

**Frequently Asked Questions Series 5 (Released on 2 May 2008/ Last Updated in February 2020)**

**Rule Amendments relating to GEM Review**

**Status of “Frequently Asked Questions” Table**

The following frequently asked questions (FAQs) are designed to help issuers understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Please contact the Listing Division at the earliest opportunity with any queries.

## **Part 1: GEM Rules**

<b>No</b>	<b>GEM Rule</b>	<b>Query</b>	<b>Response</b>
1		Withdrawn in February 2020	
2	3.10	Where a GEM-listed company has successfully transferred its listing to the Main Board, will it still be held accountable for breaches of GEM Listing Rules committed at the time when it was listed on GEM?	Yes. The issuer will still be subject to the disciplinary actions that can be taken by the GEM Listing Committee under the Rules.  [Updated in February 2020]
3		Withdrawn in February 2020	
4		Withdrawn in February 2020	
5		Withdrawn in February 2020	

No	GEM Rule	Query	Response
6		Withdrawn in February 2020	
7		Withdrawn in February 2020	
8		Withdrawn in February 2020	
9		Withdrawn in February 2020	
10		Withdrawn in February 2020	
11	11.14	Where the Exchange accepts a shorter operating period for infrastructure project companies, Mineral Companies and other circumstances stated under Rule 11.14, will there be a corresponding relaxation of the minimal operating cash flow requirement?	No. The listing applicant must still meet the minimum operating cash flow and other eligibility requirements.  [Updated in February 2020]
12		Withdrawn in February 2020	
13	11.23(6), 11.23(9)	Can debt securities be included when calculating an applicant's market capitalisation?	No. Only equity securities can be included in the calculation.  [Updated in February 2020]

## **Part 2: Main Board Rules**

<b>No</b>	<b>MB Rule</b>	<b>Query</b>	<b>Response</b>
14		Withdrawn in February 2020	
15	Chapter 9A general	Can a GEM transfer applicant choose/ buy its new Main Board stock code?	Yes, all GEM transfer applicants must change its stock code when it transfers to the Main Board, and they can choose/ buy their preferred stock code under the process same as that applicable to new Main Board IPO applicants. [Updated in February 2020]
16	9A.02 (GEM 9.24)	Is shareholders' approval required for transfer of listing under the Listing Rules?	No. However, it may be required under the transfer applicant's constitutive documents, or under applicable company law in the jurisdiction of incorporation of the transfer applicant. [Updated in February 2020]
17	9A.02(2)	Can a GEM issuer submit a transfer application before it publishes the annual report of the first full financial year which commenced after the date of its GEM listing, if such annual report will be published before its intended date of listing on the Main Board? Please provide an example to illustrate when a GEM issuer can submit its transfer application.	No. A GEM issuer applying for transfer must have published such annual report when it submits its transfer application. For example, if a GEM issuer has a December financial year end and is listed on GEM in 2008, under Rule 9A.02(2), it could submit a transfer application after the annual report for the financial year 2009 has been published and distributed to its shareholders, which is required to be within the first three months of 2010 under GEM Rule 18.03. [Updated in February 2020]

No	MB Rule	Query	Response
18		Withdrawn in February 2020	
19		Withdrawn in February 2020	
20	9A.02(3)	What factors would the Exchange take into consideration in assessing whether a breach by a GEM transfer applicant is serious?	<p>The Exchange will normally have regard to the following factors:</p> <ul style="list-style-type: none"> <li>• the nature and extent of the breach (for example, whether it involves any prejudice or risk of prejudice to investors such as failure to obtain prior shareholder approval for connected transactions, or failure to make disclosure under Rule 13.09, and the duration and frequency of the breach); and</li> <li>• whether there are evidences that the breach involves fraud, deceit or dishonesty, is deliberate or due to recklessness, or reveals material or systemic weaknesses in the listed company's internal control procedures.</li> </ul> <p>[Updated in February 2020]</p>
21	9A.02(1), 8.09(2), paragraph 7(1)(a) of Appendix 28 to Main Board Rules	How should a transfer applicant demonstrate compliance with the minimum market capitalisation requirement under Rule 8.09(2) or	Market capitalisation should be calculated using the share price on the date of listing on the Main Board. In practice, the Exchange will assess whether the applicant will be able to meet the MB Mkt Cap Requirement based on the closing share price on the trading day immediately before the first day of the proposed transfer (i.e. Main Board listing). The Exchange will also examine the applicant's share price movement

