

THE STOCK EXCHANGE OF HONG KONG LIMITED

DISCIPLINARY HEARINGS

PROCEDURES

Preamble

1. Under section 21 of the Securities and Futures Ordinance, the Exchange has the duty to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of securities that are traded on it or through its facilities.
2. Under section 23 of the Securities and Futures Ordinance, the Exchange has made the Listing Rules (also referred to as the MB Rules) and the GEM Listing Rules for the proper regulation and efficient operation of the market which it operates. The Listing Rules and the GEM Listing Rules confer upon the Listing Committee certain disciplinary powers. In particular, the Listing Committee may impose the sanctions set out in MB Rule 2A.10 and GLR 3.11 upon the parties identified in MB Rule 2A.09 and GLR 3.10. Under MB Rule 2A.15 and GLR 3.16, the Listing Committee may also prescribe such procedures and regulations for any meetings or hearings as it may think fit.
3. These procedures have been made by the Listing Committee under MB Rule 2A.15 and GLR3.16, for the purposes of achieving a just and expeditious disposal of disciplinary business before the Listing Committee. The procedures are intended to enable the Listing Committee to deal with all disciplinary matters expeditiously and on the merits. To this end, the procedures are flexible and may be varied at any time to suit the circumstances of any particular case.
4. The process under these procedures is intended to be informal and to be conducted primarily on the papers. Parties are required to file written submissions addressing all relevant issues. Whilst parties may be permitted to supplement their written submissions orally at hearings, oral submissions must be kept to a minimum and be limited as far as possible to matters not dealt with by way of the written submissions.
5. Parties should also appreciate that the disciplinary process established under the Listing Rules and the GEM Listing Rules is potentially a two-stage process involving:
 - (a) a first instance hearing before the Disciplinary Committee; and
 - (b) a further and final review hearing before the Listing Review Committee.
6. All parties are given a reasonable opportunity to be heard before any final determination is made. To enable the Exchange to comply with its duty under section 21 of the Securities and Futures Ordinance, however, it is essential that the process is completed expeditiously. For this reason, parties must strictly adhere to all time limits provided for in these procedures. Extensions of time will only be granted in exceptional circumstances.
7. A separate set of procedures apply to disciplinary review hearings before the Listing Review Committee (see “Disciplinary Review Hearings Procedures” published on the Exchange’s website).

Procedures

1. Interpretation

1.1 Definitions in the Listing Rules and the GEM Listing Rules apply to these procedures.

1.2 In these procedures, unless the context otherwise requires:

“**Board**” means the Board of Directors of the Exchange;

“**Chairman**” means the Chairman of the Disciplinary Committee;

“**Disciplinary Committee**” means the Listing Committee convened to hear any first instance proceedings;

“**Exchange**” means The Stock Exchange of Hong Kong Limited;

“**GEM Listing Rules**” or “**GLR**” means the Rules Governing the Listing of Securities on GEM of the Exchange;

“**Listing Committee**” means the listing sub-committee of the Board;

“**Listing Review Committee**” means the listing review sub-committee of the Board;

“**Listing Rules**” or “**MB Rules**” means the Rules Governing the Listing of Securities on the Exchange;

“**non-cooperation proceedings**” means disciplinary proceedings the subject matter of which relates solely to a failure to co-operate in an investigation conducted by the Exchange;

“**party**”/“**parties**” means either or both of the Listing Division and the respondent(s) in disciplinary proceedings, or either or both of the Listing Division and the parties to a Resolution Proposal;

“**Resolution Proposal**” means a proposal for concluding intended or disciplinary proceedings on a no-contest basis or by settlement;

“**respondent(s)**” means the person(s) against whom proceedings are brought by the Listing Division; and

“**Secretary**” means the Secretary to the Listing Committee.

A. Disciplinary Proceedings

2. Commencement of disciplinary proceedings

2.1 The Listing Division will initiate disciplinary proceedings by submitting a report setting out its case and all material facts and submissions upon which it intends to rely to the Secretary who will serve a copy of the report on the respondents.

