

# Chapter 4

## GENERAL

### REVIEW PROCEDURE

#### General

4.01 The GEM Listing Committee has retained the role of oversight of the Listing Division and the Chief Executive to ensure that they exercise those powers and carry out their day-to-day functions in a professional and impartial manner. This oversight role does not mean, however, that the GEM Listing Committee will be involved in the day-to-day administration of the GEM Listing Rules but the GEM Listing Committee will act as an independent review body and has retained the right to review at any time, on its own volition, any decision of the Chief Executive, the Executive Director of the Listing Division or any member of the staff of the Listing Division which is made under any of the powers delegated by the GEM Listing Committee and to endorse, modify, vary or reverse any such decision. In addition, the GEM Listing Committee has the power to impose directions, regulations or restrictions on the Chief Executive, the Executive Director - Listing Division and the staff of the Listing Division in respect of the way in which they are to carry out their delegated authority.

#### Definitions and Interpretation

4.01A In this Chapter:

- (1) Where this Chapter provides a time limit for performing any act within a specified number of business days of receipt of the relevant document, the act is to be performed within the specified number of business days after, but not including, the date of receipt of the relevant document.
- (2) "Return Decision" means the Listing Division's decision to return a new applicant's listing application and all related documents to its Sponsor (except for the retention of a copy of these documents for the Exchange's record) on the ground that the information in the listing application form, Application Proof, or any other relevant documents under rules 12.22 and 12.23 is not substantially complete under rule 12.09(1). A Return Decision does not include a rejection decision under rule 4.05(1)
- (3) "Review Request" means a written request by the relevant party for a review of the decision of the Listing Division, GEM Listing Committee or the GEM Listing Review Committee (as the case may be) under rules 4.05, 4.06, 4.06A and 4.16(7) which must be served on the Secretary of the GEM Listing Committee or the Secretary of the GEM Listing Review Committee (hereinafter referred to as the "Secretary"), as the case may be

4.02 The GEM Listing Committee may at any time conduct a hearing in relation to any matter relating to or arising out of the GEM Listing Rules and it may require the attendance at such hearing of such persons and the production to such hearing of such documents as it deems appropriate. As provided in this Chapter, certain decisions of the Listing Division may be referred to the GEM Listing Committee for review; and certain decisions of the GEM Listing Committee may be referred to the GEM Listing Review Committee for a further and final review.

4.02A This Chapter sets out the mechanism, procedures and related provisions for the review of non-disciplinary decisions by the GEM Listing Committee and the GEM Listing Review Committee.

- 4.03 The GEM Listing Committee and the GEM Listing Review Committee may from time to time prescribe such procedures and regulations for any review hearings of the respective Committee as they may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.
- 4.04 (1) Notwithstanding rule 4.03 and provisions set out in Form 5A, a listed issuer or new applicant shall submit to the GEM Listing Committee information for an application for listing pursuant to each Form 5A no more than two times, subject always to:—
- (a) the GEM Listing Committee permitting otherwise if it considers necessary; and
  - (b) only one right of review by the listed issuer or new applicant against the latest decision made by the GEM Listing Committee as at the date of the Review Request pursuant to rule 4.08.
  - (c) [Repealed 6 July 2019]
- (2) (a) The GEM Listing Committee shall only consider a revised application for listing if the listed issuer or the new applicant, as the case may be, provides new information for consideration by the GEM Listing Committee.
- (b) [Repealed 1 January 2020]
- (3) Subject to rule 4.04(1), the listed issuer or the new applicant may, if it considers necessary, submit its application for listing together with a new Form 5A again for the consideration by the GEM Listing Committee.

**Review cases of a new applicant to be considered by the GEM Listing Committee  
and the GEM Listing Review Committee**

- 4.05 (1) (a) Where the Listing Division rejects an application for listing by a new applicant, the new applicant has the right to have the decision referred to the GEM Listing Committee for a review.
- (b) Where the GEM Listing Committee rejects an application for listing by a new applicant or endorses, modifies or varies the Listing Division's decision to reject an application, the new applicant has the right to have the decision referred to the GEM Listing Review Committee for a further and final review.
- (c) Subject to rule 4.16, the decision of the GEM Listing Review Committee on the review is conclusive and binding on the new applicant.
- Note: A rejection decision under rule 4.05(1) does not include a Return Decision.*
- (2) (a) A new applicant and/or its Sponsor have the right to have a Return Decision reviewed by the GEM Listing Committee.

