
AMENDMENTS TO THE GEM LISTING RULES

Chapter 3

GENERAL

COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE GEM LISTING COMMITTEE, THE GEM LISTING REVIEW COMMITTEE AND THE LISTING DIVISION

Disciplinary ~~procedures~~ jurisdiction and sanctions

- 3.4410 (1) The Exchange may bring disciplinary actions and impose or issue the sanctions in rule ~~3.10~~ may be imposed or issued 3.11 against any of the following:—
- (a) a listed issuer or any of its subsidiaries;
 - (b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);
 - (c) any member of the senior management of a listed issuer or any of its subsidiaries;
 - (d) any substantial shareholder of a listed issuer;
 - (e) any significant shareholder;
 - (f) any professional adviser of a listed issuer or any of its subsidiaries;
 - (g) any employee of a professional adviser of a listed issuer or any of its subsidiaries;
 - (~~h~~) any authorised representative of a listed issuer;
 - (~~i~~) any supervisor of a PRC issuer; ~~and~~
 - (j) ~~the~~ any guarantor of an issuer in the case of a guaranteed issue of debt securities or structured products; and
 - (k) any other party who gives an undertaking to or enters into an agreement with the Exchange.

- (2) For the purposes of this rule:
- (a) “professional adviser” includes any financial adviser, independent financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the GEM Listing Rules. It does not include Sponsors or Compliance Advisers; and
- (b) “senior management” includes:
- (i) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;
- (ii) any person who performs managerial functions under the directors’ immediate authority; or
- (iii) any person referred to as senior management in the listed issuer’s corporate communication or any other publications on the Exchange’s website or on the listed issuer’s website.

Notes:

~~(34) The scope of any disciplinary action taken, in particular any ban imposed on against a professional adviser pursuant to under rules 3.10(5), 3.10, 3.11 and 3.11B, including any ban imposed on a professional adviser under rule 3.11(9), shall be limited to matters governed by or arising out of the GEM Listing Rules.~~

~~(42) In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 3.11. In particular, Professional advisers’ obligations to, when acting in connection with GEM Listing Rule matters on which they are instructed to advise, shall use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the GEM Listing Rules. They must not knowingly provide any information to the Exchange which is false or misleading in a material particular are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member.~~

3.101 ~~In addition to its powers to suspend, resume or cancel a listing, if the GEM Listing Committee finds that there has been a breach of the GEM Listing Rules by any of the parties named in rule 3.140, of the GEM Listing Rules it may: —~~

- (1) issue a private reprimand;

- (2) issue a public statement ~~which involves~~involving criticism;
- (3) issue a public censure;
- ~~(4) report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of Banking or any professional body) or to an overseas regulatory authority;~~
- ~~(5) ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the GEM Listing Committee for a stated period;~~
- ~~(6) require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;~~
- ~~(47) in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the GEM Listing Rules, state publicly that in the Exchange's opinion the occupying retention of the position of office by the director or senior management of a named listed issuer or any of its subsidiaries by an individual is prejudicial may cause prejudice to the interests of investors;~~
- (5) in the case of serious or repeated failure by a director to discharge his responsibilities under the GEM Listing Rules, state publicly that in the Exchange's opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries;
- ~~(8) in the event a director remains in office following a public statement pursuant to paragraph (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;~~
- ~~(69) in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the GEM Listing Rules, order that deny the facilities of the market to a listed issuer be denied for a specified period and/or until fulfilment of specified conditions to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;~~
- (7) suspend trading in the listed issuer's securities or any class of its securities;
- (8) cancel the listing of the listed issuer's securities or any class of its securities;

- (9) ban a professional adviser or a named individual employed by a professional adviser from representing any or a specified party in relation to a stipulated matter or matters coming before the Listing Division or the GEM Listing Committee for a stated period;
- (10) recommend reporting the conduct of the party in breach to the Commission or another regulatory authority, whether in Hong Kong or overseas (for example, the Financial Secretary or any professional body);
- (11) order rectification or other remedial action to be taken within a stipulated period; and
- (12) take, or refrain from taking, such other action as it thinks fit, including making public any action taken pursuant to paragraphs (4), (5), (6), (8) or (9) above.

Notes:

- 1. Any reference to the GEM Listing Committee in rules 3.11, 3.11A and 3.11B includes both the GEM Listing Committee and the GEM Listing Review Committee.
- 2. Where the GEM Listing Committee or the GEM Listing Review Committee (as the case may be, after the decision has become final), issues:
 - (i) a public sanction under rule 3.11, such sanction will be published with reasons; or
 - (ii) a private reprimand, the substance of such sanction may be published with reasons without disclosing the identities of the parties involved.
- 3. In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie under rule 3.10.
- 4. For the purposes of this rule and rule 3.11A(2) below, denying "facilities of the market" is not intended to mean cancellation of listing. It is meant to include withholding approval of any matters that require approval from the Exchange, including the issuance of shares.

