

HKEx LISTING DECISION

Cite as HKEx-LD53-3 [April 2006] (Withdrawn in April 2015)

[See GEM Rule 17.49A]

Summary	
Name of Party	Company A - a GEM listed company.
Subject	Whether suspension in the trading of the shares of Company A would be required for failing to publish on a timely basis financial information as required under the GEM Listing Rules, and, if required, the length of such suspension.
Listing Rule	GEM Listing Rules 18.03, 18.48A and 18.49
Decision	The Exchange determined that the suspension in the trading of the shares of Company A would be required as it had failed to publish financial information on a timely basis as required under GEM Listing Rules. The suspension would remain in force until Company A publishes the requisite financial information.

SUMMARY OF FACTS

1. Company A's financial year end was on 31 December 2004. Company A informed the Exchange that its board was expecting a delay in the publication of its audited results.
2. As required by the GEM Listing Rules, Company A should have released the Financial Year 2004 Final Results and despatched the 2004 Annual Report on or before 31 March 2005. Company A explained that the delay had been caused by protracted negotiations with its auditors over the audit fees that had been quoted higher than the previous year.
3. Company A informed the Exchange that agreement on the audit fees had been reached in mid March 2005. The auditors would attend a stock take by the end of March 2005. Audit field work would commence on 18 April 2005. Therefore, Company A had expectations that the 2004 Final Results and Annual Report would be respectively announced and despatched on or before 30 June 2005.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether suspension in the trading of the shares of Company A would be required for failing to publish on a timely basis financial information as required under the GEM Listing Rules and, if required, the length of such suspension.

APPLICABLE LISTING RULE OR PRINCIPLE

5. GEM Listing Rule 18.03 provides that:

The listed issuer shall send to:—

- (1) every member of the listed issuer; and
- (2) every other holder of its listed securities,

a copy of either (i) the directors' report and its annual accounts and, where the listed issuer prepares group accounts, the group accounts, together with a copy of the auditors' report thereon or (ii) its summary financial report, not less than 21 days before the date of the listed issuer's annual general meeting and not more than 3 months after the date upon which the financial period ended.

6. GEM Listing Rule 18.48A provides that a listed issuer must publish (in accordance with the requirements of Chapter 16) its annual report, in respect of each of its financial year, not later than 3 months after the date upon which the financial year ended.

7. GEM Listing Rule 18.49 provides that:

A listed issuer must publish (in accordance with the requirements of Chapter 16) a preliminary announcement of the results for the financial year, which has been agreed with its auditors, on the GEM website on the next business day after approval by or on behalf of the board of its results and in any event not later than 3 months after the date upon which the financial year ended.

ANALYSIS

8. Company A should have published the final results for the year ended 31 December 2004 and despatched the 2004 Annual Report on or before 31 March 2005.
9. Such a delay constituted breaches of GEM Listing Rules 18.03, 18.48A and 18.49.

10. Financial information is essential to enable investors to make informed investment decisions. If an issuer fails to publish its financial results on time, its shareholders and the market do not have the necessary information to appraise the financial position of the issuer group. For the protection of investors, the trading of securities of an issuer that fails to publish its financial results on or before the due date should be suspended pending publication of the requisite financial information.
11. As Company A knew beforehand that it would not be able to publish its financial information as required under the GEM Listing Rules on a timely basis, it should request for suspension to take place on the last day of the deadline for publishing the subject financial information.

DECISION

12. The Exchange determined that the trading of the shares of Company A should be suspended as it had failed to publish its financial information on a timely basis in accordance with the requirements of GEM Listing Rules. The suspension would remain in force until Company A publishes the requisite financial information.