

Chapter 4

GENERAL

REVIEW PROCEDURE

General

- 4.01 The GEM Listing Committee has retained the role of oversight of the GEM 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 GEM Listing Division or any member of the staff of the GEM 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 - GEM Listing Division and the staff of the GEM Listing Division in respect of the way in which they are to carry out their delegated authority.
- 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 GEM Listing Committee may be referred to the GEM Listing (Review) Committee (as defined in rule 4.05(2)) for review; certain decisions of the GEM Listing Committee or the GEM Listing (Review) Committee may also be referred to the Listing Appeals Committee for review.
- 4.03 The GEM Listing Committee may from time to time prescribe such procedures and regulations for any review hearings as it may think fit.
- 4.04 (1) Notwithstanding rule 4.03 and provisions in respect of the application form set out in Appendix 5A, a listed issuer or new applicant shall submit to the GEM Listing Committee, information for an application for listing pursuant to each application form no more than 2 times, subject always to:—
- (a) the GEM Listing Committee permitting otherwise if it considers necessary;
 - (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; and
 - (c) rule 4.11(5).
- (2) 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 the consideration by the GEM Listing Committee.
- (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 application form again for the consideration by the GEM Listing Committee.

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

- 4.05 (1) Where the GEM Listing Division rejects an application for listing by a new applicant, the new applicant shall have the right to have that ruling reviewed by the GEM Listing Committee.
- (2) In the first review, where the GEM Listing Committee rejects an application for listing by the new applicant or endorses, modifies or varies the GEM Listing Division's decision to reject such an application, the new applicant shall have the right to have that decision referred to the GEM Listing Committee (the "GEM Listing (Review) Committee") again for a second review.
- (3) The decision of the GEM Listing (Review) Committee on the second review shall be conclusive and binding on the new applicant except where a new applicant is rejected solely on the grounds of unsuitability of the new applicant itself or its business.

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 GEM Listing Division makes a ruling on the listed issuer, the listed issuer may request that the ruling be referred to the GEM Listing Committee and the GEM Listing Committee may, in its sole discretion, review the ruling at a first review hearing of the GEM Listing Committee.
- (2) Subject to rule 4.04, where the GEM Listing Committee endorses, modifies or varies the GEM Listing Division's ruling or makes its own ruling, the listed issuer may request that it be referred to the GEM Listing (Review) Committee again for a second review of the ruling.
- (3) The decision of the GEM Listing Division, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee, as the case may be, shall be binding on the listed issuer if the listed issuer does not seek review of the decision of the GEM Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be; otherwise, the decision of the GEM Listing (Review) Committee or, in the cases to which rule 4.07 applies, the decision of the Listing Appeals Committee, shall be conclusive and binding on the listed issuer.

Review cases to be considered by the Listing Appeals Committee

4.07 The Listing Appeals Committee shall be the review hearing body in respect of any decision of the GEM Listing Committee or GEM Listing (Review) Committee on any of the following matters:—

- (1) Rejection of a new applicant - unsuitability for listing

Where the GEM Listing Committee rejects the new applicant solely on the ground that the new applicant or its business is not suitable for listing, the new applicant shall have a right to a further review of the application by the GEM Listing (Review) Committee and a further and final review of the application by the Listing Appeals Committee. The Listing Appeal Committee's decision will then be conclusive and binding on the new applicant.

- (2) Rejection of a Sponsor.

Where the GEM Listing Committee decides to reject any prospective Sponsor's application for admission to the Exchange's list of Sponsors or that any Sponsor admitted to the Exchange's list of Sponsors should be removed therefrom or that any Sponsor admitted to the Exchange's list of Sponsors should be regarded as ineligible to act in any particular case, that prospective Sponsor or admitted Sponsor, as the case may be, shall have the right to have that decision reviewed by the Listing Appeals Committee whose decision shall be conclusive and binding.

- (3) Rejection of a compliance officer or an authorised representative
- (a) Where the GEM Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.14 or authorised representative under rule 5.19 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.
 - (b) Where the GEM Listing Committee endorses, modifies or varies the GEM 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 Listing Appeals 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) Rejection of a lifting of suspension of dealings
- (a) Where the GEM Listing Division rejects an application by a listed issuer to lift a suspension of dealings which has been in effect for more than 30 consecutive days, the listed issuer shall have the right to have that decision referred to the GEM Listing Committee for review.
 - (b) Where the GEM Listing Committee endorses, modifies or varies the GEM Listing Division's decision, that listed issuer shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer.
- (5) Rejection of a suspension of dealings or decision to direct a resumption of dealings
- (a) Where the GEM Listing Division rejects an application by a listed issuer for a suspension of dealings in its securities or a decision is made to direct the resumption of dealings in accordance with rule 9.12), the listed issuer shall have the right to have that decision referred to the GEM Listing Committee for review.
 - (b) Where the GEM Listing Committee endorses, modifies or varies the GEM Listing Division's decision, that listed issuer shall have the right to have the decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer.
- (6) Cancellation of a listing
- (a) Following a decision to cancel the listing of a listed issuer, the GEM Listing Committee will set down a detailed review procedure upon the receipt of the written request made including time limits for submitting documents on a case by case basis.
 - (b) Where the GEM Listing Committee decides to cancel the listing of a listed issuer, the listed issuer shall have the right to have that decision referred to the GEM Listing (Review) Committee again for review.
 - (c) Where the GEM Listing (Review) Committee endorses, modifies or varies the earlier decision of the GEM Listing Committee, the listed issuer shall have a right to further and final review of that decision by the Listing Appeals Committee, whose decision shall be conclusion and binding on the listed issuer.

