

Chapter 3

GENERAL

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

General

- 3.01 The Board has arranged for all of its powers and functions in respect of all listing matters in relation to GEM to be discharged by the GEM Listing Committee and/or its delegates, subject to the review procedures set out in this Chapter and Chapter 4. Any function which under the GEM Listing Rules may be performed by the Exchange or any power which under the GEM Listing Rules may be exercised by the Exchange may, therefore, be performed or exercised by the GEM Listing Committee and/or its delegates. Accordingly, the GEM Listing Committee and, in relation to certain powers of review, the Listing Appeals Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Board unless and until the Board revokes these arrangements.
- 3.02 The GEM Listing Committee has arranged for most of these powers and functions to be discharged by the GEM Listing Division and the Chief Executive of the Exchange (the "Chief Executive"), subject to the reservations and review procedures set out in this Chapter and Chapter 4. In the first instance, therefore, all matters concerning the GEM Listing Rules will be dealt with by the GEM Listing Division. The GEM Listing Division will also interpret, administer and enforce the GEM Listing Rules subject to the review procedures set out in this Chapter and Chapter 4.
- 3.03 In discharging their respective functions and powers the Listing Appeals Committee, the GEM Listing Committee, the GEM Listing Division and the Chief Executive are required to administer the GEM Listing Rules, and otherwise to act, in the best interest of the market as a whole and in the public interest.
- 3.04 All references in Chapters 3 and 4 to decisions and rulings of the GEM Listing Division include decisions and rulings made by the Chief Executive.

Application procedures

New applicants

- 3.05 Every application for listing by a new applicant (whether in relation to equity securities or debt securities) should be submitted to the GEM Listing Division which may reject it or recommend it. However, the GEM Listing Committee has reserved to itself the power to approve all applications for listing from a new applicant and this means that even if such an application is recommended by the Executive Director – GEM Listing Division or the Chief Executive, it must still be approved by the GEM Listing Committee. The GEM Listing Committee may at the request of the GEM Listing Division give an "in principle" approval, that a particular issuer or its business, or a particular type of security is suitable for listing, at an early stage in the application process (but will again consider the full application after the GEM Listing Division has processed it). Otherwise the GEM Listing Committee will not consider an application from a new applicant until the GEM Listing Division has processed the application. If the GEM Listing Committee approves a listing the GEM Listing Division will issue a formal approval letter, in due course.

Listed issuers

- 3.06 Applications for the listing of equity securities by a listed issuer will be dealt with by the GEM Listing Division and it is the Executive Director – GEM Listing Division who will normally approve the listing and issue the formal approval letter, in due course. However, the GEM Listing Committee may determine the matter in the first instance at the request of the GEM Listing Division where it considers it appropriate to do so. Applications for the listing of debt securities by a listed issuer shall be dealt with in the same manner as applications by new applicants as set out in rule 3.05.

Sponsors

- 3.07 The GEM Listing Committee has reserved to itself the power to approve or reject the application of any prospective Sponsor for admission to the Exchange's list of Sponsors, to remove any Sponsor from such list and to decide that any Sponsor admitted to such list should be regarded as ineligible to act in any particular case. This means that a prospective Sponsor will not have its application for admission to the list of Sponsors accepted or rejected, nor will a Sponsor be removed from such list nor will a Sponsor be ruled ineligible to act in any particular case unless the GEM Listing Committee has decided on the matter.

Guidance

- 3.08 Prospective issuers, and in particular new applicants, are encouraged (through their Sponsors, where applicable) to contact the GEM Listing Division to seek informal and confidential guidance as to the eligibility of a proposed application for listing at the earliest possible opportunity.

Cancellation procedures

- 3.09 The GEM Listing Committee has reserved to itself the power to cancel the listing of a listed issuer. This means that a listed issuer will not have its listing cancelled unless the GEM Listing Committee has considered the matter.

