

Chapter 3

Composition of the GEM Listing Committee

3.18 The GEM Listing Committee shall consist of ~~7~~21 members, comprising the following number of persons from the following categories:-

(1) Stockbroker ~~or Council~~ members

~~4~~1 individuals who ~~are~~ is :-

(a) ~~an~~ individual members ~~or~~ directors of a corporate member of the Exchange, representing any of the 3 constituencies, namely Constituency A, Constituency B and Constituency C, as defined by article 87A(b) of the Articles of the Exchange; or

(b) Council members who are neither individual members nor directors of corporate members of the Exchange;

(2) Listed company representatives

~~4~~2 individuals who are directors of listed issuers on GEM or the Main Board of varying sizes and business activities and who are neither individual members nor officers or employees of individual or corporate members of the Exchange;

(3) Market practitioners and users

~~12~~3 individuals who are neither individual members nor officers or employees of individual or corporate members of the Exchange and who are:-

(a) a director or a partner of a company or firm principally engaged in the business of fund management;

(b) an officer or senior employee of a merchant bank;

(c) a barrister or a partner of a firm of solicitors in private practice in Hong Kong;

(d) a partner of an accounting firm;

(e) a senior member of an industrial body with an interest in furthering the development of technology or scientific-based research; or

(f) a person who is otherwise involved in or experienced in the securities market and corporate finance matters or securities regulation;

A ~~minimum~~ ~~maximum~~ of 1 member and a maximum of 4 members may come from any of the foregoing categories in this paragraph (3);

(4) The Chief Executive, ex officio.

~~3.19 Each member of the GEM Listing Committee, other than the ex officio member, shall have one alternate who shall be selected from the same category (1), (2) or (3) of rule 3.18, as the member in question.~~

~~3.19~~20 Members of the GEM Listing Committee ~~and their alternates~~ may also be members of the Council provided that neither the Chairman of the Council nor any Vice-Chairman of the Council may hold office on the GEM Listing Committee.

~~3.20~~1 Each individual to be appointed a member ~~or an alternate~~ of the GEM Listing Committee must meet the following criteria:-

(1) the individual must have relevant experience;

- (2) the individual must be a highly regarded member of his profession/occupation; and
- (3) the individual must be available to assume the duties and responsibilities of a member of the GEM Listing Committee ~~or an alternate, as the case may be,~~ for the duration of his term of office.

**Appointment and removal of members of
the GEM Listing Committee ~~and their alternates~~**

- 3.21~~2~~ All members of the GEM Listing Committee ~~and their alternates~~ shall remain in office until any change or changes are made to their appointment or their offices are vacated pursuant to rule 3.25~~6~~ or 3.28~~9~~. Subject to rule 3.27~~8~~, all members of the GEM Listing Committee ~~and their alternates~~ are eligible for re-appointment.
- 3.22~~3~~ Members of the GEM Listing Committee ~~and their alternates~~ shall be appointed by the Council. The Council may appoint only persons nominated in accordance with rule 3.23~~4~~.
- 3.23~~4~~ The persons eligible for appointment or re-appointment in each year as members ~~or alternates~~ of the GEM Listing Committee under any of the categories set out in rule 3.18 shall be nominated by a Listing Nominating Committee comprising 3 members of the Executive Committee of the Council (one being a broker member, one being a lay member of the Council and the third being the Chief Executive of the Exchange) and the Chairman and 2 Executive Directors of the Commission. In their deliberations the Listing Nominating Committee shall seek the views of the current Chairman and Deputy Chairman of the GEM Listing Committee.
- 3.24~~5~~ The Chairman and Deputy Chairman of the GEM Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Council. The Chairman must be a member of the Council and either he or the Deputy Chairman must be a lay member of the Council. The Chief Executive may not be elected as either Chairman or Deputy Chairman of the GEM Listing Committee.
- 3.25~~6~~ All members of the GEM Listing Committee ~~and their alternates~~ shall vacate office annually at the earlier of:-
- (1) the conclusion of the Council meeting appointing a new GEM Listing Committee which is held after the annual election of members of the Council (pursuant to Article 89 of the Articles of the Exchange) next following the date of their appointment; and
 - (2) 30 days after the date of the first Council meeting held after the annual election of members of the Council (pursuant to Article 89 of the Articles of the Exchange) next following the date of their appointment;
- unless they are re-appointed by the Council for a further full term or such shorter period as the Council may stipulate at the time of re-appointment.
- 3.26~~7~~ The Council may fill any casual vacancies that may occur in the GEM Listing Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 3.18 as the member ~~or alternate~~ who has vacated office.
- 3.27~~8~~ Members ~~and alternates~~ of the GEM Listing Committee may only remain in office for a maximum of 3 consecutive years. ~~In calculating such period there shall be aggregated periods served in the capacity as an alternate and in the capacity as a member of the GEM Listing Committee.~~ Any person who serves as the Chairman or the Deputy Chairman of the GEM Listing Committee may remain in office for a total of 4 years. ~~(aggregating for this purpose periods served in the capacity as an alternate and in the capacity as a member).~~ A member ~~or alternate~~ (including the Chairman and Deputy Chairman) who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of 2 years from the date on which he last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the Listing Nominating Committee shall have the discretion to nominate a person for re-appointment within a period shorter than 2 years from the date he vacates office but not shorter than 1 year from such date and the Council shall have the power to appoint such person.
- 3.28~~9~~ The office of a member of the GEM Listing Committee ~~or of an alternate~~ shall be vacated if any one of the following events occurs:-

