

Chapter 2

GENERAL

INTRODUCTION

Preliminary

- 2.01 The principal function of the Exchange is to provide a fair, orderly and efficient market for the trading of securities. In furtherance of this, the Exchange has made the GEM Listing Rules under section 23 of the Securities and Futures Ordinance prescribing the requirements for the listing of securities on GEM. These comprise requirements which have to be met before securities may be listed and also continuing obligations with which an issuer and, where applicable, a guarantor must comply once listing has been granted. The GEM Listing Rules have been approved by the Commission pursuant to section 24 of that Ordinance.
- 2.02 The purpose of this book is to set out and explain those requirements.
- 2.03 Although GEM is operated by the Exchange, it is entirely distinct from the Main Board. As such the GEM Listing Rules apply only to GEM and the Main Board Listing Rules apply only to the Main Board.
- 2.04 Any entity seeking to withdraw its listing on GEM with a view to listing on the Main Board or vice versa will be obliged to comply fully with the respective rules applicable to the respective stock markets.
- 2.05 The GEM Listing Rules do not apply to Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Clearing Rules of The SEHK Options Clearing House Limited. The Traded Options Committee of the Exchange is primarily responsible for the supervision and regulation of the options market. Interested parties are directed to the Options Trading Rules of the Exchange and the Clearing Rules of The SEHK Options Clearing House Limited, as from time to time in effect.

General principles

- 2.06 The GEM Listing Rules are designed to ensure that investors have and can maintain confidence in the market and in particular that:—
- (1) applicants are suitable for listing;
 - (2) the issue and marketing of securities are conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer and, in the case of a guaranteed issue, the guarantor and of the securities for which listing is sought;
 - (3) investors and the public are kept fully informed by listed issuers and, in the case of a guaranteed issue, the guarantors of material factors which might affect their interests;
 - (4) all holders of listed securities are treated fairly and equally;
 - (5) directors of a listed issuer act in the interests of its shareholders as a whole – particularly where the public represents only a minority of the shareholders; and

- (6) all new issues of equity securities by a listed issuer are first offered to the existing shareholders by way of rights unless they have agreed otherwise.

In these last 4 respects, the GEM Listing Rules seek to secure for holders of securities, other than controlling interests, certain assurances and equality of treatment which their legal position might not otherwise provide.

- 2.07 It is emphasised that the GEM Listing Rules are not exhaustive and that the Exchange may impose additional requirements or make listing subject to special conditions whenever it considers it appropriate. Conversely, the Exchange may waive, modify or not require compliance with the GEM Listing Rules in individual cases (to suit the circumstances of a particular case), as a variety of circumstances may exist which require it to make ad hoc decisions. However, any waiver or modification of, or decision not to require compliance with, a rule, which is intended to have general effect (i.e. to affect more than one issuer and its subsidiaries at the same time) may only be granted with the prior consent of the Commission. The Exchange will not grant an individual waiver or modification of a rule, or agree not to require compliance with a rule, on a regularly recurring basis so as to create the same result as a general waiver. Consequently, both new applicants and listed issuers and, in the case of a guaranteed issue, guarantors are welcome to seek informal and confidential guidance from the Exchange at all times.
- 2.08 The GEM Listing Rules may be amended by the Exchange from time to time, subject to the approval of the Commission under section 24 of the Securities and Futures Ordinance.
- 2.09 Suitability for listing depends on many factors. Applicants for listing should appreciate that compliance with the GEM Listing Rules may not of itself ensure an applicant's suitability for listing. The Exchange retains a discretion to accept or reject applications and in reaching its decision will pay particular regard to the general principles outlined in rule 2.06. Informal and confidential guidance may be sought from the Exchange concerning the eligibility of any proposed application for listing.

Note: Queries should be addressed to the Listing Division and should, so far as practicable, be made by the Sponsor (other than in circumstances where the issuer is not required to have (or does not otherwise retain) a Sponsor).

- 2.10 Listing any securities on GEM, whether of a new applicant or a listed issuer, is in all cases subject to the approval of the Exchange.
- 2.11 No issuer may list its debt securities on GEM unless its equity securities, or the equity securities of its holding company, are already listed on GEM or will be listed on GEM at the same time as the issuer's debt securities.

Characteristics of GEM

- 2.12 GEM has been positioned as a market designed to accommodate small and mid-sized companies to which a higher investment risk may be attached than other companies listed on the Main Board. Appropriate warning and disclosure in this regard is required to be made by all issuers in their listing documents and circulars and without prejudice to the generality of this rule, reference is made to the provisions of rule 2.20.

