

THE STOCK EXCHANGE OF HONG KONG LIMITED

DISCIPLINARY REVIEW 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 Review Committee certain disciplinary powers. In particular, the Listing Review Committee may conduct reviews of the Listing Committee's decisions. It may endorse, overturn, modify or vary the ruling of the earlier meeting of the Listing Committee under MB Rule 2A.11 and GLR 3.12.
3. Under MB Rule 2A.15 and GLR 3.16, the Listing Review Committee may also prescribe such procedures and regulations for any meetings or hearings as it may think fit.
4. These procedures have been made by the Listing Review Committee under MB Rule 2A.15 and GLR 3.16, for the purposes of achieving a just and expeditious disposal of disciplinary business before the Listing Review Committee. The procedures are intended to enable the Listing Review Committee to deal with all disciplinary review 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.
5. 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.
6. 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.
7. The review will be a re-hearing by the Listing Review Committee on the merits. This ensures that 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.

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 Listing Review Committee;

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

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

“**first instance hearing(s)**” means hearing(s) of the Disciplinary Committee in the first instance;

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

“**party**”/“**parties**” means either or both of the review applicant(s) and the Listing Division in proceedings initiated under MB Rule 2A.11 or GLR 3.12, as appropriate;

“**review applicant(s)**” means any party reprimanded, criticised, censured or otherwise sanctioned by the Disciplinary Committee under MB Rules 2A.09 and 2A.10 or GLRs 3.10 and 3.11 who has applied for a review of the decision of the Disciplinary Committee under MB Rule 2A.11 or GLR 3.12; and

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

A. Review proceedings

2. Initiating review proceedings

- 2.1 A party reprimanded, criticised, censured or otherwise sanctioned by the Disciplinary Committee under MB Rules 2A.09 and 2A.10 or GLRs 3.10 and 3.11 may apply to the Listing Review Committee for a review of the decision of the Disciplinary Committee under MB Rule 2A.11 or GLR 3.12.
- 2.2 An application for review must be made in writing to the Secretary within the time specified under MB Rule 2A.12 or GLR 3.13. The application must state whether the review is in respect of the findings of breach(es), and/or the sanction(s) and direction(s) imposed, by the Disciplinary Committee, and state the full grounds of review together with reasons.
- 2.3 A review of the decision of the Disciplinary Committee by the Listing Review Committee is by way of a re-hearing.
- 2.4 (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 his/her undertaking to the Exchange;
- (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.
- 2.5 The deemed service provisions in the undertaking of any review applicants to the Exchange in the form of Appendices 5B, 5H or 5I to the Listing Rules, and Appendices 6A, 6B or 6C to the GEM Listing Rules, shall apply.

- 2.6 Without limiting anything in the deemed service provisions referenced in paragraph 2.5 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 (including addresses in Macau and the mainland of the People's Republic of China).

3. Conflicts of interest

- 3.1 After receiving an application for review in writing, the review process will commence by the Secretary arranging a member from the chairmen pool to act as the Chairman for the hearing. Members of the chairmen pool shall ordinarily chair any hearing of the Listing Review Committee by rotation.
- 3.2 If the proposed Chairman cannot accept the role, then another member from the chairmen pool will be invited to act as the Chairman for the hearing. If all members from the chairmen pool cannot accept the role, an acting Chairman will be chosen from the Listing Review Committee members on an ad hoc basis. Before agreeing to act as Chairman, the member concerned will do his best to satisfy himself that he has no professional or personal interest in the case. The Secretary may arrange for a new Chairman if the original Chairman becomes unavailable. Members of the chairmen pool are allowed to participate as members in hearings of the Listing Review Committee as necessary to ensure a quorum can be formed.
- 3.3 The Secretary will arrange for at least four members of the Listing Review Committee to attend the hearing in addition to the Chairman.
- 3.4 The proposed members to attend a hearing should raise with the Secretary any concerns over possible conflicts of interest at the earliest opportunity.
- 3.5 The Secretary will notify the parties of the names of the Chairman and other members of the Listing Review 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.
- 3.6 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. If the Chairman is the subject of the issue of potential conflict, then the other members of the Listing Review Committee who will be attending the hearing shall consider and rule upon the issue. If an issue of potential conflict is raised at a hearing, then the procedure described at 9.1(c) below will be followed.

4. Directions

4.1 The Chairman may give in writing such directions as he considers appropriate, with the objective of achieving a just and expeditious resolution of the 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.

4.2 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 Listing Review 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.

4.3 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) a review of the decision of the Disciplinary Committee is by way of a re-hearing, based on the report of the Listing Division and the submissions of the parties filed for the first instance hearing;
- (2) no further submissions from the parties should be required unless relevant and material new facts have emerged; and
- (3) 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.