- (1) in respect of a member ~~or an alternate~~ appointed under the category referred to in rule 3.18(1), if he ceases to be an individual member or a director of a corporate member of the Exchange;
- (2) if a receiving order is made against him or he makes any arrangement or composition with his creditors;
- (3) if he becomes insane or is found to be of unsound mind within the meaning of the Mental Health Ordinance (Cap. 136);
- (4) if by notice in writing to the Council and the GEM Listing Committee, he resigns from his office; or
- (5) if by reason of serious misconduct he is removed by the Council and a written statement setting out the reasons for his removal has been delivered to the Commission.

Provided that the acts of such member ~~or alternate~~ shall nevertheless be treated as valid and effectual in all respects up to and until an entry of the vacation of office shall be entered in the minutes of the GEM Listing Committee.

~~3.30 Notwithstanding the vacation of the office of a member, the alternate appointed for such member shall have authority to act in place of the member who has vacated office until such time as a replacement for such member has been appointed.~~

Functions and powers of the GEM Listing Committee

3.29~~31~~ The GEM Listing Committee shall exercise all the powers and functions of the Council in relation to all listing matters in relation to GEM. The GEM Listing Committee's exercise of such powers and functions is only subject to the powers of review in the Listing Appeals Committee.

Conduct of meetings of the GEM Listing Committee

3.30~~2~~ The GEM Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Council for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the GEM Listing Committee shall be 5 members ~~or their alternates~~ present in person. ~~A member's alternate may not be counted in the quorum if that member is also present at the meeting.~~ The Chief Executive may be counted in the quorum for a meeting of the GEM Listing Committee (including a meeting at which the GEM Listing Committee is determining a matter in the first instance) except that he shall not be counted in the quorum for any meeting at which a decision of the GEM Listing Division or the GEM Listing Committee is under review pursuant to any disciplinary proceedings. The Chief Executive may attend meetings of the GEM Listing Committee convened for such purpose and put forward his views (if any) on the matter under review pursuant to any disciplinary proceedings but he shall not thereafter be entitled to participate in the deliberations of the GEM Listing Committee or to vote on such matters. At any meeting held to review an earlier decision of the GEM Listing Committee pursuant to any disciplinary proceedings, all of the members ~~and alternates~~ present at the second meeting must be persons who were not present at the first meeting. ~~Members who attended the first meeting may arrange for their alternates to attend the second meeting.~~

Composition of the Listing Appeals Committee

3.31~~3~~ The Listing Appeals Committee, being the final appellate body of the Exchange in respect of both GEM and the Main Board, shall consist of 3 members.

3.32~~4~~ The Chairman of the Listing Appeals Committee shall be the Chairman of the Council from time to time if the Chairman of the Council is a person appointed to the Council from one of the three categories comprising the group of categories referred to in Article 87A(a)(iv), (v) and (vi) of the Articles of Association of the Exchange (a "lay member"). If the Chairman of the Council is not a lay member then the Chairman of the Listing Appeals Committee shall be appointed by the Council from amongst the lay members of the Council.

3.33~~5~~ The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the lay members of the Council. The Chairman and Deputy Chairman of the Listing Appeals Committee shall vacate office at the conclusion of the first meeting of the Council after the election of members of the Council (pursuant to Article 89 of the Articles of Association of the Exchange) next following the date of their appointment, unless they are reappointed by the Council at such meeting for a further full term or such shorter

period as the Council may stipulate at the time of reappointment.

- 3.346 The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman as and when the Listing Appeals Committee is required to review a decision of the GEM Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the Council who is an individual member or a director of a corporate member of the Exchange.
- 3.357 In the event that either the Chairman or the Deputy Chairman is materially interested in the outcome of a review (otherwise than as a member of the Council) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member must be appointed from the lay members on the Council or from those members of the Nominating Committee of the Exchange who are not members of the Exchange.
- 3.368 In the event that both the Chairman and the Deputy Chairman are materially interested in the outcome of a review (otherwise than as members of the Council) or are otherwise unavailable to hear a particular review the Council shall appoint a temporary Chairman of the Listing Appeals Committee from the lay members of the Council. The temporary Chairman shall appoint a temporary Deputy Chairman from the lay members of the Council or from those members of the Nominating Committee referred to in Article 95A(a) of the Articles of Association of the Exchange who are not members of the Exchange and a third member of the Listing Appeals Committee from the individual members or directors of corporate members who are members of the Council, to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation whichever is the sooner. The provisions of rule 3.357 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.
- 3.379 The Chairman may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the GEM Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as a member of the Exchange or a member of the Council).

