of Land or Property Development Projects *(Continued)*

59. The Exchange had received a number of enquiries and submissions in respect of the impact of the above requirements on listed issuers actively engaged in property development as a principal business activity that acquire land or property development projects in Hong Kong from Government or Government-controlled entities (e.g. Kowloon Canton Railway Corporation, Mass Transit Railway and Urban Renewal Authority) through public auctions or tenders. A common theme of the submissions was that bids conditional on shareholders' approval were generally not acceptable to Government or Government-controlled entities, or joint venture partners. In addition, there are difficulties (in terms of timing and in the disclosure of detailed information) in obtaining shareholders' approval prior to submitting a bid.
60. The Committee agreed that it would be appropriate to establish a regime to accommodate listed property issuers bidding for land or property development projects in Government and public sector auctions. As a first step in that process, the Committee has endorsed (and the SFC have approved) a general waiver that will provide temporary relief whilst a consultation process is undertaken on amending the Listing Rules. The waiver was published on 14 December 2006 and will cease to have effect on 31 December 2008 by which time the consultation process will be completed and appropriate amendments to the Listing Rules introduced.
61. The waiver is applicable to listed issuers actively engaged in property development as a principal activity. It applies to land or property development projects acquired in Hong Kong from Government or Government-controlled entities through public auctions or tenders. Broadly, projects undertaken with non-connected persons will not require prior shareholders' approval but will be subject to announcement and reporting requirements. Projects undertaken with persons who are connected by virtue of being Joint Venture partners with the issuer in existing property projects will not be subject to shareholder approval for specific projects. The issuer will be required to obtain, in advance, a "general mandate" from shareholders for such projects. (For full details of the waiver and related conditions see *Waiver of general effect in relation to listed issuers engaging in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders* published on 14 December 2006.)

MEETING STATISTICS AND ACTIVITIES

62. The following meetings were held during the period covered by this report and in the preceding period.

Number of Meetings	Nature of Meeting		Average Number of Members in Attendance	
	2006	2005	2006	2005
Regular Meetings	49	50	10.9	9.8
Review Meetings (*excluding reviews by Listing Appeals Committee)	22	31	5.7	5.3
Disciplinary Meetings	15	25	5.9	5.4
Quarterly and ad hoc policy meetings	5	5	18.5	16.8
Total	91	111		

APPROVAL OF NEW LISTING APPLICANTS

63. One of the principal items of business of the Committee's regular meetings is considering whether or not to approve new listing applications. These are considered on the basis of reports from the Listing Division, which include a recommendation on whether or not to approve the listing application. In respect of each application considered by the Listing Committee it is usual for the Committee to approve the application, with or without the imposition of conditions, to reject the application or to defer a decision pending the submission of further information. Statistics in relation to listing applications handled by the Listing Committee are set out in the tables below.

Meetings at which IPO applications were considered	2006	2005
Meetings Within the Regular Schedule	42	41
Specially Convened Meetings	2	3
Listing Applications considered by the Listing Committee	2006	2005
Main Board	65	76
GEM	6	13
Total	71	89
Applications Approved		
Main Board	59	67
GEM	5	11
Total	64	78
Applications Rejected		
Main Board	3	1
GEM (see note below)	1	1
Total	4	2
Decisions Deferred Pending Further Information		
Main Board	3	8
GEM	0	1
Total	3	9
Applications Subsequently Listed to 31st December		
Main Board	51	55
GEM	5	9
Total	56	64

Note: The GEM application rejected in 2006 represents the withdrawal of an approval that had previously been granted in light of additional information not available when the listing application had initially been considered.

64. An appeal was made in respect of one of decisions by the Committee to reject a Main Board applicant. That appeal was unsuccessful. An appeal was also made against the Committee's decision to withdraw its earlier approval of a GEM listing application. That appeal was successful and the applicant subsequently submitted an application for listing.
65. The Listing Division may also reject listing applications without the direct involvement of the Listing Committee. In the year under review three applications (including one arising from a very substantial acquisition treated as a new listing) were rejected by the Listing Division. Two of these decisions were upheld on initial review by the Committee but subsequently overturned. The other decision was overturned on its initial review.