4.4 The Secretary will arrange for a copy of all the submissions filed in the course of the proceedings to be provided to all the other parties.

4.5 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.

4.6 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.

4.7 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.

5. Nature of hearings

5.1 A review under MB Rule 2A.11 and GLR 3.12 is a re-hearing at which the Listing Review Committee may make any finding irrespective of the decision of the Disciplinary Committee. The hearing will be conducted on the basis of:

- (a) the same materials considered by the Disciplinary Committee in reaching its decision at the first instance, including all written submissions;
- (b) the ruling of the Disciplinary Committee and the reasons for it;
- (c) the written grounds for review of the review applicant and its reasons; and
- (d) any further written submissions delivered in accordance with the directions of the Chairman.

5.2 Save in exceptional circumstances and with the leave of the Chairman, no new evidence may be adduced at a hearing before the Listing Review Committee.

6. Extensions of time and failure to comply with directions

6.1 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 Listing Review 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.

7. Pre-hearing procedure

- 7.1 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.
- 7.2 The Secretary will arrange for the information provided by each party under paragraph 7.1 above to be provided to the other parties to the proceedings.

B. The Hearing

8. Attendance of parties

- 8.1 Each review applicant 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 review applicant is advised by the same company or firm of professional advisers, only one person from that company or firm of advisers may accompany those review applicants at the hearing. Review applicants 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.
- 8.2 It is expected that review applicants 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 Listing Review Committee may have. This is particularly so in respect of any review applicants who are directors who have undertaken to the Exchange to attend before any meeting or hearing at which they are requested to appear.
- 8.3 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 7.1 above.
- 8.4 Where a party wishes to address the Listing Review 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.
- 8.5 Any party who wishes to call witnesses at the hearing must apply to the Chairman for consent at the same time its/his application for review is filed under paragraph 2.2. 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.
- 8.6 Any review applicant 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.

9. Conduct of hearings

- 9.1 Hearings of the Listing Review Committee are informal. The Chairman will conduct the hearing 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 Listing Review Committee present, including the Chairman, will confirm that he has no personal or professional interest in the case before the Listing Review 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 Listing Review 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 Listing Review 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 Listing Review 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 Listing Review 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 review applicant(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 Listing Review 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 Listing Review 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 review applicant(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.
 - 9.2 At any hearing, the Listing Review 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 Listing Review Committee considers appropriate. The Evidence Ordinance (Cap. 8, Laws of Hong Kong) and laws relating to the admissibility of evidence shall not apply.
 - 9.3 At hearings before the Listing Review 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.
 - 9.4 The Listing Review 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 proceedings. Subject to paragraph 13.3 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 Listing Review 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.
 - 9.5 A recording of the hearing will normally be made for administrative purposes. A transcript of the hearing (i.e. without the deliberations of the Listing Review 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.
- 10. The burden of proof**
- 10.1 The party making an assertion has the burden of proving it.
- 11. The standard of proof**
- 11.1 Proceedings before the Listing Review Committee are civil in nature. Accordingly, the standard of proof is on the balance of probabilities.
- 12. Failure of the parties to attend**
- 12.1 If a party fails to be present or represented at a hearing, the Listing Review 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.

- 12.2 Before deciding to dispose of any hearing in the absence of a party, the Listing Review Committee must consider the written submissions of the party filed before the hearing, if any.

13. The decision

- 13.1 In coming to its decision, the Listing Review Committee will consider the written and oral submissions presented by the parties.

- 13.2 The Secretary and any legal advisers to the Listing Review Committee may be present during the Listing Review Committee's deliberations for the purposes of providing administrative and legal support. After the Listing Review Committee has deliberated and arrived at its decision, the Listing Review Committee may communicate its decision, findings and reasoning to the Secretary and/or advisers for their assistance in recording the decision in writing.

- 13.3 Where the Listing Review Committee has obtained legal advice on substantive issues arising in the proceedings, the Listing Review Committee 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 Listing Review Committee will consider any such submissions before making a ruling.

- 13.4 The Listing Review 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.

- 13.5 The Listing Review Committee is the decision-maker in relation to the circumstances of the case. In determining the issues before it, the Listing Review 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 such directions as appear to the Listing Review Committee to be appropriate in the circumstances of the case. The Listing Review 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 or set out in the decision of the Disciplinary Committee;
- (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).

14. After the decision

- 14.1 The Exchange may, where appropriate, issue a publication in relation to the decision.

C. Miscellaneous matters

15. Point of contact

15.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Communications should be addressed to the Secretary to the Listing Review Committee, The Stock Exchange of Hong Kong Limited, at:

- email address: LRCSecretary@hkex.com.hk
- postal address: 11th Floor, Two Exchange Square, 8 Connaught Place, Central, Hong Kong
- fax number: (852) 2801 7715

16. Discrepancies

16.1 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.