

THE STOCK EXCHANGE OF HONG KONG LIMITED
GROWTH ENTERPRISE MARKET

DISCIPLINARY PROCEDURES
IN RELATION TO LISTING MATTERS
OF
GROWTH ENTERPRISE MARKET

Adopted by the GEM Listing Committee pursuant to Rule 3.16
of the GEM Listing Rules on 28th March 2000

1. Introduction

- 1.1 The GEM Listing Committee's powers and functions in respect of disciplinary procedures are contained within Chapters 3 and 6 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited ("GEM Listing Rules").
- 1.2 The GEM Listing Committee may impose in its discretion those sanctions which are set out in Rules 3.10 and 6.67.
- 1.3 The parties against whom the GEM Listing Committee may impose the sanctions are set out in Rules 3.11, 6.67 and 6.68.
- 1.4 The composition of the GEM Listing Committee is set out in Rules 3.18 to 3.19.

2. An Overview

- 2.1 The GEM Listing Rules have been made pursuant to section 34 of the Stock Exchanges Unification Ordinance, which empowers the Exchange to prescribe requirements for the listing of securities and in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of the Exchange. Rule 1.06 of the GEM Listing Rules provides that the GEM Listing Rules shall be interpreted, administered and enforced by the Exchange, whose decision shall be conclusive and binding.
- 2.2 Rule 3.16 provides that "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". Pursuant to this provision the GEM Listing Committee has prescribed a set of procedures for the conduct of disciplinary proceedings (the "procedures"), which may be amended by the GEM Listing Committee from time to time.
- 2.3 The procedures set out in paragraphs 4 to 6 apply to the conduct of a hearing of the GEM Listing Committee in the first instance ("first instance hearing") where the GEM Listing Division is taking disciplinary action following a suspected contravention of the GEM Listing Rules. The procedures set out in paragraphs 8 to 10 apply to the conduct of a hearing of the GEM Listing Committee on review of a decision of the GEM Listing Committee at first instance hearing ("review hearing") (the "first instance hearing" and the "review hearing" collectively as the "hearing").
- 2.4 The hearing is primarily by way of written submissions exchanged in accordance with the procedural time-table. Whilst the procedures allow for limited oral submissions to be made at the hearing, all submissions should, so far as possible, be contained in the written submissions which are delivered to the GEM Listing Committee in advance of the hearing through the Secretary to the GEM Listing Committee (the "Secretary"). This gives the other parties to the hearing fair notice of the case and ensures that the hearing is kept as brief as possible. Given the nature of the tribunal, the GEM Listing Committee

discourages lengthy oral submissions and in so far as they are deemed necessary at all, oral submissions should be limited to matters not contained in the written submissions.

- 2.5 All documentary evidence should be appended to the written submissions.
- 2.6 The function of the GEM Listing Committee in disciplinary proceedings is to decide whether there is a breach of the GEM Listing Rules in light of the facts before it and to determine the appropriate sanction to be imposed in case of a finding that breaches of the GEM Listing Rules have occurred. The GEM Listing Committee shall have regard to all relevant circumstances, including the facts as contained in the written submissions, the documentary evidence appended to the submissions, and any oral evidence and submissions made before the GEM Listing Committee at the hearing.

3. The Secretary to the GEM Listing Committee

- 3.1 The duties of the Secretary are to oversee and co-ordinate the operation of the procedures so as to ensure that disciplinary proceedings are conducted smoothly and swiftly in accordance with the relevant time schedule, to advise the GEM Listing Committee on all procedural matters, and to carry out such duties as may from time to time be authorised by the GEM Listing Committee.
- 3.2 The Secretary shall be the point of contact for all parties, including the representatives of the GEM Listing Division (the "Representatives"), the party(ies) who is/are the subject of the disciplinary proceedings in case of a first instance hearing (the "Party(ies)"), the appellant(s) in case of a review hearing, and any observer to the proceedings, in respect of any procedural matter arising out of the disciplinary proceedings. All pre-hearing enquiries on procedural matters, whether in case of a first instance hearing or a review hearing, shall be directed to and decided by the Secretary on behalf of the GEM Listing Committee, subject to the discretion of the Secretary to refer any procedural matter to the Chairman or the GEM Listing Committee for confirmation or decision.

