

Frequently Asked Questions Series 5 (Released on 2 May 2008 / Last Updated on 2 July 2010)

Rule Amendments relating to GEM Review

Status of “Frequently Asked Questions” Table

The following frequently asked questions (FAQs) are designed to help issuers to 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. Contact the Listing Division at the earliest opportunity with any queries.

Part 1: GEM Rules

No	GEM Rule	Query	Response
1	3.09	Will cancellations of listings continue to be handled by the GEM Listing Committee?	Yes, the GEM Listing Committee will approve all delistings from GEM except for transfers of listings from GEM to the Main Board, as these are not regarded as withdrawals of listing from the Exchange.
2	3.10	Where a GEM-listed company has successfully transferred its listing to the Main Board, how will previous breaches of GEM Listing Rules (committed at the time when the company was still listed on GEM) be handled?	Any company that has breached relevant GEM Listing Rules will be held accountable under such Rules even if subsequently it has transferred its listing to the Main Board. The full range of remedies available to the GEM Listing Committee will continue to be available. Where appropriate, the Exchange may impose additional requirements on the company under relevant Main Board Listing Rules to address any remaining issues arising from the breach.
3	Chapter 11 general	Will the new GEM listing requirements apply to listing applicants whose applications are submitted before the commencement date?	The transitional arrangement is set out on the last page of the Consultation Conclusions. For applicants who have submitted their formal application form on or before 2 May 2008, the old Rules continue to apply. For applicants submitting their formal application form after the 2 May 2008, the applicable listing qualifications and admission requirements will be those that are in effect on the date of listing.
4	11.04	Can the management/controlling shareholder have a business that competes with that of the GEM listing applicant?	The existing Rule 11.04 has been revised. "Management shareholder" has been replaced by "controlling shareholder". Where the interest of the controlling shareholder may have an impact on the ability of the listing applicant to carry out its business independently, the newly inserted paragraph 27A in Appendix 1 states that the applicant must be able to demonstrate its independence and make the prescribed disclosure in the listing document. This requirement will be the same as for the Main Board after the new Rules become effective.
5	11.05	Will companies incorporated in jurisdictions outside Hong Kong, the PRC, Bermuda and the Cayman Islands be able to list on GEM?	Yes. Please refer to our Joint Policy Statement with the Securities and Futures Commission dated 7 March 2007.

No	GEM Rule	Query	Response
6	11.12A(1)	If a company has achieved the requisite level of positive operating cash flow in less than 2 years, will it be eligible for listing?	<p>Subject to Rule 11.14, which covers infrastructure and mineral companies and exceptional circumstances under which the Exchange considers it desirable to accept a shorter trading period, all other companies which have less than two full financial years track record will not be eligible for listing on GEM.</p> <p>Applicants must have an accountants' report with audited financial statements for at least two full financial years and the required operating cash flow must have been attained during this period.</p>
7	11.12A(1)	Please elaborate on the calculation of "positive operating cash flow"	<p>For the purpose of satisfying Rule 11.10A, a new applicant must submit to the Exchange a statement of cash flows from operating activities using the indirect method as described under International Accounting Standard 7 (IAS7) or Hong Kong Accounting Standard 7 (HKAS 7) for the two immediate preceding financial years.</p> <p>For the purpose of Rule 11.12A (1), under the indirect method described in HKAS7, positive cash flow from operating activities is determined by adjusting profit or loss for the effects of:</p> <ul style="list-style-type: none"> (a) non-cash items including depreciation, provisions, deferred taxes, unrealised foreign currency gains and losses, undistributed profits of associates, and minority interests; and (b) all other items for which the cash effects are investing or financing cash flows. <p>The figure we normally use to assess compliance can be illustrated by reference to the figure "3,740" of HK Accounting Standard 7 on page 15.</p> <p>However, there is certain modification to that, and for the avoidance of doubt, changes during the period in inventories and operating receivables and payables must not be added back when arriving at the net operating cash flow, notwithstanding the requirement of paragraph 20 (a) of HKAS7.</p>