- (b) Where the GEM Listing Committee endorses the Return Decision, the new applicant and/or the Sponsor have the right to have the Return Decision referred to the GEM Listing Review Committee for a further and final review. Subject to rule 4.16, the decision of the GEM Listing Review Committee on the review is conclusive and binding on the new applicant and the Sponsor.

**Review cases of a listed issuer to be considered by the GEM Listing Committee and the GEM Listing Review Committee**

- 4.06 (1) Where the Listing Division makes a decision on the listed issuer, the listed issuer may request the decision be referred to the GEM Listing Committee for a review by the GEM Listing Committee.
- (2) Subject to rule 4.04, where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision or makes its own decision, the listed issuer may request the decision be referred to the GEM Listing Review Committee for a further and final review.
- (3) Subject to rule 4.16, the decision of the Listing Division or the GEM Listing Committee, as the case may be, shall be conclusive and binding on the listed issuer if the listed issuer does not seek review of the decision of the Listing Division or the GEM Listing Committee, as the case may be; otherwise, the decision of the GEM Listing Review Committee shall be conclusive and binding on the listed issuer.

**Review cases of a compliance officer or an authorised representative to be considered by the GEM Listing Committee and the GEM Listing Review Committee**

- 4.06A (1) Where the Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.19 or authorised representative under rule 5.24 should be terminated, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision referred to the GEM Listing Committee for review.
- (2) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision reviewed by the GEM Listing Review Committee, whose decision shall be conclusive and binding on both the listed issuer and that compliance officer or authorised representative, as the case may be.

4.07 [Repealed 6 July 2019]

**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 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 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 the issue of the written decision under rule 4.13(3).

#### **Notice of review hearing**

- 4.09 Upon the receipt of a Review Request, the GEM Listing Committee or the GEM Listing Review Committee, as the case may be, will convene a hearing to review the matter in accordance with the procedures as prescribed by the Secretary; provided that when the GEM Listing Committee or the GEM Listing Review Committee considers that it is necessary to resolve an issue urgently, it may stipulate such time as may be necessary within which the relevant party should be informed as to the date for the review hearing.

#### **Prehearing procedures**

- 4.10 In all review cases, the Listing Division and the relevant parties will provide each other and the GEM Listing Committee or the GEM Listing Review Committee, as the case may be, through the Secretary of the relevant Committee with copies of any papers to be presented by it at the hearing, in advance of the review hearing.

#### **Conduct of review hearing**

- 4.11 (1) The GEM Listing Committee or the GEM Listing Review Committee shall meet for the despatch of business, adjourn and otherwise regulate its hearings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. All review hearings under this Chapter shall be heard *de novo*. The GEM Listing Committee and the GEM Listing Review Committee (as the case may be) will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the GEM Listing Committee or the GEM Listing Review Committee. The GEM Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The GEM Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.
- (2) The quorum necessary for the transaction of any business by the GEM Listing Committee or the GEM Listing Review Committee shall be five members present in person.
- (3) The Chief Executive of HKEC will not attend meetings of the GEM Listing Committee at which the GEM Listing Committee is determining a matter in the first instance or attend review hearings of the GEM Listing Committee.
- (4) [Repealed 6 July 2019]
- (5) (a) [Repealed 6 July 2019]
- (b) [Repealed 6 July 2019]

- (c) [Repealed 6 July 2019]
- (d) In a review of a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision, any materials submitted to the GEM Listing Committee or the GEM Listing Review Committee must be based on the original materials submitted to the Listing Division when the new applicant first filed its listing application.
- (6) [Repealed 1 July 2008]
- (7) (a) At a review hearing before the GEM Listing Committee or the GEM Listing Review Committee, the directors of the new applicant or the listed issuer (as the case may be) have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Sponsor, the Compliance Adviser, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant or the listed issuer (as the case may be); a Sponsor, Compliance Adviser or authorised representative may be accompanied by its/his legal adviser.  
  
(b) [Repealed 1 January 2020]
- (8) In the case of a review hearing sought by a compliance officer or an authorised representative under rule 4.06A, the compliance officer or authorised representative, as the case may be, shall have the right to attend the review hearing, to make submissions and may be accompanied by his legal adviser.
- (9) Sub-rule (7) does not apply to a review relating to a Return Decision. In a review hearing of a Return Decision by the GEM Listing Committee or the GEM Listing Review Committee, the directors of the new applicant and/or one representative of each Sponsor have the right to attend the hearing, to make submissions and to be accompanied, in the case of the directors of the new applicant, by one representative of each of the new applicant's financial adviser, legal adviser and auditors; and in the case of each Sponsor, by its legal adviser. If all the parties seeking a review decide not to attend the hearing, the hearing will proceed based on the documents submitted for hearing. For the avoidance of doubt, if a party seeking a review decides not to attend the hearing, the hearing will proceed in his absence.