4. Pre-hearing Procedures

- 4.1 All disciplinary proceedings shall be instigated by the GEM Listing Division by forwarding a report to the GEM Listing Committee setting out the suspected breaches of the GEM Listing Rules by the Party(ies) (the "report") through the Secretary. The Secretary will as soon as reasonably practicable send a copy of the report to the Party(ies) together with the procedural timetable and a copy of the procedures.
- 4.2 The Secretary may specify the number of copies of written submissions to be submitted by the parties. All written submissions by the parties are to be submitted to the Secretary in accordance with the procedural time-table. The Secretary shall then arrange for the same to be forwarded to the GEM Listing Committee and provide the other parties with copies of such submissions.

- 4.3 (a) Unless otherwise notified by the parties, all correspondences, including written submissions, shall be sent by the Secretary to the parties by delivery by hand or by registered post or by fax with a confirmatory copy by post or by hand:
- (i) in the case of a company to its registered office;
 - (ii) in the case of a director, to:
 - (a) the registered office address of the company for which the director concerned holds the relevant directorship; or
 - (b) the usual or last known residential or business address of the director concerned; or
 - (c) the address notified by the director concerned in Part 1 of Appendix 6A or 6B of the GEM Listing Rules, as appropriate; or
 - (d) the address notified by the director concerned in accordance with paragraph 1(e) of Part 2 of Appendix 6A or 6B of the GEM Listing Rules, as appropriate;
 - (iii) or, in the case of a director, if there is a letter box for the address in question, by inserting through the letter box a copy of the document enclosed in a sealed envelope addressed to him; and
 - (iv) in the case of any party to whom none of (i), (ii) and (iii) applies, to a place agreed with the Secretary.
- (b) All correspondence, including written submissions shall be sent by the parties to the Secretary by delivery by hand or by ordinary post or by fax with a confirmatory copy by post or by hand.
- (c) Service shall be deemed effective on the second business day (or, in the case of an overseas address, the tenth business day) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question.
- 4.4 At least 5 days before the first instance hearing each and every party, including the Representatives and the Party(ies), shall provide the Secretary with a list of all persons attending the first instance hearing together with that party and the respective capacity in which such persons attend the first instance hearing.
- 4.5 The Secretary shall provide all the parties to the proceedings a list of persons attending the first instance hearing together with the parties and their capacity in attending the first instance hearing once the necessary information has been received by him under paragraph 4.4 above.

5. Attendance at the First Instance Hearing

- 5.1 A Party may be accompanied by his/her legal adviser. The Representatives will not normally be accompanied by an independent legal adviser, but may be, in which case the Party(ies) will be notified in accordance with paragraph 4.5 above. Whilst a Party may confer with his/her legal adviser at any stage during the first instance hearing, all submissions should be made by the Party(ies) and all questions addressed to a Party by the Chairman and/or any members of the GEM Listing Committee present at the first instance hearing must be answered directly by that Party and not through his/her legal adviser.
- 5.2 The first instance hearing will be conducted in English, but any Party may, if he/she wishes, be accompanied by a person who is capable of speaking English and acting as an interpreter. If that party wishes to be accompanied by an interpreter, he/she is required to inform the Secretary as soon as possible, and in any event, at least 5 days before the first instance hearing in accordance with paragraph 4.4 above.
- 5.3 In a case where a Party is not familiar with the English language, but wishes to address the GEM Listing Committee during the first instance hearing in Cantonese or Putonghua, that Party is required to inform the Secretary as soon as possible, and in any event, at least 5 days before the first instance hearing, of his/her intention to address the GEM Listing Committee in Cantonese or Putonghua.
- 5.4 It is the responsibility of any party requiring the attendance of witness(es) to procure his/their attendance at the first instance hearing. Any party calling witnesses should notify the Secretary of his/their identity(ies), as soon as possible, but in any event at least 5 days before the first instance hearing in accordance with paragraph 4.4 above.
- 5.5 The company may attend the first instance hearing as an observer. The representative of the company shall be a director of the company who is not subject to the disciplinary proceedings, and has to be properly authorised by the company to attend the first instance hearing on its behalf.
- 5.6 If any party fails to attend the first instance hearing and does not give prior notification to the Secretary of his/her unavailability for the first instance hearing, the GEM Listing Committee may proceed in his/her absence.