Disciplinary procedures

- 3.10 In addition to its powers to suspend, resume or cancel a listing, if the GEM Listing Committee finds that there has been a breach by any of the parties named in rule 3.11 of the GEM Listing Rules it may:—
- (1) issue a private reprimand;
 - (2) issue a public statement which involves 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 GEM 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;
 - (7) 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 retention of office by the director is prejudicial to the interests of investors;

- (8) in the event a director remains in office following a public statement pursuant to (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;
- (9) in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the GEM Listing Rules, order that the facilities of the market be denied for a specified period to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;
- (10) 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.

3.11 The sanctions in rule 3.10 may be imposed or issued 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 management shareholder or significant shareholder;
- (f) any professional adviser of a listed issuer or any of its subsidiaries;
- (g) the person fulfilling the role of the listed issuer's qualified accountant (as such role is prescribed in rule 5.10);
- (h) any authorised representative of a listed issuer;
- (i) any supervisor of a PRC issuer; and
- (j) the guarantor of an issuer in the case of a guaranteed issue of debt securities.

For the purposes of this rule "professional adviser" includes any 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.

Notes: 1 The scope of any disciplinary action taken, in particular any ban imposed on a professional adviser pursuant to rule 3.10(5), shall be limited to matters governed by or arising out of the GEM Listing Rules.

2 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 use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the GEM Listing Rules 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 The Exchange's powers of sanction against any Sponsor (and/or any director or employee of any Sponsor) are set out in rules 6.67 and 6.68.

- 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 or rules 6.67 and 6.68 (an “appellant”) give its reasons in writing for the decision made against that appellant pursuant thereto and that appellant shall have the right to have the decision against him referred to the GEM Listing Committee again for review. If the GEM Listing Committee modifies or varies the ruling of the earlier meeting, it will, if requested by the appellant, give its reasons in writing for the modification or variation and, in respect of decisions pursuant to rule 3.10(2), (3), (5), (7), (8) or (9) or rule 6.69 only, the appellant shall have a right to a further and final review of the decision against the appellant by the Listing Appeals Committee. The decision of the Listing Appeals Committee on review shall be conclusive and binding on the appellant. If requested by the appellant, the Listing Appeals Committee will give reasons in writing for its decision on review.
- 3.13 A request for a review of any decision of the GEM Listing Division or the GEM Listing Committee made pursuant to rule 3.12 must be notified to the Exchange within 7 days of the GEM Listing Division’s or 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 days of the receipt of the written reasons.
- 3.14 Any request for the GEM Listing Division, the GEM Listing Committee or the Listing Appeals Committee to give its reasons in writing for its decision shall be made within 3 business days of its decision. Where requested, written reasons for a decision will be provided by the GEM Listing Division, the GEM Listing Committee or the Listing Appeals Committee (as the case may be) as soon as possible and, in any event, within 14 days of the request.
- 3.15 Any person, other than an issuer, its Sponsor and authorised representatives, who is aggrieved by a decision of the GEM 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.
- 3.16 The GEM Listing Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings as it may think fit.

Rights of parties to be heard

- 3.17 In any disciplinary proceedings of the GEM Listing Committee and on any further review of the decision resulting from those proceedings by the GEM Listing Committee or the Listing Appeals Committee, the party the subject of such proceedings shall have the right to attend the meeting, to make submissions and to be accompanied by its professional advisers. In all disciplinary proceedings the GEM Listing Division will provide the parties with copies of any papers to be presented by it at the meeting, in advance of the meeting.

Composition of the GEM Listing Committee

- 3.18 The GEM Listing Committee shall consist of 21 members, comprising the following number of persons from the following categories:—
- (1) Exchange Participants
- 4 individuals who are Exchange Participants or directors of Exchange Participants which are companies;

(2) Listed company representatives

4 individuals who are directors of listed issuers on GEM or the Main Board of varying sizes and business activities and who are neither Exchange Participants nor officers or employees of Exchange Participants;

(3) Market practitioners and users

12 individuals who are neither Exchange Participants nor officers or employees of Exchange Participants and who are:—

- (a) a director or a partner of a company or firm principally engaged in the business of fund management;
- (b) an officer or senior employee of a merchant bank;
- (c) a barrister or a partner of a firm of solicitors in private practice in Hong Kong;
- (d) a partner of an accounting firm;
- (e) a senior member of an industrial body with an interest in furthering the development of technology or scientific-based research; or
- (f) a person who is otherwise involved in or experienced in the securities market and corporate finance matters or securities regulation;

A minimum of 1 member and a maximum of 4 members may come from any of the foregoing categories in this paragraph (3);

(4) The Chief Executive of HKEC acting as ex officio member and, in his absence or if he so directs in any particular case, the Chief Executive to act as his alternate.