No	MB Rule	Query	Response
	(GEM Rule 9.24)	paragraph 7(1)(a) of Appendix 28 to Main Board Rules (“ <b>MB Mkt Cap Requirement</b> ”)?	<p>during the trading record period and if the applicant had not been able to meet the MB Mkt Cap Requirement for a prolonged period of time, the Exchange will closely monitor the applicant’s share price movement and critically examine any unusual increase, especially when close to the day of transfer. The Exchange may not approve the transfer application until the applicant and its sponsor provide reasonable and satisfactory explanation on the unusual share price movement. Further, if the applicant’s share price and/ or trading volume had been volatile, the Exchange will require the applicant to make relevant prominent disclosure in the transfer announcement/ listing document.</p> <p>[Updated in February 2020]</p>
22	9A.02(3)	How can a GEM issuer ascertain it fulfills the requirement under Rule 9A.02(3) before it submits a transfer application?	<p>The GEM issuer may request for a written confirmation from the Listing Department on whether it can fulfil the requirement under Rule 9A.02(3).</p> <p>The Listing Department will confirm whether the GEM issuer has been the subject of any disciplinary investigation by the Exchange in relation to a serious breach or potential serious breach of any GEM Listing Rules or Exchange Listing Rules in the past 12 months <u>from the date of the confirmation letter</u>. If additional information that alters such confirmation comes to light within two months of the letter, the Exchange will notify the GEM issuer in writing. [Updated in February 2020]</p>
23		Withdrawn in February 2020	
24		Withdrawn in February 2020	
25		Withdrawn in February 2020	
26	GEM Rule	Will the Listing Department pre-vet the	The Listing Department will not pre-vet the announcement required

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	9.26 Paragraph 11 to Appendix 28 of MB Rule	announcements as required by (i) GEM Rule 9.26 and (ii) paragraph 11 to Appendix 28 of Main Board Rules?	under GEM Rule 9.26. The announcement under paragraph 11 to Appendix 28 of Main Board Rules must be submitted to the Exchange together with the transfer application and will be vetted and approved by the Exchange before it can be published. [Updated in February 2020]
27	Paragraph 11 to Appendix 28 and 11.04	Will trading halt or suspension be required pending the announcement/ listing document or at any time during the transfer process?	GEM transfer applicants are required to observe the trading halt or suspension policy and the general disclosure obligations under the GEM Rules as long as they are still listed on the GEM.  A GEM transfer applicant must assess whether the information relating to the transfer process would require disclosure under GEM Rule 17.10, having considered its particular circumstances. A trading halt or suspension would be necessary in any of the circumstances described in GEM Rules 17.11A(1) to (3) where an announcement cannot be made. [Updated in February 2020]
28	9A.10	If a GEM issuer transfers the listing of its equity securities to the Main Board, would the related GEM-listed warrants, options or convertible instruments be transferred to Main Board?	Yes, any related GEM-listed warrants, options or convertible instruments are expected to transfer to the Main Board simultaneously with the equity securities, which is in line with the spirit of Main Board Listing Rules 15.05 and 16.02. . [Updated in February 2020]
29	9A.11	If there is an issue of new shares at the time of or shortly before the transfer of listing, will there be any parallel trading arrangements (i.e. with existing shares traded on GEM and newly issued shares traded on the Main Board)?	No. Parallel trading of securities of the same issuer on both boards is not allowed. There should be a clear-cut date for cessation of trading on GEM and commencement of trading on the Main Board. [Updated in February 2020]
30	9A.12(2)	If a GEM issuer obtained shareholders' approvals for continuing connected transactions which will take place within a certain period, and transfers its listing from GEM to Main Board during that period, would it be necessary for the GEM issuer to obtain shareholders'	No, if there has not been any change of facts or circumstances since the original shareholders' approval was granted, a GEM issuer does not need to refresh the shareholders' approval merely because of its transfer to the Main Board. The effect of the shareholders' approval shall continue until its original expiry date. [Updated in February 2020]

No	MB Rule	Query	Response
		approval again after the transfer to the Main Board?	
31	10.07 & 10.08	Will there be restrictions on disposal/ issuance of shares or fund-raising activities for a GEM issuer during its transfer application process?	No, unless such activities would lead to market disruption or unfairness. Issuers should note that the requirements under Main Board Rules 10.07(1) and 10.08 are not applicable to GEM transfer as provided under Rule 10.07(4) and 10.08(5). [Updated in February 2020]
32		Withdrawn in February 2020	
33		Withdrawn in February 2020	
34	General	Will there be a listing ceremony for transferring to the Main Board from GEM?	Yes, at the issuer's request