6. Conduct of the First Instance Hearing

- 6.1 The GEM Listing Committee is a lay and informal tribunal, and it is the intention of the GEM Listing Committee to keep the first instance hearing informal.
- 6.2 Rules of Evidence do not apply. The GEM Listing Committee may receive any material, written or otherwise, and attach such weight as it thinks appropriate to these materials, notwithstanding that such material may not be admissible in civil or criminal proceedings.

6.3 The procedural steps of a first instance hearing are as follows:

- the Chairman will ask the members of the GEM Listing Committee present to confirm that he/she has no personal or professional interest in the case before the GEM Listing Committee. In a case where any member present has a personal or professional interest, that member is invited to make a declaration of such interest, and all parties are invited to confirm whether there is any objection to the presence of such member at the hearing;
- the Chairman confirms that a quorum of 5 is present and introduces the members of the GEM Listing Committee present and the Secretary to all the parties. The Chairman then invites the Representatives and the Party(ies) to introduce themselves. The Representatives and the Party(ies) should also introduce any persons attending the first instance hearing with them and the respective capacity in which such persons attend the first instance hearing;
- the Chairman will request the observer to introduce himself/herself and to confirm that he/she is properly authorised by the company to attend the first instance hearing.
- the Chairman, on behalf of the GEM Listing Committee, will confirm the documentation which has been submitted to the GEM Listing Committee and will confirm the receipt of such documentation by the parties;
- the Chairman will invite the Representatives to make any oral submission to supplement, but not repeat, the GEM Listing Division's written submissions. The Chairman will then invite the Party(ies) to make any oral submission to supplement, but not repeat, his/their written submissions. Any party accompanied by a legal adviser may confer with his/her legal adviser prior to making any oral submission;
- members of the GEM Listing Committee present may ask the Representatives, the Party(ies) and any persons attending the first instance hearing any question relevant to the disciplinary enquiry. Any person to whom a question is directed shall answer such question directly, and not through his/her legal adviser, although any party accompanied by a legal adviser may confer with his/her legal adviser prior to answering such questions. However, any member of the GEM Listing Committee present may request any legal adviser present to clarify or elaborate upon any answers given by their clients;
- the Representatives, to be followed by the Party(ies) may make a final oral submission relating to matters arising at the first instance hearing if they so wish. Any Party accompanied by a legal adviser may confer with his/her legal adviser prior to making that final submission.

- 6.4 After all the parties have made their final submissions, the GEM Listing Committee will retire to consider the evidence and reach its decision. The Chairman will ask all the parties to leave the hearing (except the Secretary and his/her assistant who will remain).
- 6.5 Following the decision of the GEM Listing Committee, the Secretary shall as soon as possible deliver to the parties a written decision comprising:-
- (a) the decision(s) of the GEM Listing Committee; and
 - (b) the reasons for the decision(s) if the GEM Listing Committee at its sole discretion directs the inclusion of the same.

7. Review of any decision of the GEM Listing Committee at a First Instance Hearing

- 7.1 Rule 3.12 provides for the review of any decision of the GEM Listing Committee made pursuant to Rules 3.10, 3.11, 6.67 and 6.68 by the party reprimanded, criticised, censured or otherwise sanctioned (an "appellant").
- 7.2 The procedures to be followed in the case of a review are set out in paragraphs 8 to 10 below.