CANCELLATION OF LISTING OF LISTED ISSUERS

66. The power to approve the cancellation of listing of securities (“delisting”) rests with the Listing Committee. The procedures adopted for Main Board and GEM issuers differ:
- The delisting procedures for Main Board companies which involve three stages each of six months duration are set out in Practice Note 17 to the Main Board Listing Rules. A company placed in the third stage of the procedures has a deadline, normally of six months, within which to submit a resumption proposal. If it does not submit a proposal within that time (or if it submits one which is determined not to be viable) the company’s listing will be cancelled.
 - GEM Rules 9.14 to 9.18 deal with the delisting of GEM companies but there is no Practice Note in relation to the delisting of GEM issuers. Long suspended GEM companies are given notice under the ambit of GEM Rules 9.14 to 9.18 of the Exchange’s intention to delist them. The companies are then provided with a deadline of six months within which to submit a valid resumption proposal or, if they fail to provide a valid proposal, to be delisted.
67. The Listing Committee’s approval is required to place a Main Board company into the third stage of the delisting procedures, to give a GEM company notice of intention to delist or to cancel the listing of a Main Board or GEM company. The Listing Committee’s decision to delist a Main Board or GEM issuer may be subject to review by the Listing (Review) Committee and, in turn, also the Listing Appeals Committee.
68. At its regular meetings, the Listing Committee:
- Approved placing two Main Board issuers in to the third stage of the delisting procedures. Neither of these decisions was appealed against.
 - Approved giving seven GEM issuers notice of the Exchange’s intention to delist them. None of these decisions was appealed against.
 - Approved cancelling the listing of one Main Board issuer that had not submitted a resumption proposal in accordance with Practice Note 17. This decision was not appealed against and the company was delisted.
 - Approved cancelling the listing of three GEM issuers that had not submitted resumption proposals. None of these decisions was appealed against and the companies were delisted.
 - Approved cancelling the listing of one Main Board issuer after rejecting as not viable a resumption proposal that had been submitted. This decision was appealed against and the review remains outstanding at the year end.
 - Approved cancelling the listing of one GEM issuer after rejecting as not viable a resumption proposal that had been submitted. This decision was upheld on review.
69. In the Feedback Statement on the Consultation on Continuing Listing Criteria and Related Issues, published on 7 February 2005 (the “Feedback Statement”), the Listing Division commented, “The experience of the Listing Division over the last eighteen months also suggests that the timing, presentation and substance of resumption proposals for long-suspended companies frequently fall short of the Exchange’s expectations. In particular this experience suggests that compliance with Rule 13.24 of the Main Board Listing Rules (Rule 17.26 of the GEM Listing Rules), formerly paragraph 38 of the Listing Agreement is best achieved if the applicant can present a clear, plausible and coherent proposal which meets or is close to the quantitative standards required for a new listing applicant under Chapter 8 of the Main Board Listing Rules.”

CANCELLATION OF LISTING OF LISTED ISSUERS *(Continued)*

70. In its previous annual report the Committee expressed its strong support for the views above. This continues to be the case and received practical endorsement at a case considered by the Committee in the course of the year. In that case a company listed on GEM had been given notice that the Exchange intended to exercise its right to cancel the company's listing and had been given a period of six months within which to submit a viable resumption proposal. The company had been required to submit that proposal ten business days before the expiry of the six month deadline. The company had submitted the proposal one day before the deadline expired. The Listing Division considered that the proposal which had been submitted lacked sufficient detail to support its creditability and to demonstrate that it was a viable resumption proposal and on that basis recommended to the Committee that the company should be delisted.
71. The company's legal advisers requested that additional time be allowed for the company to address the Listing Division's concerns in respect of the resumption proposal. In considering this request the Committee noted that resumption proposals were expected to be clear and credible; to demonstrate their viability; and to be in sufficient detail that they could be submitted to the Committee. If a company submitted a proposal close to the deadline it ran the risk that whatever proposal was submitted would not meet these requirements. If the Listing Division engaged in detailed correspondence and discussion with companies that submitted late resumption proposals the delisting process would become protracted and this was to be avoided. Consequently the Committee did not allow additional time.
72. At its policy meeting in November 2006 the Committee approved proposals to enhance the information available about long suspended companies on HKEx's website. These proposals came into effect in January 2007.

SPONSORS AND SUPERVISORY STAFF

73. Sponsors play an important role in the listing application process. They are the principal conduit of information about listing applicants to the Listing Division which uses the information and representations received to prepare reports for the Committee with recommendations on whether to approve the listing application. It is therefore of the utmost importance that sponsors perform their role to the highest standards so as to facilitate the assessment of an application for listing.
74. Under the arrangements in force during 2006 the Committee was responsible for approving GEM sponsors and their supervisors and these matters were generally dealt with at the Committee's regular meetings. An analysis of the GEM sponsor matters considered at the Committee's meetings is set out below.