Time for application

- 4.08 A written request by the relevant party for a review of any decision of the GEM Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) in rules 4.05, 4.06 and 4.07 (the "Review Request") must be notified, within 7 business days of the date of receipt of either the relevant decision, or if the relevant party requests a reasoned decision pursuant to rule 4.13, the reasoned decision. The Review Request, in hard copy, shall be served on the Secretary of the GEM Listing Committee, the Secretary of the GEM Listing (Review) Committee or the Secretary of the Listing Appeals Committee (hereinafter referred to as the "Secretary"), as the case may be at the address set out in rule 2.21(1).

Notice of review hearing

- 4.09 Upon the receipt of the written request for a review of any decision of the GEM Listing Division, the GEM Listing Committee or GEM Listing (Review) Committee, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals 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 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 GEM Listing Division and the relevant parties will provide each other and the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee 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, the GEM Listing (Review) Committee or the Listing Appeals 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.
- (2) The quorum necessary for the transaction of any business by the GEM Listing Committee or the GEM Listing (Review) Committee shall be 5 members present in person. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.
- (3) 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 GEM Listing (Review) Committee at which a decision of the GEM Listing Division or the GEM Listing Committee is under review. The Chief Executive of HKEC or the Chief Executive (act as his alternate) may attend meetings of the GEM Listing (Review) Committee convened for such purpose and put forward his views (if any) on the matter under review but he shall not thereafter be entitled to participate in the deliberations of the GEM Listing (Review) Committee or to vote on such matters.
- (4) At any meeting held to review an earlier decision of the GEM Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be, all of the members present at the review hearing shall be persons who were not present at the earlier GEM Listing Committee meeting.

- (5) (a) The relevant party shall have provided the GEM Listing Committee with all or any new information for the consideration by the GEM Listing Committee before seeking to review a GEM Listing Committee decision by the GEM Listing (Review) Committee.
- (b) A party may only request a review of a decision of the GEM Listing Committee when all the relevant information and evidence has been provided to the GEM Listing Committee. A party seeking to review shall not seek to present to the GEM Listing (Review) Committee new information or evidence that was not previously presented to the GEM Listing Committee.
- (c) If the GEM Listing Division upon receipt of the written submission from the relevant party discovers that the relevant party adduces new information in its written submissions prepared for the review hearing, the GEM Listing Division shall notify the Secretary immediately so that arrangements may be made for the relevant party to withdraw its application for review. The new submission will then be considered by the GEM Listing Committee as a first instance hearing.
- (6) Where the GEM Listing Committee is considering an application for listing from a new applicant, the GEM Listing Division will normally invite the new applicant and its directors to make itself available to attend the GEM Listing Committee hearing. The new applicant, including its directors and its Sponsor shall be prepared to answer questions raised by the GEM Listing Committee, but they will normally only be invited into the GEM Listing Committee hearing if the GEM Listing Committee wishes to directly question the new applicant. If the new applicant is invited to make itself available to attend, the new applicant may be accompanied by its directors, Sponsor and/or proposed authorised representatives.
- (7) At a GEM Listing (Review) Committee or Listing Appeals Committee hearing, the directors of the new applicant or the listed issuer (as the case may be) shall have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Sponsor, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant or the listed applicant (as the case may be); a Sponsor or authorised representative may be accompanied by its/his legal adviser.
- (8) In the case of a review hearing sought by a prospective Sponsor or admitted Sponsor pursuant to rule 4.07(2) or a compliance officer or an authorised representative pursuant to rule 4.07(3), the Sponsor, 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 one legal adviser.

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, the GEM Listing (Review) Committee or the Listing Appeals 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, the GEM Listing (Review) Committee or the Listing Appeals Committee, as appropriate.

- (3) The Secretary shall advise the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee on procedural matters, but all decisions on such matters shall be made only by the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals 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, the GEM Listing (Review) Committee or the Listing Appeals Committee.
- (4) The Secretary shall be the point of contact for all parties, including the representatives of the GEM 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, GEM Listing (Review) Committee or Listing Appeals 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, the GEM Listing (Review) Committee or the Listing Appeals Committee, as the case may be, for its decision.

Request for written reasons

- 4.13 On receipt of a decision by the GEM Listing Division, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee (as the case may be) a relevant party has 3 business days to request written reasons for the decision. The GEM Listing Division, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee (as the case may be) will provide written reasons within 14 business days of receipt of the request.

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 GEM Listing Division, the GEM Listing Committee or 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, its Sponsor, compliance officer or 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.