3. Service of disciplinary documents

3.1 (a) Unless the parties are otherwise notified, all correspondence, including written submissions, should normally be delivered by email. The Secretary and/or the parties may alternatively deliver by hand, post, or fax (if by fax, then a confirmatory copy will also be sent by hand or by post);

(b) Unless the parties are otherwise notified, correspondence will be sent to:

(i) in the case of a company, an email address of the company, or email address of one of the company's directors/officers (if by email), or the address/fax number of the company's place of business or registered office (if by hand, post or fax);

(ii) in the case of a current director or supervisor:

- an email address of the company concerned, or email address of the director or supervisor (if by email),
- the address/fax number of the place of business or registered office of the company concerned (if by hand, post or fax), or
- any other email address, residential address, contact address, or fax number provided by the director or supervisor in accordance with the Listing Rules or the GEM Listing Rules;

(iii) in the case of any other party or if there is no principal place of business or registered office of the company concerned, to the address provided to the Exchange by that person or to the last known address of the party.

3.2 The deemed service provisions in the Listing Rules and the GEM Listing Rules shall apply.

3.3 Without limiting anything in the deemed service provisions referenced in paragraph 3.2 above, service on a party shall be deemed effective:

(a) on the date of delivery by hand, email or fax;

(b) on the fourth business day after sending by ordinary or registered post to an address in Hong Kong; and

- (c) on the tenth business day after sending by ordinary or registered post to an address outside Hong Kong.

4. Response submission

- 4.1 Respondents to disciplinary proceedings will normally have 28 days to deliver a submission, supporting documents and evidence in response to the report of the Listing Division, with the presumption that no extension of time will be granted. If the written submission or any supporting documents and evidence are not in English, the respondents should prepare an English translation of the documents before submitting the same to the Secretary.
- 4.2 If the respondents wish to make representations as to the appropriate sanctions and/or directions, they should do so in their written submissions.

B. Disciplinary Committee

5. Membership and conflicts of Interest

- 5.1 Following initiation of proceedings by the Listing Division or invoking the disciplinary powers of the Disciplinary Committee referred to in paragraphs 16.1 and 16.2, the Secretary will arrange for a member of the Listing Committee to act as the Chairman for the purpose of giving directions for the proceedings or considering a Resolution Proposal (including those referred to in paragraphs 6.1, 6.4, 7.1, 17.2 and 18.1). The Chairman and Deputy Chairmen of the Listing Committee will be invited by rotation. If none of them can accept this role, a senior member in terms of length of service on the Listing Committee may do so. Before agreeing to act as the Chairman, the member concerned will do his best to satisfy himself that he has no professional or personal interest in the case, and should raise with the Secretary any concerns over possible conflicts of interest at the earliest opportunity.
- 5.2 The Secretary will invite the Chairman, the Deputy Chairman or the Listing Committee member (as the case may be) who has been invited to give directions under paragraph 5.1 to be the Chairman of the Disciplinary Committee for the hearing or to consider the Resolution Proposal. The Secretary may arrange for a new Chairman if the original Chairman becomes unavailable in accordance with the procedures set out in paragraph 5.1. The Secretary will then arrange for at least four other members of the Listing Committee to be members of the Disciplinary Committee for the hearing or to consider the Resolution Proposal.
- 5.3 Each proposed member to be appointed to that Disciplinary Committee will do his best to satisfy himself that he has no professional or personal interest in the case, and should raise with the Secretary any concerns over possible conflicts of interest at the earliest opportunity.

- 5.4 The Secretary will notify the parties of the names of the Chairman and other members of the Disciplinary Committee, who have indicated an intention to attend the hearing at least two business days before the hearing, or as soon as reasonably practicable thereafter. The parties must raise any concerns over possible conflicts of interest with the Secretary at the earliest opportunity.
- 5.5 If an issue of potential conflict arises prior to a hearing, then the Chairman will consider and rule upon the issue as soon as possible after it is raised.