3.19 Each individual to be appointed a member of the GEM Listing Committee must meet the following criteria:—

- (1) the individual must have relevant experience;
- (2) the individual must be a highly regarded member of his profession/occupation; and
- (3) the individual must be available to assume the duties and responsibilities of a member of the GEM Listing Committee for the duration of his term of office.

**Appointment and removal of
members of the GEM Listing Committee**

- 3.20 All members of the GEM Listing Committee shall remain in office until any change or changes are made to their appointment or their offices are vacated pursuant to rule 3.24 or 3.27. Subject to rule 3.26, all members of the GEM Listing Committee are eligible for re-appointment.
- 3.21 Members of the GEM Listing Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 3.22.
- 3.22 The persons eligible for appointment or re-appointment in each year as members of the GEM Listing Committee under any of the categories set out in rule 3.18 shall be nominated by a Listing Nominating Committee comprising the Chief Executive and 2 members of the board of HKEC and the Chairman and 2 Executive Directors of the Commission. In their deliberations the Listing Nominating Committee shall seek the views of the current Chairman and Deputy Chairman of the GEM Listing Committee.
- 3.23 The Chairman and Deputy Chairman of the GEM Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The Chief Executive of HKEC or the Chief Executive (act as his alternate) may not be elected as either Chairman or Deputy Chairman of the GEM Listing Committee.
- 3.24 All members of the GEM Listing Committee shall vacate office annually at the earlier of:—
- (1) the conclusion of the meeting of the Board appointing a new GEM Listing Committee which is held after an annual general meeting of the Exchange; and
 - (2) 30 days after the date of the first meeting of the Board held after the annual general meeting of the Exchange next following the date of their appointment;
- unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment.
- 3.25 The Board may fill any casual vacancies that may occur in the GEM Listing Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 3.18 as the member who has vacated office.
- 3.26 Members of the GEM Listing Committee may only remain in office for a maximum of 3 consecutive years. Any person who serves as the Chairman or the Deputy Chairman of the GEM Listing Committee may remain in office for a total of 4 years. A member (including the Chairman and Deputy Chairman) who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of 2 years from the date on which he last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the Listing Nominating Committee shall have the discretion to nominate a person for re-appointment at any time before the lapse of 2 years from the date such person vacates office and the Board shall have the power to appoint such person.

3.27 The office of a member of the GEM Listing Committee shall be vacated if any one of the following events occurs:—

- (1) in respect of a member appointed under the category referred to in rule 3.18(1), if he ceases to be an Exchange Participant or a director of an Exchange Participant which is a company;
- (2) if a receiving order is made against him or he makes any arrangement or composition with his creditors;
- (3) if he becomes insane or is found to be of unsound mind within the meaning of the Mental Health Ordinance (Cap. 136);
- (4) if by notice in writing to the Board and the GEM Listing Committee, he resigns from his office; or
- (5) if by reason of serious misconduct he is removed by the Board and a written statement setting out the reasons for his removal has been delivered to the Commission.

Provided that the acts of such member shall nevertheless be treated as valid and effectual in all respects up to and until an entry of the vacation of office shall be entered in the minutes of the GEM Listing Committee.

Functions and powers of the GEM Listing Committee

3.28 The GEM Listing Committee shall exercise all the powers and functions of the Board in relation to all listing matters in relation to GEM. The GEM Listing Committee's exercise of such powers and functions is only subject to the powers of review in the Listing Appeals Committee.

