

REVIEW OF THE GROWTH ENTERPRISE MARKET (GEM) AND CHANGES TO THE GEM AND MAIN BOARD LISTING RULES

The Law Society's Submissions

Hong Kong Exchanges and Clearing Limited and its subsidiary The Stock Exchange of Hong Kong Limited have on 16 June 2017 launched a consultation on "The Growth Enterprise Market (GEM) and changes to the GEM and Main Board Listing Rules". In response thereto, the Law Society provides the following submissions on the consultation questions posed.

***Question 1:** Do you agree with the proposal to re-position GEM as a stand-alone board and hence remove the GEM Streamlined Process for GEM Transfers and re-introduce the requirements to (a) appoint a sponsor to conduct due diligence for GEM Transfers; and (b) publish a "prospectus-standard" listing document such that GEM Transfer applications are treated as a new listing application (without requiring the applicant to conduct an offering)? Please give reasons for your views.*

Law Society's response:

The Law Society does not believe the mere fact that few companies have taken the GEM Streamline Process means it is justifiable to remove the transfer mechanism, but is fully supportive of taking steps to improve the integrity and attractiveness of the two boards as well as combating shell planting. Removal of the GEM Streamline Process may be a way to achieve this but it can also be unduly burdensome or even superfluous to those GEM issuers initially listed by way of a public offer and have grown into considerable size. The Law Society is therefore supportive of stepping up the GEM listing requirements but will keep an open mind on the removal of the GEM Streamline Process.

***Question 2:** Do you agree with the proposal to require all GEM Transfer applicants to have (a) published and distributed at least two full financial years of financial statements after their GEM listings; and (b) not been subject to any disciplinary investigations by the Exchange in relation to a serious breach or*

potentially serious breach of any Listing Rules for 24 months before they can be considered for a GEM Transfer? Please give reasons for your views.

Law Society's response:

Agree.

***Question 3:** Do you agree with the proposal to retain the current track record requirement under the GEM Listing Rules (i.e. two financial years)? Please give reasons for your views.*

Law Society's response:

Agree.

***Question 4:** Do you agree with the proposal to retain the current practice of not requiring a GEM applicant that can meet the Main Board admission requirements to list on the Main Board instead of GEM? Please give reasons for your views.*

Law Society's response:

Agree.

***Question 5:** Do you agree with the proposal to increase the Cashflow Requirement from at least HK\$20 million to at least HK\$30 million? Please give reasons for your views.*

The Hong Kong Stock Exchange invite suggestions on other potential quantitative tests for admission to GEM.

Law Society's response:

No comment.

***Question 6:** Do you agree with the proposal to increase the minimum market capitalisation requirement at listing from HK\$100 million to HK\$150 million? Please give reasons for your views.*

Law Society's response:

The Law Society supports an increase in the minimum market capitalisation

requirement and is opened as to the size of the increase.

Question 7: *Do you agree with the proposal to increase the post-IPO lock-up requirement such that controlling shareholders of GEM issuers:*

- (a) *cannot dispose of any of their equity interest in a GEM issuer within the first year of listing; and*
- (b) *cannot dispose of any interest in the subsequent year that would result in them no longer being a controlling shareholder as defined under GEM Listing Rule 1.01?*

Please give reasons for your views.

Law Society's response:

- (a) Agree.
- (b) Agree.

Question 8: *Do you agree with the proposal to introduce a mandatory public offering mechanism of at least 10% of the total offer size for all GEM IPOs? Please give reasons for your views.*

Law Society's response:

Agree.

Question 9: *Do you agree with the proposals to align the GEM Listing Rules on:*

- (a) *placing to core connected persons, connected clients and existing shareholders, and their respective close associates with those under Appendix 6 to the Main Board Listing Rules and Guidance Letter HKEX-GL85-16 "Placing to connected clients, and existing shareholders or their close associates, under the Rules"; and*
- (b) *the allocation of offer shares between the public and placing tranches and the clawback mechanism with those in Practice Note 18 to the Main Board Listing Rules?*

Please give reasons for your views.

Law Society's response:

- (a) Agree.
- (b) Agree.

***Question 10:** Do you agree with the proposal to increase the minimum public float value of securities from HK\$30 million to HK\$45 million? Please give reasons for your views.*

Law Society's response:

The Law Society supports an increase in the minimum public float requirement and is opened as to the size of the increase.

***Question 11:** Do you agree with using the Profit Requirement to determine eligibility to list on the Main Board? If not, what alternative test should be used? Please give reasons for your views.*

Law Society's response:

Agree.

***Question 12:** If you agree to retain the Profit Requirement, do you agree that the current level of profit under the Profit Requirement should remain unchanged? Please give reasons for your views.*

Law Society's response:

No comment.

***Question 13:** Do you agree with the proposal to increase the minimum market capitalisation requirement at listing for Main Board applicants from at least HK\$200 million to at least HK\$500 million? Please give reasons for your views.*

Law Society's response:

The Law Society supports a proportionate increase and is opened to the actual size of the increase.

Question 14: *Do you agree with the proposal to proportionately increase the minimum public float value of securities for Main Board applicants from HK\$50 million to HK\$125 million? Please give reasons for your views.*

Law Society's response:

The Law Society supports a proportionate increase and is opened to the actual size of the increase.

Question 15: *Do you agree with the proposal to increase the post-IPO lock-up requirement such that the controlling shareholders of Main Board issuers:*

- (a) *cannot dispose of any of their equity interest in a Main Board issuer within the first year of listing; and*
- (b) *cannot dispose of any interest in the subsequent year that would result in them no longer being a controlling shareholder as defined under Main Board Listing Rule 1.01?*

Alternatively, do you believe that it is not appropriate to extend the post-IPO lock-up requirements for Main Board applicants, given that they are less likely to have the characteristics identified in the 2016 Suitability Guidance Letter because of their larger size and our proposal to raise the minimum market capitalisation requirement to HK\$500 million (see paragraph 36 of the Consultation Paper).

Please give reasons for your views.

Law Society's response:

- (a) Agree.
- (b) Agree.

Question 16: *Do you agree that the proposals for the Main Board should be considered independently irrespective of the outcome of the proposals for GEM? Please give reasons for your views.*

Law Society's response:

Agree.

**The Law Society of Hong Kong
17 August 2017**