	2006	2005
Meetings to consider GEM Sponsor cases	34	34
New Applications considered and approved	2	5
Annual Reviews considered	41	43
Extensions of period for review considered	12	5
Voluntary withdrawal from list of sponsors	4	5

75. In addition to the above, during the year the Committee has taken action in three cases primarily as a consequence of concerns about the sponsor's performance or capability to meet its obligations. In all three of these cases the Committee imposed conditions on the approval of the continuation of the relevant firm's GEM sponsorship status. One of the cases was the result of a coordinated action with the SFC where the conditions imposed included that the firm would not sponsor any GEM applications for nine months and that the firm's principal supervisor would withdraw from GEM sponsor work for six months.

SPONSORS AND SUPERVISORY STAFF *(Continued)*

76. Whilst the Committee was responsible for the approval of GEM sponsors and their supervisors during 2006 this will not be the case going forward. In October 2006 the Exchange announced amendments to the Listing Rules that marked the end of an extensive project in respect of sponsors and independent financial advisers (“IFAs”) that began with a joint consultation with the SFC in 2003 (“Phase 1 Consultation”). The results of the Phase 1 Consultation were set out in joint consultation conclusions published in 2004 (“2004 Joint Consultation Conclusions”). Respondents to the Phase 1 Consultation had endorsed:
- The SFC as statutory regulator being responsible for the assessment of eligibility, on-going supervision, discipline and enforcement of the conduct of corporate finance advisers that discharged the work of sponsors and IFAs.
 - The Exchange as market operator would be responsible for implementation and administration of Listing Rule requirements, including practice notes on due diligence.
77. The project continued in 2005 when the SFC consulted the market on revisions to its licensing regime (“Phase 2 Consultation”). The results of the Phase 2 Consultation were published in April 2006.
78. In October 2006 the Exchange announced amendments to the Listing Rules as anticipated in the 2004 Joint Consultation Conclusions. Those amendments came into effect on 1 January 2007, to coincide with the SFC’s revised licensing regime becoming fully effective. Under those Rules:
- The Exchange will permit a firm to work as a sponsor or compliance adviser provided that the firm is appropriately licensed or registered with the SFC. The Exchange will no longer impose initial or continuing eligibility criteria.
 - The Exchange will have no power to sanction sponsors and compliance advisers. The Exchange will cooperate with the SFC in this regard as appropriate including, for example, referring suspected breaches to the SFC for consideration and possible investigation.
79. With effect from 1 January 2007 the Exchange has also amended its practice in relation to IFAs. Firms will now be regarded as IFAs if
- The firm is licensed or registered to undertake sponsor work (i.e. it is licensed or registered under the SFO for Type 6 regulated activity and permitted under its license or certificate of registration to undertake work as a sponsor); or
 - The firm meets the current Exchange practice as to what is acceptable i.e. it has completed two significant corporate finance transactions.
80. These amendments completed what was necessarily an extensive undertaking to review and improve the regulation of sponsors and compliance advisers. They will provide a more even playing field and better protection for the Hong Kong market. They should also minimise the regulatory overlap between the role of the Exchange and SFC, which should reduce compliance costs.

OTHER REGULAR BUSINESS

81. At each regular meeting the Listing Division provides the Committee with information on companies whose shares have been suspended from trading since the last regular meeting of the Committee. Each month the Committee receives an information paper on companies whose shares have been suspended for a prolonged period. This forms the basis for a monthly update that is published on HKEx’s website in respect of long suspended companies and companies delaying the release of results announcements.