			Applicants are reminded that only cash flow generated from operating activities in the ordinary and usual course of business will be counted towards the \$20 million.
8	11.12A(1)	How will the positive cash flow test be applied to the cash flow generated by associated companies and jointly controlled entities?	Cash flow from associated companies and jointly controlled entities will be excluded for the purpose of measuring the HK\$20 million threshold.
9	11.12A(1)	What preparation method and form of disclosure is required for the cash flow statement?	See Note to Rule 11.12A(1). The cash flow statement should be prepared under the indirect method and be contained within the prospectus, if not already forming part of the accountant's report.
10	11.12A(2)(3)	What is the time requirement for ownership and management continuity for a GEM IPO applicant under the new Rules?	The Exchange will look for management continuity for at least 2 completed financial years and ownership continuity for at least 1 completed financial year immediately before the issue of listing document. In both cases continuity must continue to the date of listing.
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 relaxation will be granted only in relation to the length of the trading record (i.e. 2 financial years) stated in Rule 11.12A(1). The listing applicant must still meet the minimum operating cash flow and other entry requirements. This GEM requirement is different from the requirement of the Main Board Rule 8.05B because the Exchange wish to standardize treatment for all industries. <i>Note: Amended in July 2010 after a new Chapter 18A for Mineral Companies was introduced in the GEM Rules on 3 June 2010.</i>
12	11.23	For the purpose of satisfying the market capitalization requirement of HK\$100 million and the public float requirements, should GEM applicants be required to meet these requirements at the time of application, or at the time of listing?	As in current listings on GEM or the Main Board, the requirements refer to the time of listing. In practice, however, at the time when a listing is applied for, the issuer must be able to satisfy the Exchange that there is a reasonable likelihood of the requirements being met at the expected time of listing.
13	11.23(6), 11.23(9)	For purpose of calculating market capitalization, are "non -share securities" included within "all issued share capital"	Only equity securities are included in the calculation. Different classes of equity securities, such as "H" and "A" shares are all included, but not debt securities.

Part 2: Main Board Rules

No	MB Rule	Query	Response
14	Chapter 9A general	Does the new streamlined transfer process replace the previous de-listing/re-listing regime?	Although the de-listing/re-listing regime will not be formally abolished, the Exchange will encourage issuers to use the new streamlined regime. As there will be substantial savings in time and cost, instances of using the previous mode of transfer are expected to be rare.
15	Chapter 9A general	Can a new Main Board stock code be chosen/bought?	Yes, the Exchange will apply the same principles as in a standard IPO process, with special and normal pool numbers.
16	9A.02	Is shareholders' approval required for transfer of listing?	The Listing Rules do not impose a shareholders' approval requirement for transfer of listing, but there may be such a requirement under the issuer's constitutive documents, or under applicable company law in the jurisdiction of incorporation of the transfer applicant.
17	9A.02(2)	When measuring for the duration of listing on GEM, will the Exchange measure from the first date of listing on GEM to (1) the date of the application for a transfer, or (2) intended date of listing on the Main Board?	A GEM issuer applying for transfer must have been listed on GEM for a minimum period of one year and has also published its first full-year audited financial statements subsequent to its first date of listing, when it files the formal application (i.e. Form J in Appendix 5 of the Main Board Listing Rules) to transfer to the Main Board.
18	9A.02, Appendix 1 Para 27A	Will a transfer applicant have to be released from all financial assistance provided by connected persons before transferring to the Main Board?	<p>Normally the Main Board requirement for financial independence will be strictly applied as in a Main Board IPO application.</p> <p>However, the Exchange is aware that release of financial assistance from connected persons may be disruptive to the GEM company's normal business and may not be in the interest of shareholders as a whole.</p> <p>Reference is made to Listing Decision 42-1, which states that (a) all listing applicants seeking listing on the Main Board, are ordinarily required, barring exceptional circumstances, to repay all outstanding loans due to, and release guarantees provided by, their controlling/substantial shareholders; and (b) this standard practice applies to cases moving from GEM to the Main Board. GEM transfer applicants who may be under "exceptional circumstances", should consult the Exchange at an early stage.</p>

No	MB Rule	Query	Response
			Transfer applicants should note that the revised GEM Listing Rules require GEM IPO listing applicants to comply with the same independence requirement as Main Board IPO listing applicants .
19	9A.02(2)	Please use an example to illustrate the earliest possible transfer application date.	If a GEM issuer has a December financial year end and it is listed on GEM during 2008, it will have fulfilled the requirement of rule 9A.02(2) when the annual report for the financial year 2009 has been published and distributed to its shareholders, which is expected to be within the first three months of 2010.
20	9A.02(3)	What will constitute a “serious breach” that may hinder a transfer application?	<p>What constitutes a serious breach depends on the facts and circumstances. The Exchange will normally have regard to (among others) the following factors:</p> <ul style="list-style-type: none"> • the nature of the breach, including the impact on the orderliness and reputation of the market and any prejudice or risk of prejudice to investors (for example, cases involving a failure to obtain prior shareholder approval for connected transactions or a failure to make timely and accurate initial or continuing disclosure of material price sensitive information); • the duration and frequency of the breach; • whether the breach revealed serious or systemic weaknesses in the listed company’s procedures; • the extent to which the breach departs from current market practice; and • evidence that the breach was deliberate or reckless.

No	MB Rule	Query	Response
21	9A.02, 8.09A	How is market capitalisation calculated for an issuer transferring to the Main Board, for the purpose of satisfying the Rule 8.09A market capitalisation requirement?	<p>Strictly speaking, market capitalisation will be calculated using the share price on the date of listing on the Main Board.</p> <p>In practice, the Exchange will require the issuer to submit a market cap computation based on share price on the latest practicable date which is usually a few days before the Main Board listing date.</p>
22	9A.02(3)	How can an issuer find out if it can fulfill the “good behaviour” requirement before filing a transfer application from the Division, i.e. that it has not been the subject of any disciplinary investigation in relation to a serious breach or potential serious breach in the past 12 months before the transfer application?	<p>Prior to making a formal transfer application, a GEM issuer, who otherwise meets the transfer requirements, may contact the Listing Division to obtain their written confirmation on 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.</p> <p>Based on the information available to the Exchange up to the date of the confirmation letter, the Listing Division will confirm whether the transfer applicant 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 from <u>the date of the confirmation letter</u>. The Exchange may alter its view set out in the confirmation letter should additional information arise subsequent to the issuance of the confirmation letter. Where such information comes to light within two months of the confirmation letter the Exchange will, normally, write to notify the GEM issuer of the change in circumstances. Please note that the Exchange is not obliged to provide further notification.</p> <p>The transfer applicant should note that in order to qualify for the transfer of listing of its securities from GEM to the Main Board, it must not be 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 during the 12 months <u>preceding the transfer application and until the commencement of dealings in its securities</u>.</p>

No	MB Rule	Query	Response
23	9A.03	Can fund-raising be conducted during the transfer process from GEM to the Main Board?	<p>The Exchange does not intend to impose any general prohibition on fund-raising at or close to the time of transfer provided all relevant provisions of the Listing Rules are fulfilled for both corporate actions.</p> <p>We note that, in practice, there may be additional execution complexities and/or potential conflicts with the time tables for running multiple corporate actions concurrently, and issuers should plan carefully in this regard.</p>
24	9A.04	What about transfer of infrastructure, investment and Mineral Companies from GEM to Main Board? What are the additional requirements?	<p>The general principle is that the GEM transferee will have to satisfy all the disclosure requirements applicable to such companies as if in a fresh IPO application for the Main Board, because such information may not have been provided whilst listed on GEM.</p> <p>For relevant Listing Rules requirements, please see chapters 18, 21 and Rule 8.05B as applicable. The additional information must be circulated to the shareholders in writing.</p> <p><i>Note: Amended in July 2010 after a new Chapter 18A for Mineral Companies was introduced in the GEM Rules on 3 June 2010.</i></p>
25	9A.06(3)	Will a transfer applicant be required to comply only with the listing requirements set out in the checklist?	A transfer applicant is required to comply with all applicable Main Board listing requirements. The checklist is provided as an aid only and does not form part of the Listing Rules. It is the transfer applicant's responsibility to satisfy the Exchange as to fulfillment of all applicable requirements.
26	GEM Rule 9.26 MB Rule 9A.08	Will the initial transfer announcement as required by GEM Rule 9.26 and the main transfer announcement as required by Main Board Rule 9A.08 be pre-vetted by the Division?	<p>The initial announcement will be relatively simple and informing the market of the transfer application only. There is no requirement in the Listing Rules that this announcement will have to be pre-vetted by the Exchange.</p> <p>The second announcement is expected to contain substantive details about the transfer and a draft of this must be submitted to the Exchange at the time of submission of the transfer application. This announcement should be cleared by the Exchange before it is published.</p>

No	MB Rule	Query	Response
27	9A.08	Will trading suspension be required pending the announcement or at any time during the transfer process?	<p>GEM transfer applicants are required to observe the suspension policy and the general disclosure obligations under the GEM Rules as long as they are still listed on the GEM Board. Under the GEM Listing Rules, where an obligation to issue an announcement containing price-sensitive information has arisen for a GEM issuer under GEM Rule 17.10, it should publish the announcement as soon as practicable. Where the issuer is unable to publish the price sensitive announcement on a timely basis, it should request a temporary suspension and resumption pending the issuance of the announcement.</p> <p>A GEM transfer applicant must assess whether the information relating to the transfer process would be price-sensitive in nature, having considered its particular circumstances. Where the information is considered price sensitive, it should follow the guidance set out in the paragraph above.</p>
28	9A.10-11	What are the procedures for migration to the Main Board of GEM-listed warrants, options or convertible instruments?	<p>Where GEM-listed equity securities are migrated to the Main Board, any GEM-listed warrants, options or convertible instruments will normally be transferred simultaneously to the Main Board. The Exchange will apply the spirit of Main Board Listing Rules 15.05 and 16.02 under which, barring exceptional circumstances, these instruments can be listed on the Main Board only if the underlying securities are listed there or on another recognized market. Where this will cause practical problems, the Exchange may exercise its discretion to allow the warrants or convertible instrument to remain listed on GEM until expiry.</p>
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)?	<p>The company should seek guidance from the Listing Division in such circumstances. In general, where listed either on GEM or the Main Board, its securities will not be traded on both platforms at the same time. There should be a clear-cut date for cessation of trading on GEM and commencement of trading on the Main Board and there will not be parallel trading on both boards.</p> <p>Separately, issuers should note that the Exchange has issued a press release dated 22 April 2008 that parallel trading will be abolished from 2 November 2008.</p>

No	MB Rule	Query	Response
30	9A.12(2)	If shareholders' approvals have been obtained for continuing connected transactions within a certain period, and the transfer from GEM to Main Board occur during the period, would shareholders' approval be needed again for the Main Board?	The GEM issuer should seek guidance from the Listing Division in such circumstances. In generally, where there has not been any change of facts or circumstances since the original shareholders' approval was granted, there is no need to refresh or obtain again the same shareholders' approval at a meeting merely because of the transfer to the Main Board. The effect of the shareholders' approval shall continue for the purpose of continuing obligations until its original expiry date since grant.
31	MB 10.07 & 10.08	Will there be restrictions on disposal or issuance of shares during the transfer process?	<p>The Exchange has not imposed any general prohibition on these activities except where these would lead to market disruption or unfairness.</p> <p>Issuers should note that the moratoria on disposal of existing shares (10.07(1)(a)-(b) and issue of new shares (10.08) will be disapplied under Rule 10.07(4) and 10.08(5).</p>
32	10.08(5)	Please elaborate on the moratorium on new share issues by a listing transfer applicant.	A GEM-listed company is restricted under GEM Listing Rule 17.29 from issuing new securities within 6 months of listing. As there is a one full financial year waiting period before a GEM company can apply for transfer, this 6-month moratorium will invariably have expired by the time it qualifies for a Main Board listing. After being successfully transferred, Rule 10.08(5) disapplies the equivalent moratorium. This means that after transferring to the Main Board, the company is free to issue new securities immediately.
33	Practice Note 15	In a case of transfer of listing from GEM to the Main Board, will the 3-year cooling period for spin-offs run from the listing on GEM or the listing on the Main Board?	Practice Note 15 has been amended so that the 3-year cooling period runs from the original date of listing on GEM, instead of from the date of listing on Main Board pursuant to the transfer. <i>See Note to Paragraph 3 of PN 15.</i>
34	General	Will there be a listing ceremony for transferring to the Main Board from GEM?	A listing ceremony can be arranged on the issuer's request as cases of a new Main Board IPO.