- 3.11A (1) If a statement under rule 3.11(4) with follow-on actions in sub-rule (2) below, or rule 3.11(5), has been made against an individual, the listed issuer:

(a) named in the statement; or

(b) in respect of which any of its subsidiaries is named in the statement

must include in all of its announcements and corporate communications to be published a reference to the sanction made under rule 3.11(4) or 3.11(5), unless and until that individual ceases to be a director or senior management, as the case may be, of the named listed issuer and/or its subsidiaries.

(2) If an individual against whom a statement has been made under rule 3.11(4) or 3.11(5) occupies the position of director or senior management, as the case may be, of the named listed issuer or subsidiary, as the case may be, after a date to be determined and specified by the GEM Listing Committee, the GEM Listing Committee may, at any time in its sole discretion, impose the follow-on actions below:

(a) order that the facilities of the market be denied to that issuer for a specified period; and/or

(b) suspend or cancel the listing of that issuer's securities or any class of its securities.

(3) The GEM Listing Committee may make public any follow-on action imposed under rule 3.11A(2).

3.11B In addition to imposing the sanctions in rule 3.11 when a party has failed to discharge obligations or responsibilities expressly imposed on that party by a specific GEM Listing Rule, the GEM Listing Committee may impose the sanctions in rule 3.11 on any of the parties named in rule 3.10 above, if it finds the party has:-

(1) failed to comply with a requirement imposed by the Listing Division or the GEM Listing Committee;

(2) contravened an undertaking given to or breached an agreement with the Exchange in relation to a listing matter; or

(3) caused by action or omission or knowingly participated in a contravention of the GEM Listing Rules or a requirement referred to in (1) above.

Note: In respect of parties covered by section 23(8) of the SFO, a sanction may be imposed under rule 3.11B(3) in and only in the circumstances prescribed for disciplinary action in the arrangements agreed from time to time between the Exchange and the relevant professional regulatory body; and,

in considering whether a party covered by section 23(8) of the SFO has breached rule 3.11B(3), the Exchange will take into account, among other things, whether such party has knowingly or recklessly facilitated or participated in a breach of the GEM Listing Rules or any undertaking given to or any agreement with the Exchange.

- 3.12 The GEM Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 3.10, ~~and 3.11, 3.11A and 3.11B~~ (a “review applicant”), give its reasons in writing for the decision made against that review applicant pursuant ~~thereto~~ to rules 3.10, 3.11, 3.11A and 3.11B and that review applicant shall have the right to have the decision against him referred to the GEM Listing Review Committee for a further and final review. The GEM Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting. Subject to rule 3.17A, the decision of the GEM Listing Review Committee on review shall be conclusive and binding on the review applicant. If requested by the review applicant, the GEM Listing Review Committee will give reasons in writing for its decision on review.
- 3.13 A request for a review of any decision of ~~the Listing Division or the~~ GEM Listing Committee made pursuant to rule 3.12 must be ~~notified to the Exchange~~ served on the Secretary within ~~7~~ seven business days of the ~~Listing Division’s or~~ issue of the GEM Listing Committee’s decision unless written reasons for a decision are requested, in which case a request for a review of that decision must be notified within ~~7~~ seven business days of the ~~receipt~~ issue of the written reasons.
- 3.14 Any request for ~~the Listing Division,~~ the GEM Listing Committee or the GEM Listing Review Committee to give its reasons in writing for its decision shall be made within three business days of the issue of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by ~~the Listing Division,~~ the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 business days of the receipt of the request.

Chapter 4

GENERAL

REVIEW PROCEDURE

Time for application

- 4.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the GEM Listing Committee or the GEM Listing Review

Committee (as the case may be) under rules 4.05(1), 4.06, 4.06A and 4.16(7) must be served on the Secretary within seven business days of ~~receipt~~ the issue of either the relevant decision, or if the relevant party requests written reasons under rule 4.13(1), those written reasons.

- (2) A Review Request for reviewing a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within five business days of ~~receipt~~ the issue of the written decision under rule 4.13(2).
- (3) A Review Request made under rule 4.06 for reviewing a decision of the Listing Division to direct the resumption of dealings or, if such decision has been referred to the GEM Listing Committee for review, the GEM Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within five business days of ~~receipt~~ of the issue of the written decision under rule 4.13(3).

Request for written reasons

- 4.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of dealings, any request for ~~on receipt of a decision by~~ the Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) to give written reasons for its decision shall be made by a relevant party within ~~has~~ three business days of the issue of ~~to request written reasons for~~ the decision. The Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) will provide written reasons within 14 business days of the receipt of the request. Such written reasons will be provided to all parties to the review.