C. Chairman's Directions

6. Directions

- 6.1 The Chairman may give in writing such directions as he considers appropriate, with the objective of achieving a just and expeditious resolution of the disciplinary proceedings. The directions may cover, amongst other matters, the filing of submissions or evidence. If the Chairman deems it appropriate, he may convene a meeting for the purpose of considering directions.
- 6.2 If the parties wish to raise a procedural issue, they must do so in writing and at the earliest opportunity possible. Save in exceptional circumstances, procedural issues (including any procedural issue raised by the Disciplinary Committee on its own initiative) may be dealt with by the Chairman on the basis of written submissions only (if submissions are required by the Chairman), without the need for a hearing.
- 6.3 The disciplinary proceedings are conducted on the basis of the report of the Listing Division and any written submissions filed by the parties. Only one submission is to be filed by each respondent except in exceptional circumstances where directed by the Chairman. The Secretary will arrange for a copy of all the submissions and correspondence filed in the course of the disciplinary proceedings to be provided to all the other parties.
- 6.4 In each case, and without limitation, the Chairman:
- (a) may, if he considers appropriate and in his sole discretion, give written directions to the parties specifying:
 - (i) whether any further written submissions are required from any party and if so the time by which they must be delivered to the Secretary;
 - (ii) any other matters;
 - (b) will, in his sole discretion, give written directions to the parties specifying the date, time and place of the hearing.

In considering whether to make a direction under (a)(i) above, the Chairman may consider, amongst other matters, the following:

- (1) no further submissions from the parties should be required unless relevant and material new facts have emerged; and

- (2) the party who seeks to file a further submission must satisfy the Chairman that a further submission is appropriate and necessary in the interests of fairness.

6.5 In making directions for the hearing, the Chairman:

- (a) is the sole decision maker on the date of a hearing but may, as a matter of courtesy and convenience, consult the parties before fixing a date; and
- (b) will consider, in his sole discretion, timely requests by the parties supported by written reasons for an adjournment of the hearing, and may require evidence of the circumstances being put forward in support of any such request. Adjournments will rarely be granted and late requests for an adjournment will only be granted in exceptional circumstances.

6.6 A party does not have a right to insist that a hearing should be adjourned for reasons of convenience of the party or any of its advisers or witnesses. Parties are expected to rearrange their schedules to accommodate the hearing.

6.7 In all cases, the Chairman may, in the interests of fairness, and as required by the circumstances, vary these procedures, modify previous directions or issue new directions.

7. Extensions of time and failure to comply with directions

7.1 If a party has reason(s) to seek an extension of time for complying with a direction or time limit, the party may apply in writing setting out the reason(s). The Chairman will consider reasonable requests for time extensions and may grant time extensions of such duration as deemed appropriate in his sole discretion. However, extensions of time for filing submissions will only be granted in exceptional circumstances. If a party fails, without reasonable excuse, to comply with any direction of the Chairman or any time limit, the Disciplinary Committee may, as appropriate, proceed as if it had been notified by the party that he will not be serving any document or doing whatever else was directed under that direction or in accordance with that time limit.

8. Pre-hearing procedure

8.1 Unless the Chairman directs otherwise, at least three business days before the hearing, each party shall provide the Secretary with a list of all persons attending the hearing together with that party and the respective capacity in which such persons will attend the hearing.

8.2 The Secretary will arrange for the information provided by each party under paragraph 8.1 above to be provided to the other parties to the proceedings.