Notes: 1 The qualifications for listing on GEM do not include any obligation to forecast future profitability.

- 2 Given that the companies listed on GEM are generally small and mid-sized companies, there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.*

- 2.13 The GEM Listing Rules require, and emphasise the on-going need for, comprehensive and timely disclosure of relevant information by all issuers. In this regard, particular attention is drawn to the following matters:—
- (1) A new applicant is required, in its initial listing document, to prepare a detailed statement of business objectives (see rule 11.15). It is subsequently required, in respect of its half-year end (in the event this follows listing) and full-year end for the financial year in which it is listed and the half-year ends and full-year ends of the two financial years thereafter, to draw up a comparison of actual business progress to the information provided in the statement of business objectives for the equivalent period and explain any material differences (including as to its use of proceeds, as indicated in the initial listing document) (see rules 18.08A);
 - (2) A listed issuer is required to publish audited annual accounts and half-year and quarterly reports, which reports need not be audited (see Chapter 18);
 - (3) [Repealed 1 January 2013]
 - (4) The directors of an issuer are collectively and individually responsible for ensuring the issuer's full compliance with the GEM Listing Rules; and
 - (5) [Repealed 1 July 2008]
- 2.14 The Exchange expects each director of an issuer to be cognizant of the GEM Listing Rules and reasonably familiar with the obligations and duties imposed upon him and the issuer pursuant to the GEM Listing Rules, the Securities and Futures Ordinance, the Companies Ordinance, the Takeovers Code and the Code on Share Buy-backs.
- 2.15 Having regard to the higher risk profile of GEM, the GEM Listing Rules impose additional responsibilities on the Compliance Adviser of an issuer by comparison to those imposed on a Compliance Adviser to a company listed on the Main Board (see Chapter 6A). Sponsors and Compliance Advisers are expected to play an important role in upholding and maintaining the standard of GEM issuers and hence the market's confidence in GEM.
- 2.16 [Repealed 1 January 2005]

- 2.17 In circumstances where breaches of the GEM Listing Rules have been identified, the Exchange will take appropriate measures to enforce compliance and/or impose appropriate disciplinary measures.

Responsibility and confirmation

- 2.18 Any listing document, circular or announcement issued by an issuer pursuant to the GEM Listing Rules is required to contain a statement of responsibility and confirmation on the part of the directors of the issuer in the following form:—

“This [document], for which the directors of the issuer collectively and individually accept full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors, having made all reasonable enquiries, confirm that to the best of their knowledge and belief the information contained in this [document] is accurate and complete in all material respects and not misleading or deceptive, and there are no other matters the omission of which would make any statement herein or this document misleading.”

Notes: 1 In cases where the directors of the issuer are responsible for part of a listing document, circular or announcement, the directors of another company being responsible for the remainder, the statement must be appropriately adapted. In exceptional cases, the Exchange may require other persons to give, or join in, the statement, in which case the statement must also be appropriately adapted.

2 Announcements required to be issued pursuant to rule 9.11 (“holding” announcements issued in connection with a resumption of trading in an issuer’s securities), 17.11 or 31.05 (announcements issued in response to enquiries by the Exchange) need not comply with this rule, as they have their own prescribed form of statements of responsibility.

3 All the directors of the issuer must, so far as reasonably practicable, participate in approving the form of any announcement to be published by the issuer, such that each accepts the responsibility and is able to provide the confirmation required pursuant to this rule. In exceptional circumstances, such as an issuer being required to publish an urgent announcement, it shall be permissible to exclude from the statement of responsibility and confirmation those directors with whom it has not been possible to communicate prior to publishing the announcement.

Disclaimer and GEM characteristics statements

- 2.19 Any listing document, circular, announcement or notice issued by an issuer pursuant to the GEM Listing Rules must contain on its front cover or inside front cover, or as a heading, a prominent and legible disclaimer statement as follows:—

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

- 2.20 Any listing document or circular and every annual report and accounts (including, where applicable, a summary financial report), half-year (including, where applicable, a summary half-year report) and quarterly report issued by an issuer pursuant to the GEM Listing Rules (excluding any Explanatory Statement issued pursuant to rule 13.08) must contain, at a prominent position in the document, and in bold type, a statement in the following terms concerning the characteristics of GEM:—

“Characteristics of GEM of The Stock Exchange of Hong Kong Limited (the “Exchange”)

GEM has been positioned as a market designed to accommodate small and mid-sized companies to which a higher investment risk may be attached than other companies listed on the Exchange. Prospective investors should be aware of the potential risks of investing in such companies and should make the decision to invest only after due and careful consideration.