OTHER REGULAR BUSINESS *(Continued)*

82. An analysis of other matters considered at regular meetings during the year is set out below:

Nature of decision/advice sought	Number of cases	
	2006	2005
Approval of waiver in respect of lock up restrictions in connection with a privatisation	1	–
Approval for a voluntary withdrawal of listing (including 2 cases (2005: 2 cases) involving a transfer from GEM to the Main Board)	17	14
Consideration of spin-off applications	5	4
Approval of an issuer of structured products	3	6
Approval for listing of debt securities not delegated to the Head of Listing	8	4
Requests for pre-application guidance from potential IPO candidates	8	3
Consideration of proposals for a change in domicile of the issuer	2	–
Approval of Application for waiver from public float requirement	–	1
Rejection of Application for limited waiver in relation to pre-emption rights and prior independent shareholder approval	–	1
Approval of proposed waiver of general effect from requirement to cancel repurchased shares	–	1

REVIEW MEETINGS

Excluding cases considered by the Listing Appeals Committee, the Committee considered 22 (2005: 31) requests for reviews of decisions made by the Listing Division or Committee during the year, some of which related to decisions that had been made in the previous year. Details of the reviews are set out in the table below.

Appeal Committee	Decision made by	Nature of decisions	Number of cases	Outcome
Listing Appeals Committee	Listing (Review) Committee	Viability of Resumption Proposal	3	Earlier decision upheld in 1 case, and overturned in 1 case (note)
Listing (Review) Committee	Listing Committee	Rejection of listing application	1	Earlier decision upheld
	Listing Committee	Rejection of spin off application	1	Earlier decision overturned
	Listing Committee	Viability of resumption proposal	2	Earlier decisions upheld
	Listing Committee	Maintenance of Public float	1	Earlier decision upheld
	Listing Committee	Conditions for listing	2	Earlier decision upheld in 1 case and overturned in 1 case
GEM Listing (Review) Committee	GEM Listing Committee	Viability of Resumption Proposal	3	Earlier decisions upheld
	GEM Listing Committee	Rejection of listing application	1	Earlier decision overturned
	GEM Listing Committee	Withdrawal of listing approval following new information	1	Earlier decision overturned
Listing Committee	Listing Division	Rejection of waiver in respect of public float	2	Earlier decision upheld in 1 case and overturned in 1 case
	Listing Division	Viability of resumption proposal	1	Earlier decision upheld
	Listing Division	Rejection of waiver in respect of contents of circular	2	Earlier decision upheld in 1 case and overturned in 1 case
	Listing Division	Classification of a transaction	1	Earlier decision overturned
	Listing Division	Rejection of listing application	2	Earlier decision upheld in 1 case and overturned in 1 case
GEM Listing Committee	Listing Division	Rejection of listing application	1	Earlier decision endorsed
	Listing Division	Rejection of waiver from disclosing advances	1	Earlier decision overturned

(Note: one meeting was adjourned.)

REVIEW MEETINGS *(Continued)*

83. As at the end of the period covered by this report, excluding disciplinary matters, five cases were under review as follows:

Appeal Committee	Decision made by	Nature of decisions	Number of cases
Listing Appeals Committee	Listing (Review) Committee	Viability of Resumption Proposal	2
Listing (Review) Committee	Listing Committee	Cancellation of Listing	1
Listing (Review) Committee	Listing Committee	Rejection of Listing Application	1
Listing Committee	Listing Division	Classification of a transaction	1

DISCIPLINARY MEETINGS

84. Disciplinary matters are generally dealt with at specially convened meetings of the Committee. Written representations are central to the process. A typical case will involve two rounds of written submissions from the Listing Division and from those alleged to have breached the Rules (the listed issuer and/or its directors). At the hearing the Listing Division and those against whom action is being brought, or their legal representatives, are permitted to make oral representations to supplement their written submissions and Committee members may ask questions of any party or its legal representative present at the meeting. The parties or their legal representatives may thereafter make closing submissions.
85. On 27 May 2005 the Court of Appeal ruled that the Listing (Disciplinary) Committee sitting in a disciplinary hearing constituted a “court” for the purposes of Article 35 of the Basic Law. An appeal was made to the Court of Final Appeal and this was heard in March 2006. Pending the result of that Court of Final Appeal hearing, the Committee took steps to ensure that it acted in accordance with the Court of Appeal judgment. The restrictions previously imposed on the length of oral submissions and on full legal representation at the hearing were lifted. The greater involvement of lawyers in disciplinary meetings has generally had the effect of lengthening proceedings considerably and we have also witnessed an increase in procedural challenges interrupting the disciplinary process.
86. The Court of Final Appeal overturned the decision of the Court of Appeal in a judgement handed down on 6 April 2006. A number of points emerge from that judgement.
87. First, the Court stated plainly that the Committee in performing its disciplinary role was not a “court” for the purposes of Article 35 of the Basic Law. However, in the judgement of Mr. Justice Ribeiro PJ at paragraph 91 he noted that it was common ground between the parties that the Committee is bound to observe the common law principles of fairness when discharging this burden. The Committee acknowledges this obligation and has and will continue to adopt procedures which ensure the fair disposal of business to all parties which are appropriate to the circumstances of each case.