D. The Hearing

9. Attendance of parties

- 9.1 Each respondent has the right to attend the hearing and to be accompanied by a professional adviser. Subject to the discretion of the Chairman to be exercised as appropriate based on the facts and circumstances of each case, where more than one respondent is advised by the same company or firm of professional advisers, only one person from that company or firm of advisers may accompany those respondents at the hearing. Respondents can only participate in proceedings if they attend in person or, if a company, by the personal attendance of an appropriate and authorised director of that company.
- 9.2 It is expected that respondents will attend the hearing, and that they will ensure they are in a position to make supplementary oral submissions if necessary, and to answer any questions which the Disciplinary Committee may have. This is particularly so in respect of the respondents who have undertaken to the Exchange to attend before any meeting or hearing at which they are requested to appear.
- 9.3 The hearing will be conducted in English. Any party may, if he wishes, be accompanied by a person who is capable of speaking English and acting as an interpreter, but he must inform the Secretary as soon as possible, and in any event, at least three business days before the hearing in accordance with paragraph 8.1 above.
- 9.4 Where a party wishes to address the Disciplinary Committee during the hearing in a language other than English, he must inform the Secretary as soon as possible, and in any event, at least three business days before the hearing.
- 9.5 Any party who wishes to call witnesses at the hearing must apply to the Chairman for consent by no later than the time of filing its/his submission under paragraph 4.1. The Chairman may direct the party to file a statement of the evidence of the potential witnesses. It is the responsibility of any party desiring the attendance of witnesses to procure their attendance at the hearing.
- 9.6 Any respondent who does not intend to attend the hearing must notify the Secretary in writing and provide written reasons for the intended absence as soon as reasonably practicable and in any event at least three business days before the hearing.

10. Conduct of hearings

- 10.1 Hearings of the Disciplinary Committee are informal. The Chairman will conduct the hearings in the manner he considers suitable for clarifying the issues before it and generally for handling the proceedings in a just and expeditious manner. Unless otherwise directed by the Chairman the hearing will be conducted as follows:
- (a) At the beginning of the hearing the Chairman will make a short opening statement to explain the manner and order of the proceedings.

- (b) Each member of the Disciplinary Committee present, including the Chairman, will confirm that he has no personal or professional interest in the case before the Disciplinary Committee. Any member present who has a personal or professional interest in the case will be invited to make a declaration of his interest. All parties will then be invited to confirm whether they have any objection to any member present being part of the Disciplinary Committee and if they have such an objection to state the reasons for the objection.
 - (c) If any objection is raised in accordance with sub-paragraph (b) above, then all members of the Disciplinary Committee present at the hearing, save for any member who is the subject of the issue of potential conflict, shall consider and rule upon the issue. If an objection is sustained, the relevant member who was the subject of the objection shall leave the hearing and take no further part in the matter. The remaining members of the Disciplinary Committee can continue with the hearing provided that there is a quorum.
 - (d) The Chairman will confirm that a quorum of five is present and will introduce the members of the Disciplinary Committee to all the parties. The Chairman will then invite the parties and their representatives to introduce themselves. The parties should also introduce any persons attending the hearing with them and the respective capacity in which such persons attend the hearing.
 - (e) The Chairman will normally invite the representatives of the Listing Division, followed by the respondent(s), to make any oral submission to supplement, but not repeat, their respective written submissions. Any party accompanied by a professional adviser may confer with his professional adviser before making any oral submission. Such oral submissions must be kept as short as reasonably practicable.
 - (f) The Disciplinary Committee may ask the parties and any persons attending the hearing any question relevant to the disciplinary action. Persons answering questions are expected to do so directly and not through their professional advisers, although any party accompanied by a professional adviser may confer with his professional adviser before answering a question. The Disciplinary Committee may request any professional adviser present to clarify or elaborate any answers given by their clients.
 - (g) The Chairman will normally invite the representatives of the Listing Division, followed by the respondent(s), to make a final oral submission if they so wish. Any party accompanied by a professional adviser may confer with his professional adviser before making that final submission. Such oral submissions must be kept as short as reasonably practicable.
- 10.2 At any hearing, the Disciplinary Committee may, in its full discretion, admit or reject any evidence adduced, whether oral or written, and attach such weight to the evidence as the Disciplinary Committee considers appropriate. The Evidence Ordinance (Cap. 8, Laws of Hong Kong) and laws relating to the admissibility of evidence shall not apply.