Chapter 5

GENERAL

DIRECTORS, COMPANY SECRETARY, BOARD COMMITTEES, AUTHORISED REPRESENTATIVES AND CORPORATE GOVERNANCE MATTERS

Directors

5.02A Directors, in accepting to be directors of a listed issuer, shall be considered as having:

- (1) irrevocably appointed the listed issuer as their agents, for so long as they remain directors of the issuer, for receiving on their behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and
- (2) authorised the Executive Director – Listing, or to any person authorised by the Executive Director – Listing to disclose any of their personal particulars given by them to members of the GEM Listing Committee or the Commission and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

5.13A Directors of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

- (1) as soon as reasonably practicable after their appointment, their telephone number, ... for correspondence from and service of notices and other documents by the Exchange or the Commission;

...

Any correspondence from and/or service of notices and other documents by the Exchange or the Commission to the directors ... If directors or former directors fail to provide the Exchange with their up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to them, they may be not alerted to any proceedings commenced against them by the Exchange or the Commission.

Chapter 17

EQUITY SECURITIES

CONTINUING OBLIGATIONS

Announcements, circulars and other documents

Information Gathering

- 17.55A An issuer must provide to the Exchange or the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:
- (1) any information that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
 - (2) any other information or explanation that the Exchange or the Commission may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the GEM Listing Rules or the Securities and Futures Ordinance.
- 17.55B In responding to enquiries or investigations by the Exchange or the Commission, a party subject to the enquiries or investigations must provide to the Exchange or the Commission information or explanation which is accurate, complete and up-to-date.

Chapter 18

EQUITY SECURITIES

FINANCIAL INFORMATION

Annual reports

- 18.39 Brief biographical details in respect of the directors and senior managers of the listed issuer. Such details will include ... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part A

Equity Securities

In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed

Information about the issuer's management

41. (1) ... In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include ... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part B

Equity Securities

In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed

Information about the issuer's management

34. ... In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1

CONTENTS OF LISTING DOCUMENTS

Part C

Debt Securities

In the case where listing is sought for debt securities

Information about the issuer's management

46. ... In addition, brief biographical details in respect of every director or proposed director (or any person who performs an important administrative, management or supervisory function) must be provided. Such details must not be less than those required to be disclosed in an announcement relating to the appointment or re-designation of the director pursuant to rule 17.50(2) and would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities.

Appendix 6

DIRECTOR'S AND SUPERVISOR'S FORMS

Form A

Director's Declaration, Undertaking and Acknowledgement

Part 2

UNDERTAKING AND ACKNOWLEDGEMENT

- (b) I shall, when I am a director of the issuer and after I cease to be so:
- (i) provide to The Stock Exchange of Hong Kong Limited (the "Exchange") and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:
 - (1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

- (2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and
 - (ii) cooperate in any investigation conducted by the Listing Division ... and/or the Listing Committee (as such term is defined in rule 1.01 of the GEM Listing Rules) or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;
- (c) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):
 - (i) as soon as reasonably practicable after my appointment, my telephone number, ... for correspondence from and service of notices and other documents by the Exchange or the Commission;

...

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me ... I acknowledge that, if I, as the director or former director of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission;

- (d) I, in accepting to be a director of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and (ii) authorise the Executive Director – Listing Division, or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, ...

Appendix 6

DIRECTOR'S AND SUPERVISOR'S FORMS

Form B

Director's Declaration, Undertaking and Acknowledgement (PRC Issuer)

Part 2

UNDERTAKING AND ACKNOWLEDGEMENT

- (b) I shall, when I am a director of the issuer and after I cease to be so:
- (i) provide to the Exchange and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:
 - (1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
 - (2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and
 - (ii) cooperate in any investigation conducted by the Listing Division ... and/or the Listing Committee (as such term is defined in rule 1.01 of the GEM Listing Rules) or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;
- (c) I, in accepting to be a director of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and (ii) authorise the Executive Director – Listing Division, or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, ...
- (d) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

- (i) as soon as reasonably practicable after my appointment, my telephone number, ... for correspondence from and service of notices and other documents by the Exchange or the Commission;

...

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me ... I acknowledge that, if I, as the director or former director of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission; and

Appendix 6

DIRECTOR'S AND SUPERVISOR'S FORMS

FORM C

Supervisor's declaration and undertaking and acknowledgement in respect of an issuer incorporated in the People's Republic of China ("PRC")

Part 2

UNDERTAKING AND ACKNOWLEDGEMENT

1. in the exercise of my powers and duties as a supervisor of ...

...

- (g) I, in accepting to be a supervisor of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain a supervisor of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Securities and Futures Commission (the "Commission"); and (ii) authorise the Executive Director – Listing Division ..., or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee ... or the Commission and, ...
- (h) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):
- (i) as soon as reasonably practicable after my appointment, my telephone number, ... for correspondence from and service of notices and other documents by the Exchange or the Commission;

...

2. I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me ... I acknowledge that, if I, as the supervisor or former supervisor of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission.
3. I shall, when I am a supervisor of the issuer and after I cease to be so:
 - (a) provide to the Exchange and the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:
 - (i) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
 - (ii) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and
 - (b) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear.