

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 34 of the Stock Exchanges Unification 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 35 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 all factors which might affect their interests – and in particular that immediate disclosure is made of any information which might reasonably be expected to have a material effect on market activity in, and the prices of, listed securities;
 - (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 35 of the Stock Exchanges Unification 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 GEM 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 established as a market designed to accommodate companies to which a high investment risk may be attached. 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 profit "track record" requirement nor any obligation to forecast future profitability.

- 2 Given the emerging nature of companies listed on GEM, 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.*

3 *The greater risk profile, and other characteristics, of GEM mean that it is a market more suited to professional and other sophisticated investors.*

- 2.13 The GEM Listing Rules require, and emphasise the on-going need for, comprehensive and timely disclosure of relevant information by all listed 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 its active business pursuits over the period specified in rule 11.12(2) and 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 18.42 and 18.61 respectively);
 - (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) Rule 17.10 sets out the general obligation of disclosure which applies to all listed issuers without prejudice to the specific instances requiring disclosure as set out in other provisions of Chapter 17 or elsewhere in the GEM Listing Rules;
 - (4) The directors of an issuer are collectively and individually responsible for ensuring the issuer's full compliance with the disclosure obligations and all other obligations imposed upon issuers under the GEM Listing Rules; and
 - (5) For the purposes of the GEM Listing Rules, the principal means by which issuers are required to disclose information is publication on the GEM website. Issuers are not generally required to disclose information by means of paid announcements in gazetted newspapers. Accordingly, shareholders and investors should note that they need to have access to the GEM website in order to obtain up-to-date information on listed issuers.
- 2.14 The Exchange expects each director of an issuer to be cognisant 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 Ordinance, the Companies Ordinance, the Protection of Investors Ordinance, the Stock Exchanges Unification Ordinance, the SDI Ordinance, the Securities (Insider Dealing) Ordinance, the Takeover Code and the Code on Share Repurchases.
- 2.15 Having regard to the higher risk profile of GEM, the GEM Listing Rules impose additional responsibilities on the Sponsor of an issuer by comparison to those imposed on a sponsor to a company listed or proposing to list on the Main Board (see Chapter 6). Sponsors are expected to play an important role in upholding and maintaining the standard of GEM issuers and hence the market's confidence in GEM. The GEM Listing Rules provide that the Exchange must have approved a Sponsor, in accordance with the provisions of Chapter 6, for admission to a list of Sponsors maintained by the Exchange, before it is entitled to act for any new applicant or listed issuer.
- 2.16 Every issuer of equity securities is required to appoint a Sponsor for a fixed term period covering at least the remainder of the financial year during which its listing occurs and the 2 financial years thereafter. In addition to this, rule 6.02 provides the Exchange with a discretion to direct a listed issuer to appoint a Sponsor after the expiry of this period.

- 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 the Growth Enterprise Market 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:—

1. the information contained in this [document] is accurate and complete in all material respects and not misleading;
2. there are no other matters the omission of which would make any statement in this document misleading; and
3. all opinions expressed in this document have been arrived at after due and careful consideration and are founded on bases and assumptions that are fair and reasonable.”

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 as a heading, a prominent and legible disclaimer statement as follows:—

“The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this document, makes no representation as to its accuracy or completeness and expressly disclaims 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 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 The Growth Enterprise Market (“GEM”) of The Stock Exchange of Hong Kong Limited (the “Exchange”)

GEM has been established as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. Furthermore, there may be risks arising out of the emerging nature of companies listed on GEM and the business sectors or countries in which the companies operate. 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. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given the emerging nature of companies listed on GEM, 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.

The principal means of information dissemination on GEM is publication on the internet website operated by the Exchange. Listed companies are not generally required to issue paid announcements in gazetted newspapers. Accordingly, prospective investors should note that they need to have access to the GEM website in order to obtain up-to-date information on GEM-listed issuers.”

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 GEM Listing Division,
11th Floor, One International Finance Centre,
1 Harbour View Street, Central, Hong Kong; or |
| (2) | sent by electronic means (in the format specified by the Exchange) to | : | The GEM Listing Division at its electronic mail address, as specified from time to time; or |
| (3) | sent by facsimile copy to | : | The GEM 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 – GEM 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 GEM Listing Division in accordance with rule 2.21, unless otherwise stated in the GEM Listing Rules.
- 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.

Fees and other charges

- 2.26 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. In addition, of relevance to Sponsors, Appendix 9 sets out details of the application fee and review fee.