Functions and powers of the Listing Appeals Committee

- 3.3840 The Listing Appeals Committee shall be the review body in respect of any decision of the GEM Listing Committee on any of the following matters:-
- (1) that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;
 - (2) that a prospective Sponsor's application for admission to the Exchange's list of Sponsors has been rejected or that a Sponsor should be removed from such list or that a Sponsor should be regarded as ineligible to act in any particular case;
 - (3) that a person's appointment as an issuer's compliance officer or authorised representative should be terminated;
 - (4) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;
 - (5) that a request by an issuer for the suspension of dealings in its securities has been rejected or where a decision has been made to direct the resumption of dealings in the issuer's securities;
 - (6) that the listing of a listed issuer be cancelled; or
 - (7) any decision pursuant to rule 3.10 (2), (3), (5), (7), (8) or (9) or rule 6.69.

Conduct of meetings of the Listing Appeals Committee

- 3.3941 The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Council for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.

Bona fide acts of committee members ~~and their alternates~~

- 3.4042 All bona fide acts of a member of the GEM Listing Committee ~~or his alternate~~ or any member of the Listing Appeals Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member ~~or his alternate~~ or that such member ~~or his alternate~~ was for some reason ineligible for appointment, be deemed to be valid as if every member ~~or alternate~~ had been duly appointed and was qualified to be a member of the relevant Committee. ~~or an alternate of such member, as the case may be.~~

Chapter 4

Conduct of review hearing

- 4.11 (1) The GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its hearings in accordance with the provisions of the rules made by the Council for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule.
- (2) The quorum necessary for the transaction of any business by the GEM Listing Committee or the GEM Listing (Review) Committee shall be 5 members ~~or their alternates~~ present in person. ~~A member's alternate may not be counted in the quorum if that member is also present at the hearing.~~ The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.
- (3) The Chief Executive may be counted in the quorum for a meeting of the GEM Listing Committee (including a meeting at which the GEM Listing Committee is determining a matter in the first instance) except that he shall not be counted in the quorum for GEM Listing (Review) Committee at which a decision of the GEM Listing Division or the GEM Listing Committee is under review. The Chief Executive may attend meetings of the GEM Listing (Review) Committee convened for such purpose and put forward his views (if any) on the matter under review but he shall not thereafter be entitled to participate in the deliberations of the GEM Listing (Review) Committee or to vote on such matters.
- (4) ~~(a)~~ At any meeting held to review an earlier decision of the GEM Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be, all of the members ~~and alternates~~ present at the review hearing shall be persons who were not present at the earlier GEM Listing Committee meeting.
- ~~(b) A member may attend the GEM Listing (Review) Committee hearing notwithstanding his or her alternate attended an earlier GEM Listing Committee meeting. An alternate of a member may attend the GEM Listing (Review) Committee hearing notwithstanding the member himself or herself attended an earlier GEM Listing Committee meeting.~~
- (5) (a) The relevant party shall have provided the GEM Listing Committee with all or any new information for the consideration by the GEM Listing Committee before seeking to review a GEM Listing Committee decision by the GEM Listing (Review) Committee.
- (b) A party may only request a review of a decision of the GEM Listing Committee when all the relevant information and evidence has been provided to the GEM Listing Committee. A party seeking to review shall not seek to present to the GEM Listing (Review) Committee new information or evidence that was not previously presented to the GEM Listing Committee.
- (c) If the GEM Listing Division upon receipt of the written submission from the relevant party discovers that the relevant party adduces new information in its written submissions prepared for the review hearing, the GEM Listing Division shall notify the Secretary immediately so that arrangements may be made for the relevant party to withdraw its application for review. The new submission will then be considered by the GEM Listing Committee as a first instance hearing.
- (6) Where the GEM Listing Committee is considering an application for listing from a new applicant, the GEM Listing Division will normally invite the new applicant and its directors to make itself available to attend the GEM Listing Committee hearing. The new applicant, including its directors and its Sponsor shall be prepared to answer questions raised by the GEM Listing Committee, but they will normally only be invited into the GEM Listing Committee hearing if the GEM Listing Committee wishes to directly question the new applicant. If the new applicant is invited to make itself available to attend, the new applicant may be accompanied by its directors, Sponsor and/or proposed authorised representatives.

- (7) At a GEM Listing (Review) Committee or Listing Appeals Committee hearing, the directors of the new applicant or the listed issuer (as the case may be) shall have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Sponsor, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant or the listed applicant (as the case may be); a Sponsor or authorised representative may be accompanied by its/his legal adviser.
- (8) In the case of a review hearing sought by a prospective Sponsor or admitted Sponsor pursuant to rule 4.07(2) or a compliance officer or an authorised representative pursuant to rule 4.07(3), the Sponsor, compliance officer or authorised representative, as the case may be, shall have the right to attend the review hearing, to make submissions and may be accompanied by one legal adviser.