- 10.3 At hearings before the Disciplinary Committee, the matter is usually presented in person by the parties. Except in exceptional circumstances and, in any event, only with the leave of the Chairman, professional advisers accompanying the parties do not have any right of audience at the hearing.
- 10.4 The Disciplinary Committee or the Chairman may obtain advice from an independent professional adviser or an expert in any relevant area of practice in respect of substantive issues arising in the disciplinary proceedings. Subject to paragraph 14.3 below, the substance of the advice will be disclosed to the parties so that they may comment upon it before a decision is made. The Disciplinary Committee or the Chairman may seek to secure the attendance of the adviser at the hearing if it or he considers this to be necessary.
- 10.5 A recording of the hearing will normally be made for administrative purposes. A transcript of the hearing (i.e. without the deliberations of the Disciplinary Committee) may also be made. Any party to the hearing may request a copy of the transcript, which will normally be provided, subject to confidentiality considerations.

11. The burden of proof

- 11.1 The party making an assertion has the burden of proving it.

12. The standard of proof

- 12.1 Proceedings before the Disciplinary Committee are civil in nature. Accordingly, the standard of proof is on the balance of probabilities.

13. Failure of the parties to attend

- 13.1 If a party fails to be present or represented at a hearing, the Disciplinary Committee may hear and decide the matter before it in the absence of that party if:
- (a) it is satisfied that the party has been duly notified of the hearing; and
 - (b) (i) no good reason for the absence has been given to it; or
 - (ii) for the just and expeditious conduct and determination of the matter.
- 13.2 Before deciding to dispose of any hearing in the absence of a party, the Disciplinary Committee must consider the written submissions of the party filed before the hearing, if any.

14. The decision

- 14.1 In coming to its decision, the Disciplinary Committee will consider the written and oral submissions presented by the parties.

- 14.2 The Secretary and any legal advisers to the Disciplinary Committee may be present during the Disciplinary Committee's deliberations for the purposes of providing administrative and legal support. After the Disciplinary Committee has deliberated and arrived at its decision, the Disciplinary Committee may communicate its decision, findings and reasoning to the Secretary and/or advisers for their assistance in recording the decision in writing.
- 14.3 Where the Disciplinary Committee has obtained legal advice on substantive issues of the disciplinary proceedings, it may, if so advised, disclose the entire legal advice, and invite the parties to make submissions in respect of the legal issues in question. The Disciplinary Committee will consider any such submissions of the parties before making a ruling.
- 14.4 The Disciplinary Committee will provide a copy of its ruling and the reasons for it in writing to the parties as soon as practicable following the hearing.
- 14.5 The Disciplinary Committee is the decision maker in relation to the circumstances of the case. In determining the issues before it, the Disciplinary Committee, in its ruling and in accordance with the Listing Rules or the GEM Listing Rules (as appropriate), may impose such sanctions and/or make directions as appear to the Disciplinary Committee to be appropriate in the circumstances of the case. The Disciplinary Committee:
- (a) has the power to impose sanctions which are more severe, less severe, or otherwise different from any sanctions recommended by the Listing Division;
 - (b) may make its ruling based on the information and submissions available at the hearing, regardless of whether the relevant party has attended the hearing; and
 - (c) will take into account the statement on principles and factors in determining sanctions and directions (as updated from time to time).

15. After the decision

- 15.1 If one or more of the respondents seek a review of the decision of the Disciplinary Committee, a publication in appropriate terms may be issued in respect of those respondent(s) not seeking a review.

E. Resolution of Disciplinary Business by Agreement

16. Procedures after reaching a Resolution Proposal

- 16.1 The Listing Division and the parties subject to disciplinary action or proposed disciplinary action may agree terms for disposing of that disciplinary action either by means of no contest or by settlement at any time. If disciplinary sanctions or other actions within the scope of MB Rule 2A.10 or GLR3.11 are necessary, the agreement of the Disciplinary Committee will be required.
- 16.2 In that event, the disciplinary jurisdiction of the Listing Committee may be invoked for the purposes of considering such a Resolution Proposal.