#### **Role of the Secretary**

- 4.12 (1) The Secretary shall be responsible for overseeing and co-ordinating the operation of the review procedures.
- (2) Any notices, notifications and all other documents required to be submitted to the GEM Listing Committee or the GEM Listing Review Committee must be served upon the Secretary who will ensure that copies are provided to the other parties and members of the GEM Listing Committee or the GEM Listing Review Committee, as appropriate.
- (3) The Secretary shall advise the GEM Listing Committee or the GEM Listing Review Committee on procedural matters, but all decisions on such matters shall be made only by the GEM Listing Committee or the GEM Listing Review Committee, as the case may be; and the Secretary shall carry out such duties as may from time to time be authorised by the GEM Listing Committee or the GEM Listing Review Committee.

- (4) The Secretary shall be the point of contact for all parties, including the representatives of the Listing Division and the relevant party seeking a review, in respect of any administrative matter arising out of the review procedures.
- (5) The Secretary shall refer any pre-review hearing enquiries or matters, procedural or otherwise, to the Chairman proposed for any of the GEM Listing Committee or the GEM Listing Review Committee, as the case may be, for confirmation or decision or if the proposed Chairman so directs, the Secretary shall refer the same to the GEM Listing Committee or the GEM Listing Review Committee, as the case may be, for its decision.

#### **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 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 three business days of the issue of 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.
- (2) The Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) will provide written reasons for its Return Decision or decision to endorse a Return Decision.
  - (3) The Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) will provide written reasons for its decision to direct the resumption of trading under rule 9.12 or decision to endorse such a decision.

#### **Publication of decisions**

- 4.13A The conclusive and binding decisions of the GEM Listing Review Committee under this Chapter shall be published on the Exchange's website unless otherwise directed by the review body. In the event of a further and final review under rule 4.16(7), the decision of the GEM Listing Review Committee which heard the review initiated by the Commission and the decision of the GEM Listing Review Committee which heard the further and final review shall both be published.

#### **Costs**

- 4.14 Upon submission of a Review Request pursuant to rule 4.08, a non-refundable fee of HK\$60,000 is payable to the Exchange, for each review, by any party seeking to review a decision of the Listing Division, the GEM Listing Committee or (in relation to a review under rule 4.16(7)) the GEM Listing Review Committee, as the case may be, pursuant to this Chapter.

#### **Aggrieved party**

- 4.15 Any person, other than a listed issuer, a new applicant, its Sponsor and compliance officer, Compliance Adviser or authorised representatives, who is aggrieved by a decision of the Listing Division or the GEM Listing Committee may express his views, in writing, to the Chairman of the GEM Listing Committee. The GEM Listing Committee may, in its sole discretion, decide to fully review the matter, having regard to the rights of any third party which may have been created in reliance upon the earlier decision.

### **Non-disciplinary reviews initiated by the Commission**

- 4.16 (1) The Commission shall have the right to request in writing a review of any non-disciplinary matter, including a decision of the GEM Listing Committee by the GEM Listing Review Committee under this rule.
- (2) In reviewing a matter, the review body shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the GEM Listing Committee or the GEM Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 4.13(1). The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 4.13(1). Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The review body and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the review body, and the review body shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 4.16(7).
- (7) Where the review body overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by the GEM Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the GEM Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the GEM Listing Review Committee (if any). In the event there are insufficient persons available to make up the required quorum for the GEM Listing Review Committee, the proposed Chairman of the GEM Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

### **Transitional**

- 4.17 (1) All non-disciplinary review hearings in respect of the following decisions will be conducted under Chapters 3 and 4 of the GEM Listing Rules in force immediately before the implementation of the new rules:
- (a) subject to (b) below, any first instance non-disciplinary decision made before the implementation of the new rules;

- (b) any decision made under rule 9.15(1) before the implementation of the new rules and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period); and
  - (c) any review decision of the decisions referred to in (a) or (b) above.
- (2) The Committees in existence before the implementation of the new rules will continue in existence until all relevant review proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of the above matters.

*Note: For the purpose of this rule, the reference to “new rules” refers to the amendments to this Chapter and Chapter 4 which came into effect on 6 July 2019.*