DISCIPLINARY MEETINGS *(Continued)*

88. In doing so, we would observe that the established and overriding principle underpinning the Listing (Disciplinary) Committee's work is that proceedings before it are intended to be informal. Against this background and the accepted requirement of fairness in relation to procedural matters, the Committee will continue to entertain and consider any procedural points that are legitimately raised. However, we take the position that such applications are likely to significantly delay the final disposal of the matter and only increase costs to the party concerned and should not therefore be made lightly. Further, procedural challenges which lack substance and merit are not, in our view, consistent with the objective of an established informal process designed to deliver an early resolution of disciplinary business in the interests of all parties and the market. The Committee has little interest in being diverted from its task of determining disciplinary matters in a manner which is efficient and effective by engaging in unproductive debates on procedural issues. We will take a dim view of those applications which appear to have no other purpose than to delay the process and take appropriate action where it appears that the application is being made simply for tactical reasons. The Listing (Disciplinary) Committee wants to focus its attention on the real and substantive issues arising in the cases presented to it.
89. The second major point for present purposes concerns the role of legal advisers. The learned judge also noted (from paragraph 108 of his judgement onwards) that limiting the role of counsel depending on the circumstances may involve no breach of the principle of fairness referred to above. In essence it appears that the level to which lawyers should be involved depends upon the circumstances of each case and involves an assessment of the proportionality of any restrictions imposed.
90. Disciplinary proceedings are intended to be conducted primarily in writing and no restrictions apply to the level to which lawyers may be engaged to advise and assist parties involved in the disciplinary process prepare their submissions. Legal advisers are also present to give advice at the hearing should the parties require it. When it comes to legal representation at the hearing the Committee continues to believe that there are considerable advantages to promoting direct dialogue between the Committee and the parties concerned rather than being addressed through the medium of skilled advocates. This approach has in the past we believe enabled the Committee to obtain information necessary for the making of its decision directly from those with a personal knowledge of the facts with which the Committee is concerned. Thus it is anticipated that in the vast majority of cases the role of legal advisers at the hearing will be limited as described above but nonetheless their influence will be sufficient to ensure the fair disposal of business.
91. The Committee does acknowledge however that there may, in some cases, and in the interests of fairness be a need for an enlarged role for the lawyers engaged by the parties in terms of their making of oral submissions and responding to questions from the Committee. In our experience however, we believe that those cases would be very much the exception rather than the rule.
92. To help utilize its existing resources to the best regulatory effect, the Listing Division focuses its resources on pursuing the most blatant and serious breaches of the Listing Rules. These tend to be cases where some form of public sanction will be sought against the listed company and/or directors.
93. In addition to imposing public and private sanctions to punish past conduct by listed issuers and their management, in a number of cases the Committee has deployed its powers to require a listed issuer to take remedial action to rectify breaches of the rules. Such directions have, for example, involved the obligation to retain external assistance in the creation or revision of compliance structures. The Committee has also required directors to undergo training in order to assist directors understand and improve their performance in compliance matters.