8. Review Procedures

- 8.1 Except in a case where written reasons of the decision(s) have not been included in the written decision of the GEM Listing Committee pursuant to paragraph 6.5(b) above, and written reasons have been requested, an appellant seeking a review of the decision of the GEM Listing Committee at a first instance hearing must give written notice to that effect to the Secretary within 7 days of the communication of the written decision to be reviewed.
- 8.2 In a case where written reasons of the decision(s) have not been included in the written decision of the GEM Listing Committee pursuant to paragraph 6.5(b) above, a party may within 3 business days of the communication of the written decision make a written request for written reasons of the decision(s) pursuant to Rule 3.14. The GEM Listing Committee will give its reasons in writing for the decision(s) made against that party within 14 days of the request. In such a case, any request for review must be by way of a written notice to the Secretary within 7 days of the receipt of the written reasons.
- 8.3 The appellant(s) shall append to the request for review a written submission and state the grounds of the request for review and whether he/they is/are requesting for a review of either or both of (i) the decision(s) of the GEM Listing Committee; and/or (ii) the sanction imposed.
- 8.4 The review hearing is subject to a procedural time-table prescribed by the GEM Listing Committee.

- 8.5 The Secretary may specify the number of copies of written submissions to be submitted by the parties. All written submissions by the parties are to be submitted to the Secretary in accordance with the procedural time-table. The Secretary shall then arrange for all written submission by the parties in connection with the hearing to be forwarded to the GEM Listing Committee and provide the other parties with copies of the submissions in connection with the review hearing.
- 8.6 (a) Unless otherwise notified by the parties, all correspondence, including the written submissions shall be sent by the Secretary to the parties by delivery by hand or by registered post or by fax with a confirmatory copy by post or by hand:
- (i) in the case of a company to its registered office;
 - (ii) in the case of a director, to:
 - (a) the registered office address of the company for which the director concerned holds the relevant directorship; or
 - (b) the usual or last known residential or business address of the director concerned; or
 - (c) the address notified by the director concerned in Part 1 of Appendix 6A or 6B of the GEM Listing Rules, as appropriate; or
 - (d) the address notified by the director in accordance with paragraph 1(e) of Part 2 of Appendix 6A or 6B of the GEM Listing Rules, as appropriate;
 - (iii) or, in the case of a director, if there is a letter box for the address in question, by inserting through the letter box a copy of the document enclosed in a sealed envelope addressed to him; and
 - (iv) in the case of any party to whom none of (i), (ii) and (iii) applies, to a place agreed with the Secretary.
- (b) All correspondence, including written submissions shall be sent by the parties to the Secretary by delivery by hand or by ordinary post or by fax with a confirmatory copy by post or by hand.
- (c) Service shall be deemed effective on the second business day (or, in the case of an overseas address, the tenth business day) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question.
- 8.7 At least 5 days before the review hearing, each and every party, including the Representatives and the appellants, shall provide the Secretary with a list of all persons attending the review hearing together with that party and the respective capacity in which such persons attend the review hearing.

- 8.8 The Secretary shall provide all the parties to the proceedings a list of persons attending the review hearing together with the parties and their capacity in attending the hearing once the necessary information has been received by him under paragraph 8.7 above.

9. Attendance at the Review Hearing

- 9.1 An appellant may be accompanied by his/her legal adviser. The Representatives will not normally be accompanied by an independent legal adviser, but may be, in which case the appellant will be notified in accordance with paragraph 8.8 above. Whilst an appellant may confer with his/her legal adviser at any stage during the review hearing, all submissions should be made by the appellant(s) and all questions addressed to an appellant by the Chairman and/or any members of the GEM Listing Committee present at the review hearing must be answered directly by that appellant and not through his/her legal adviser.
- 9.2 The review hearing will be conducted in English, but an appellant may, if he/she wishes, be accompanied by a person who is capable of speaking English and acting as an interpreter. If that appellant wishes to be accompanied by an interpreter, he/she is required to inform the Secretary as soon as possible, and in any event, at least 5 days before the review hearing in accordance with paragraph 8.7 above.
- 9.3 In a case where an appellant is not familiar with the English language, but wishes to address the GEM Listing Committee during the review hearing in Cantonese or Putonghua, that appellant is required to inform the Secretary as soon as possible, and in any event, at least 5 days before the review hearing, of his/her intention to address the GEM Listing Committee in Cantonese or Putonghua.
- 9.4 It is the responsibility of any party requiring the attendance of witness(es) to procure his/their attendance at the review hearing. Any party calling witness(es) should notify the Secretary of his/their identity, as soon as possible, but in any event at least 5 days before the review hearing in accordance with paragraph 8.7 above.
- 9.5 The company may attend the review hearing as an observer. The representative of the company shall be a director of the company who is not subject to the disciplinary proceedings, and has to be properly authorised by the company to attend the review hearing on its behalf.
- 9.6 If any party fails to attend the review hearing and does not give prior notification to the Secretary of his/her unavailability, the GEM Listing Committee may proceed in its absence.