- 16.3 The Listing Division may invoke the disciplinary jurisdiction of the Listing Committee by giving written notice to the Secretary if either:
- (a) before disciplinary proceedings are commenced the Listing Division and one or more prospective parties to those proceedings agree terms for resolving the proposed disciplinary action; or
 - (b) after disciplinary proceedings are commenced the Listing Division and one or more parties to those disciplinary proceedings reach an agreement for resolving the disciplinary proceedings.
- 16.4 The Resolution Proposal should be supported by the relevant documentation, to include the terms agreed for disposal of the disciplinary action, which should be in writing and confirmed by the parties (prospective or actual).
- 16.5 In invoking the disciplinary jurisdiction of the Listing Committee as referred to in paragraph 16.3, the Listing Division should copy to the parties to the Resolution Proposal its correspondence to the Secretary, including the relevant documentation referred to in paragraph 16.4.

17. Consideration and endorsement of a Resolution Proposal

- 17.1 In either case referred to in paragraph 16.3, on the Secretary receiving a written notice, a Chairman will be arranged and a Disciplinary Committee will be formed in the same way as that required under paragraph 5.
- 17.2 The Chairman will fix a hearing date for consideration of the Resolution Proposal. He can make such directions as he sees fit for the efficient and timely consideration of the Resolution Proposal, including dispensing with an oral hearing to deal with the Resolution Proposal. The Secretary will inform the Listing Division and the parties to the Resolution Proposal accordingly.
- 17.3 Each of the parties (or their representatives) should be available to answer any questions which the Disciplinary Committee may have. It is at the discretion of the Chairman whether the attendance of the parties is necessary before consideration of the Resolution Proposal.
- 17.4 The Disciplinary Committee will consider and determine a Resolution Proposal on the basis of the documentation referred to in paragraph 16.4, the report of the Listing Division referred to in paragraph 2.1, the written submissions of the parties, and oral submissions of the parties at the hearing referred to in paragraph 17.2, if any. It may do so with or without a hearing.
- 17.5 The Disciplinary Committee may comment on the Resolution Proposal put before it. If the Disciplinary Committee intends to vary the terms of a Resolution Proposal, it will give due notice to the parties to the proposal, and will also give the parties an opportunity to comment on any proposed variation either orally or in writing in its absolute discretion. It may not vary the terms of any Resolution Proposals without the consent of the Listing Division and the relevant party to the proposal.

- 17.6 In coming to its decision on the merits of the Resolution Proposal, the Disciplinary Committee shall have regard to the prevailing criteria for disposing of disciplinary actions by settlement published on the Exchange's website and the statement on principles and factors in determining sanctions (as updated from time to time).
- 17.7 Where a Resolution Proposal is rejected, the Listing Division may proceed with the disciplinary proceedings subject to any directions made by the Chairman:
- (a) the proceedings, if continued, will be restored from the point in the process which they had reached before the Resolution Proposal was presented; and
 - (b) the Secretary will arrange for a new Chairman and a new Disciplinary Committee to be formed for the disposal of the restored proceedings.

F. Non-cooperation Proceedings

18. Procedures for non-cooperation proceedings

- 18.1 In any non-cooperation proceedings, where the respondent does not indicate, on or before the date directed for filing a response submission, that he/she will attend the hearing, the Chairman may, if he considers appropriate and in his sole discretion, direct the non-cooperation proceedings to be dealt with either:
- (a) on paper in a meeting of the Disciplinary Committee without the parties' attendance; or
 - (b) by way of a hearing in the absence of the respondent.
- 18.2 The other provisions of these procedures should be read accordingly. For the avoidance of doubt, the respondent may not be provided with information regarding the meeting or hearing convened to deal with the non-cooperation proceedings (including but not limited to the date of, or the identity of persons attending, any such meeting or hearing).

G. Miscellaneous Matters

19. Point of contact

- 19.1 All communications with the Listing Committee in respect of any matters prescribed under or in connection with these procedures should be addressed to the Secretary to the Listing Committee, The Stock Exchange of Hong Kong Limited, at:
- email address: LCdisciplinary@hkex.com.hk
 - postal address: 11th Floor, Two Exchange Square, 8 Connaught Place, Central, Hong Kong
 - fax number: 2801 7715

20. Discrepancies

20.1 Where any discrepancy exists between the Listing Rules (or the GEM Listing Rules, as applicable) and anything in these procedures, the Listing Rules (or the GEM Listing Rules, as applicable) shall prevail.