DISCIPLINARY MEETINGS *(Continued)*

94. The Committee has continued to deploy the fast-track approach in relation to some disciplinary matters, for example, the late publication of accounts. A company that is late in publishing its accounts has breached the Listing Rules and the main issue to consider is the sanction to be imposed on the company and/or its directors having regard to any mitigating circumstances. Under the fast-track approach, provided certain conditions are met, public sanctions will be imposed on the company and not the directors. Two fast-track cases were dealt with in the period whilst six were dealt with in the same period last year.
95. Some disciplinary matters are dealt with at regular meetings of the Committee. This is especially the case where a proposal to settle a disciplinary matter with an agreed sanction is presented to the Committee for endorsement. Disciplinary matters were dealt with at seven (2005: five) regular meetings of the Committee and all resulted in a public sanctions being imposed.
96. It is important to stress that while the Committee is prepared to consider settlement proposals this approach is encouraged against the background that public outcomes are sought which are justified on the basis of the Listing Rules and the facts of the particular case. From the regulatory perspective disposal of actions through this mechanism enables us to achieve quick and effective disciplinary results and this enables us to then utilize our resources more efficiently and to focus on cases which may have a significant regulatory impact.
97. A number of the cases considered by the Committee during the year illustrate the importance of issuers' taking steps to ensure that they have adequate and appropriate systems in place to ensure that they can meet their obligations to report financial information in a timely manner. In addition, certain cases have emphasised the Exchange's views on senior management responsibility with regard to compliance systems.
98. Our headline message is that the Exchange expects directors, as senior management, to take responsibility for ensuring that listed companies identify Listing Rule compliance risk, have appropriate systems and controls in place to mitigate these risks and ensure that the systems and controls work in practice. Where deficiencies are uncovered prompt remedial action will be important. Some listed companies expect that when they self-report compliance failings that there should be no further regulatory action. Self-reporting cannot automatically lead to no sanction but it is a factor we consider, in the context of the facts and circumstances of each case, to mitigate the level of sanction. Similarly the level of co-operation shown in helping the Exchange establish the facts is a factor taken into account in mitigation and may also be the subject of disciplinary action. As required by the terms of their undertaking to the Exchange, directors of listed companies are expected to co-operate with the Exchange to facilitate the performance of its regulatory function. Failure to do so is unacceptable and will lead in appropriate cases to the imposition of a public sanction.

DISCIPLINARY MEETINGS *(Continued)*

99. An analysis of the nature of the alleged breaches of the Listing Rules considered at disciplinary and regular meetings is set out below.

Nature of Alleged breach of Listing Rules	Number of:	
	Meetings	Cases
Failure to maintain public float	1	1
Misstatement in prospectus	1	1
Failure to publish annual accounts and interim accounts within prescribed deadlines	5	5
Failure to disclose price sensitive information or significant advances to entities	7	7
Failure to obtain shareholder approval for connected or other transactions (includes reviews of two cases considered in the previous year)	7	7
Failure to respond to enquiries	1	1
Total	22	22

Note: For the purposes of the above analysis cases involving more than one alleged breach of the Listing Rules are classified according to the most serious alleged breach of the Listing Rules.

100. An analysis of the outcome of the above cases is set out in the table below:

Outcome	No. of Cases
Public Sanction – published in period	14
Public Sanction – awaiting publication	3
Private Sanction	2
No sanction	–
Cases subject to further appeal	3
Total	22

POLICY DEVELOPMENT

101. Policy matters are generally dealt with at policy meetings of the Committee as this helps to ensure broad participation from the Committee membership. The Committee aims to hold policy meetings on a quarterly basis. Nonetheless, it is sometimes necessary for issues to be considered at regular meetings of the Committee. These items are normally in the nature of reporting back on minor revisions to policy previously agreed at quarterly meetings or amendments to the Listing Rules which had previously been approved at meetings which were minor in nature but which, nonetheless, required the Committee's approval.
102. We summarise in the table below the policy matters considered at the Committee's policy meetings on 23 January 2006, 27 April 2006, 24 July 2006, 28 September 2006 and 27 November 2006 and at other meetings on 7 September and 14 December 2006.

Significant matters considered at Listing Committee Policy and other meetings

23 January 2006

- Proposed Housekeeping Rule Amendments to the Main Board and GEM Listing Rules previously considered by the Listing Committee on 17 October 2005 – Reporting back
- Publication of a reconciliation of quarterly results to Hong Kong or International Financial Reporting Standards

POLICY DEVELOPMENT *(Continued)*

Significant matters considered at Listing Committee Policy and other meetings *(Continued)*

- Policy implications of listing overseas gambling companies
- Review of Requirements on Profit Forecasts
- Review of profit record requirement under Rule 8.05(1) – implications arising from accounting standards that require fair value adjustments to be reflected in the income statement
- Streamlining Policy for transfer of GEM companies to the Main Board of the Exchange
- Follow up on the Policy Framework for the listing of new applicants under Rule 8.05B(3)
- Requirements for Land Use Title of Properties Situated in the Mainland of the People's Republic of China
- Formation of Joint Ventures by Listed Issuers for Property Acquisitions and Developments
- Non-Competition Undertakings and Delineation Agreements
- Review of Approach to Pre-vetting Public Documents of Listed Issuers
- Review of Suspension Policy
- Issues arising from the requirements for Qualified Accountant

27 April 2006

- Abolition of Requirement for Main Board Issuers to Publish Paid Announcements in Newspapers and Related Matters – Publication of Exposure Conclusions