10. Conduct of the Review Hearing

- 10.1 The GEM Listing Committee is a lay and informal tribunal, and it is the intention of the GEM Listing Committee to keep the review hearing informal.

10.2 Rules of Evidence do not apply. The GEM Listing Committee may receive any material, written or otherwise, and attach such weight as it thinks appropriate to these materials, notwithstanding that such material may not be admissible in civil or criminal proceedings.

10.3 The procedural steps of a review hearing are as follows:

- the Chairman will ask the members of the GEM Listing Committee present to confirm that he/she has no personal or professional interest in the case before the GEM Listing Committee. In a case where any member present has a personal or professional interest, that member is invited to make a declaration of such interest, and all parties are invited to confirm whether there is any objection to the presence of such member at the review hearing;
- the Chairman will confirm that none of the members present at the review hearing was present at the first instance hearing;
- the Chairman confirms that a quorum of 5 is present and introduces the members of the GEM Listing Committee present and the Secretary to all the parties. The Chairman then invites the Representatives and the appellants to introduce themselves. The Representatives and the appellants should also introduce any persons attending the review hearing with them and the respective capacity in which such persons attend the review hearing;
- the Chairman will request the observer to introduce himself/herself and to confirm that he/she is properly authorised by the company to attend the review hearing;
- the Chairman, on behalf of the GEM Listing Committee, will confirm the documentation which has been submitted to the GEM Listing Committee and will confirm the receipt of such documentation by the parties;
- the Chairman will invite the Representatives to make any oral submission to supplement, but not repeat, the GEM Listing Division's written submissions. The Chairman will then invite the appellants to make any oral submission to supplement, but not repeat, his/their written submissions. Any party accompanied by a legal adviser may confer with his/her legal adviser prior to making any oral submission.
- members of the GEM Listing Committee present may ask the Representatives, the appellant(s) and any persons attending the review hearing any question relevant to the disciplinary enquiry. Any person to whom a question is directed shall answer such question directly, and not through his legal adviser, although any party accompanied by a legal adviser may confer with his/her legal adviser prior to answering such questions. However, any member of the GEM Listing Committee

present may request any legal adviser present to clarify or elaborate upon any answers given by their clients;

- the Representatives, to be followed by the appellant(s) may make a final oral submission relating to matters arising at the review hearing if they so wish. Any appellant accompanied by a legal adviser may confer with their legal adviser prior to making that final submission.

10.4 After all the parties have made their final submissions, the GEM Listing Committee will retire to consider the evidence and reach its decision. The Chairman will ask all the parties to leave the hearing (except the Secretary and his/her assistant who will remain).

10.5 The GEM Listing Committee may confirm, vary or modify a decision of the GEM Listing Committee which is being reviewed. Following the decision of the GEM Listing Committee, the Secretary as soon as possible shall deliver to the parties a written decision comprising:-

- (a) the decision(s) of the GEM Listing Committee; and
- (b) the reasons for the decision(s) if the GEM Listing Committee at its sole discretion directs the inclusion of the same.

11. Review of any decision of the GEM Listing Committee at a Review Hearing

11.1 If the GEM Listing Committee modifies or varies the ruling of an earlier meeting, and written reasons of the decision(s) have not been included in the written decision, it will, upon written request by the appellant within 3 business days of the communication of GEM Listing Committee's written decision, give its reasons in writing for the modification or variation. In respect of decisions pursuant to Rules 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. Request for such review must be notified to the Secretary within 7 days of the communication of the written decision, and where written reasons are requested, within 7 days of the receipt of the written reasons.

11.2 The decision of the Listing Appeals Committee on review shall be conclusive and binding on the appellant. If requested by the appellant within 3 business days of the decision, the Listing Appeals Committee will give the reasons in writing for its decision on review.