Given that the companies listed on GEM are generally small and mid-sized companies, there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.

Communication with the Exchange

- 2.21 References in the GEM Listing Rules to informing or notifying the Exchange mean, unless the context requires otherwise, that the information must be either:—

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| (1) | delivered in hard copy or in an electronic format as specified by the Exchange to | : | The Listing Division,
12th Floor, Two Exchange Square,
8 Connaught Place, Central, Hong Kong; or |
| (2) | sent by electronic means (in the format specified by the Exchange) to | : | The Listing Division at its electronic mail address, as specified from time to time; or |
| (3) | sent by facsimile copy to | : | The Listing Division on 2295-3599, |

or to such other address or number as may be announced by the Exchange from time to time or in such other manner as may be determined and promulgated by the Exchange from time to time. In addition, a hard copy of such information must be provided to the Exchange if requested by the Exchange.

- 2.22 If the information is of an urgent nature, an authorised representative of the issuer or some other responsible officer of the issuer or its Sponsor, financial adviser or legal adviser should communicate the information to the Executive Director – Listing Division or his delegates by telephone, provided always that the communication is confirmed in writing, delivered by hand, electronic means or facsimile in accordance with rule 2.21, such written communication to follow promptly after the telephone communication.

2.23 Where the GEM Listing Rules require documents to be sent or submitted to the Exchange, they must be sent or delivered to the Listing Division in accordance with rule 2.21, unless otherwise stated in the GEM Listing Rules.

2.23A Where the GEM Listing Rules require a certain number of copies of a document to be sent or submitted to the Exchange, the Exchange may require the issuer to provide the Exchange with such lesser or greater number of such copies as the Exchange may reasonably determine.

2.24 The procedures for delivery of information and documentation to the Exchange and any changes or additions to those procedures may be determined and promulgated by the Exchange from time to time.

Structure

2.25 The GEM Listing Rules fall into three main parts: Chapters 1 to 9 set out matters of general application; Chapters 10 to 25 set out the requirements applicable to the issue of equity securities; and Chapters 26 to 35 set out the requirements applicable to the issue of debt securities. In addition, there are Appendices to certain of these Chapters.

Material interest in a transaction

2.26 Where a transaction or arrangement of an issuer is subject to shareholders' approval under the provisions of the GEM Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution(s) approving the transaction or arrangement at the general meeting.

Note: For the avoidance of doubt, any provision in the GEM Listing Rules requiring any other person to abstain from voting on a transaction or arrangement of an issuer which is subject to shareholders' approval shall be construed as being in addition to the requirement set out in rule 2.26.

2.27 For the purpose of determining whether a shareholder has a material interest, relevant factors include:

- (1) whether the shareholder is a party to the transaction or arrangement or a close associate of such a party; and
- (2) whether the transaction or arrangement confers upon the shareholder or his close associate a benefit (whether economic or otherwise) not available to the other shareholders of the issuer.

There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.

Note: The references to "close associate" shall be changed to "associate" where the transaction or arrangement is a connected transaction under Chapter 20.

2.28 The issuer must, to the extent that it is aware having made all reasonable enquiries, include in the listing document or circular:

- (1) a statement as at the date by reference to which disclosure of the shareholding is made in the listing document or circular as to whether and to what extent any shareholder who is required to abstain from voting under the GEM Listing Rules controls or is entitled to exercise control over the voting right in respect of his shares in the issuer;

- (2) particulars of:
- (a) any voting trust or other agreement or arrangement or understanding (other than an outright sale) entered into by or binding upon any such shareholder; and
 - (b) any obligation or entitlement of any such shareholder as at the date by reference to which disclosure of the shareholding of any such shareholder is made in the listing document or circular,

whereby he has or may have temporarily or permanently passed control over the exercise of the voting right in respect of his shares in the issuer to a third party, either generally or on a case-by-case basis;

- (3) a detailed explanation of any discrepancy between any such shareholder's beneficial shareholding interest in the issuer as disclosed in the listing document or circular and the number of shares in the issuer in respect of which he will control or will be entitled to exercise control over the voting right at the relevant meeting; and
- (4) steps undertaken by the shareholder (if any) to ensure shares being the subject of the discrepancy referred to in rule 2.28(3) are not voted.

Fees and other charges

2.29 Of relevance to issuers, the details of the initial listing fee, annual listing fee, subsequent issue fee and other charges, together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in Appendix 9.