24 July 2006

- Amendments to the Listing Rules in respect of Structured Products arising from Publication of the SFC Consultation Conclusions Report
- Number of Deputy Chairmen on the Listing Committee
- IPO Application Procedures – Scheduling of Listing Committee Hearings
- Waiver application in relation to property companies engaging in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders – Report back
- Regulation of sponsors and compliance advisers: phase 2
- “PRC Governmental Body” exclusion from sponsor and IFA independence test
- Abolition of Requirement for Main Board Issuers to Publish Paid Announcements in Newspapers and Related Matters – Further Minor Listing Rule Amendments
- Report back on policy issues arising from proposed re-designation of domestic shares into H-shares
- Listing of Overseas Issuers
- Clarification of formal reporting requirements for profit forecasts and the release of price sensitive information
- Publication of a reconciliation of quarterly results to Hong Kong or International Financial Reporting Standards – Report back

POLICY DEVELOPMENT *(Continued)*

Significant matters considered at Listing Committee Policy and other meetings *(Continued)*

- Whether and in what circumstances the Exchange should review existing commercial arrangements between a listing applicant and third parties to ensure the integrity of the Listing Rules
- Proposed criteria to supplement the profit record requirement under Rule 8.05(1) – Implications arising from accounting standards that require fair value adjustments to be reflected in the income statement
- Whether and to what extent Qualified Accountants/Chief Financial Officers for PRC based companies may themselves reside principally outside the principal place of operations of the companies
- Rules 13.13 to 13.15 of the Main Board Listing Rules (Advances to Entities) – Application to Listed Securities Houses Revisited
- Information Paper on the handling of Listing Policy Issues

7 September 2006

- Proposed Amendments to the Main Board and GEM Listing Rules Relating to the Separation of the Role of the SFC Chairman from the SFC Executive

28 September 2006

- Regulation of Sponsors and Compliance Advisers: Phase 2
- Proposed Abolition of Short-form Preliminary Results Announcements
- Handling of Listing Policy Issues

27 November 2006

- Amendments to the Listing Rules to Eliminate Expiry Announcements in Respect of Cash Settled Structured Products
- Directors: reasons for resignation
- Multiple directorships
- Policy implications of listing overseas gambling companies
- “PRC Governmental Body” exclusion from sponsor and IFA independence test
- Application of Voting Requirements under Main Board Listing Rule 6.12 for Withdrawal of Listing
- Review of Reports on Long Suspended Companies
- Proposed procedures and indicators for triggering referrals to the newly established Financial Reporting Council
- Timeliness of periodic financial reporting and whether quarterly reporting should be introduced for Main Board issuers
- Waiver application in relation to property companies engaging in acquisitions of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders – Report back

14 December 2006

- Reduction in Transaction Levy

CONCLUSION

103. I would again like to take this opportunity to thank my two Deputy Chairmen and all my other colleagues who served on the Committee during the last year for the significant contribution they have willingly made both over the last year but also in earlier years. I should also like to acknowledge the generous support of members' employers without which the Committee could not operate as effectively.
104. Our thanks are also due to Committee Secretariat in the Listing Division for their administrative assistance and guidance during the year.
105. This report was approved for submission to the boards of SEHK and HKEx on 1 March 2007.

Carlson Tong
Chairman

MAIN BOARD AND GEM LISTING COMMITTEE MEMBERS LIST (As at 8 March 2007)

Chairman

TONG Ka Shing, Carlson

Deputy Chairmen

McAFEE William Gage

KO Yuk-yin, Teresa

Ex officio member

CHOW Man Yiu, Paul

Other members (in alphabetical order)

ALLEN Jamie

BEST Roger Thomas

BROWN Melissa

BROWN Stephen James

BUNKER Robert Edward John

CHEN Yang Chung, Roy

CHEUNG Ching Leung, David

FUNG Shing Kwong

HUI Chiu Chung, Stephen

HUNT Stephen Burnau

IP Koon Wing, Ernest

KO Po Ming, Alex

LEE Tze Hau, Michael

LEE Raymond

LONGO Joseph Paul

LOW Chee Keong

NG Kim Guan, Alex

SCHRANTZ Alexander

SLEVIN Francis Joseph

STANNARD David Peter Robert

SUN Chang

SUN Tak Kei, David

TSOI Tong Hoo, Tony

WONG Koon Man, Adrian