Conduct of meetings of the GEM Listing Committee

3.29 The GEM Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings 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. The quorum necessary for the transaction of any business by the GEM Listing Committee shall be 5 members present in person. The Chief Executive of HKEC or the Chief Executive (act as his alternate) may be counted in the quorum for a meeting of the GEM Listing Committee (including a meeting at which the GEM Listing Committee is determining a matter in the first instance) except that he shall not be counted in the quorum for any meeting at which a decision of the GEM Listing Division or the GEM Listing Committee is under review pursuant to any disciplinary proceedings. The Chief Executive of HKEC or the Chief Executive (act as his alternate) may attend meetings of the GEM Listing Committee convened for such purpose and put forward his views (if any) on the matter under review pursuant to any disciplinary proceedings but he shall not thereafter be entitled to participate in the deliberations of the GEM Listing Committee or to vote on such matters. At any meeting held to review an earlier decision of the GEM Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.

Composition of the Listing Appeals Committee

- 3.30 The Listing Appeals Committee, being the final appellate body of the Exchange in respect of both GEM and the Main Board, shall consist of the chairman and 2 other members of the board of HKEC.
- 3.31 The Chairman of the Listing Appeals Committee shall be the chairman of the board of HKEC.
- 3.32 The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the members of the board of HKEC, except the Chief Executive Officer of HKEC. The Chairman of the Listing Appeals Committee shall vacate office when a new chairman of the board of HKEC is appointed by the members of the board of HKEC and approved in writing by the Chief Executive of Hong Kong or upon his earlier removal from the chairmanship of the board of HKEC. The Deputy Chairman of the Listing Appeals Committee shall vacate office upon (i) the expiry of his term as a director of HKEC unless he is re-appointed or re-elected as a director of HKEC (as the case may be) and re-appointed by the Chairman of the Listing Appeals Committee as Deputy Chairman; or (ii) his earlier removal as director of HKEC.
- 3.33 The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman of the Listing Appeals Committee as and when the Listing Appeals Committee is required to review a decision of the GEM Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the board of HKEC, except the Chief Executive of HKEC.
- 3.34 In the event that either the Chairman or the Deputy Chairman of the Listing Appeals Committee is materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member appointed must be a member of the board of HKEC.
- 3.35 In the event that both the Chairman and the Deputy Chairman of the Listing Appeals Committee are materially interested in the outcome of a review (otherwise than as members of the board of HKEC and, where applicable, of the Board) or are otherwise unavailable to hear a particular review the board of HKEC shall appoint a temporary Chairman of the Listing Appeals Committee from the members of the board of HKEC. The temporary Chairman shall appoint a temporary Deputy Chairman and a third member of the Listing Appeals Committee from the members of the board of HKEC to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation whichever is the sooner. The provisions of rule 3.34 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.
- 3.36 The Chairman of the Listing Appeals Committee may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the GEM Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as an Exchange Participant or a member of the board of HKEC and, where applicable, of the Board).

Functions and powers of the Listing Appeals Committee

- 3.37 The Listing Appeals Committee shall be the review body in respect of any decision of the GEM Listing Committee on any of the following matters:—
- (1) that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;
 - (2) that a prospective Sponsor's application for admission to the Exchange's list of Sponsors has been rejected or that a Sponsor should be removed from such list or that a Sponsor should be regarded as ineligible to act in any particular case;
 - (3) that a person's appointment as an issuer's compliance officer or authorised representative should be terminated;
 - (4) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;
 - (5) that a request by an issuer for the suspension of dealings in its securities has been rejected or where a decision has been made to direct the resumption of dealings in the issuer's securities;
 - (6) that the listing of a listed issuer be cancelled; or
 - (7) any decision pursuant to rule 3.10 (2), (3), (5), (7), (8) or (9) or rule 6.69.

Conduct of meetings of the Listing Appeals Committee

- 3.38 The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings 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. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.

Bona fide acts of committee members

- 3.39 All bona fide acts of a member of the GEM Listing Committee or any member of the Listing Appeals Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member or that such member was for some reason ineligible for appointment, be deemed to be valid as if every member had been duly appointed and was qualified to be a member of the relevant Committee.