



Hong Kong

December 2017

AMENDMENTS TO HKEX'S MAIN BOARD AND GEM LISTING RULES TAKE EFFECT ON 15 FEBRUARY 2018

The Stock Exchange of Hong Kong Limited (the **Exchange**) published its **Consultation Conclusions on Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules (Consultation Conclusions)** on 15 December 2017 stating that it will implement virtually all the amendments to the Listing Rules proposed in its June 2017 **Consultation Paper on Review of the Growth Enterprise Market and Changes to the GEM and Main Board Listing Rules (the Consultation Paper)**.¹

The Hong Kong Listing Rule amendments will take effect on 15 February 2018 and will reposition GEM as a standalone market for small and mid-sized companies. GEM will also cease to act as a stepping stone to the Main Board. Changes to the Hong Kong Listing Rules will raise the listing thresholds for both the Main Board and GEM with higher market capitalisation requirements of HK\$500 million for the Main Board and HK\$150 million for GEM, and corresponding increases in the value of the public float on listing to HK\$125 million (from HK\$50 million) for the Main Board and HK\$45 million (from HK\$30 million) for GEM. The increased size of Main Board listed companies is aimed at a clearer delineation between the companies listed on the two boards.

The Consultation Conclusions were issued simultaneously with the **HKEx's conclusions** on the **New Board Concept**

¹ <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/Consultation-Paper-on-Review-of-the-GEM-and-Changes-to-the-GEM-and-Main-Board-Listing-Rules/cp2017062.pdf>.

Paper, published at the same time as the Consultation Paper. Responses to both consultations were considered by the HKEx holistically in seeking an appropriate listing framework for Hong Kong.

The conclusions to the New Board Concept Paper indicate that the Main Board Listing Rules will be amended to add two new chapters to provide for the listing of new economy companies with weighted voting rights structures and pre-revenue biotech companies, subject to certain additional requirements and safeguards for shareholders. Full details are available in Charltons' newsletter on the conclusions.

The HKEx has published an **FAQ** on the Listing Rule amendments and blacklined versions of the amended **GEM Listing Rules**² and **Main Board Listing Rules**³ are available on the Exchange's website at www.hkex.com.hk.

The following provides a summary of the key changes to the GEM and Main Board Listing Rules which will take effect on 15 February 2018 and the transitional arrangements that will apply.

² http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/u/p/Update_54_Attachment_1.pdf

³ http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/u/p/Update_118_Attachment_1.pdf

A. Key GEM Listing Rules Changes

1. GEM Name Change

To reflect the repositioning of GEM as a market for small and mid-sized companies, the names “Growth Enterprise Market” and 「創業板」 will be changed to “GEM”.

2. Higher entry requirements for GEM listing applicants

The following listing requirements will be raised:

- the minimum cash flow requirement for GEM applicants will be increased to HK\$30 million (from HK\$20 million);
- the minimum expected market capitalisation for GEM applicants at the time of listing will be increased to HK\$150 million (from HK\$100 million); and
- the minimum value of GEM companies’ public float at the time of listing will be raised to HK\$45 million (from HK\$30 million).

3. 10% public offering requirement

A mandatory public offering requirement of at least 10 per cent of the total offer size will apply to all GEM IPOs. It is currently possible to list on GEM by way of placing only. The allocation of offer shares between the public and placing tranches and the clawback mechanism will be aligned with Practice Note 18 to the Main Board Rules.

4. Two year post-IPO lock-up

The post-IPO lock-up on controlling shareholders of GEM issuers will be extended so that they:

- (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 ceasing to be a controlling shareholder as defined under GEM Listing Rule 1.01.

5. Placing to core connected persons, connected clients and existing shareholders

The GEM Listing Rules on placing to core connected persons, connected clients and existing shareholders and

their respective close associates will be aligned with those under Appendix 6 to the Main Board Listing Rules and HKEX-GL85-16. As a result, placing to core connected persons, connected clients and existing shareholders, and their respective close associates, will require the Exchange’s waiver/consent.

6. Removal of the streamlined process for GEM transfers to the Main Board

GEM will be repositioned as a stand-alone board and the GEM Streamlined Process for transfer to the Main Board will be removed. As a result, companies seeking to transfer from GEM to the Main Board will in future be required to appoint a sponsor and produce a “prospectus standard” listing document.

The HKEx will not however proceed with its proposal to require GEM transfer applicants to have published and distributed at least two full financial years of financial statements after their GEM listings. This is because it would effectively require a GEM issuer transferring to the Main Board to have a four-year track record (i.e. the two-year track record requirement for a GEM listing and the proposed two full financial years after GEM listing) which would be a more onerous requirement than the three-year track record requirement for Main Board listing applicants. Nor will the HKEx adopt the proposed extension of the period during which a company transferring from GEM to the Main Board must not have been subject to any disciplinary investigation by the HKEx in relation to a serious or potentially serious breach of any Listing Rules to 24 months (from the current 12 months).

7. Unwinding the delegated authority

The unwinding of the authority to approve GEM listing applications from the Listing Division to the Listing Committee will be implemented at a later date once the outcome of a proposed consultation on the system for decisions of the Listing Committee in 2018 is published, or such earlier date as is considered appropriate.

8. Mandatory sponsor requirement for transfer of listing from GEM to the Main Board

Transfers of listing from GEM to the Main Board will require the GEM issuer to appoint a sponsor at least two months before the submission of its listing application.

B. Key Main Board Listing Rules Changes

1. Higher Entry Requirements

The minimum expected market capitalisation of Main Board applicants at the time of listing will be increased to HK\$500 million from HK\$200 million.

The required minimum value of Main Board companies' public float at the time of listing will rise to HK\$125 million from HK\$50 million.

C. Implementation and transitional arrangements

1. Listing applications submitted before 15 February 2018

All listing applications received by the HKEx before 15 February 2018 will be processed in accordance with the GEM or Main Board Listing Rules in force at the date of the Consultation Conclusions (i.e. 15 December 2017). Only one renewal of such applications will be permitted thereafter.

2. Listing applications submitted on or after 15 February 2018

Applications received on or after 15 February 2018 will be processed in accordance with the amended GEM or Main Board Listing Rules, as the case may be.

3. GEM transfer applications submitted before 15 February 2018

All applications to transfer from GEM to the Main Board that are submitted before 15 February 2018 and have not lapsed, been rejected or returned as at that date, will be processed under the GEM Streamlined Process and their eligibility for the Main Board will be assessed in accordance with the Main Board Listing Rules in force as at 15 December 2017. GEM Transfer applications made before 15 February 2018 are permitted only one renewal of such applications.

4. 3 Year transitional period for issuers listed on GEM as at 16 June 2017

The Consultation Conclusions provide for a transitional period of three years ending on 15 February 2021. During the transitional period, companies which as at 16 June 2017

were either already listed on GEM, or had submitted a valid listing application for listing on GEM and subsequently listed on GEM pursuant to that application (or a renewal of such application) (together Eligible Issuers), can apply to transfer to the Main Board and have their eligibility for the Main Board assessed in accordance with the Main Board Listing Rules in force as at 15 December 2017.

The following requirements will apply to Eligible Issuers submitting an application to transfer to the Main Board during the transitional period:

- (a) applicants that have changed their principal businesses and/or controlling shareholders since listing on GEM will be required to:
 - appoint a sponsor to conduct due diligence; and
 - publish a listing document as a new listing applicant to the Main Board; and
- (b) applicants that have not changed their principal businesses or controlling shareholders since listing on GEM, will only need to:
 - prepare a GEM Transfer announcement in connection with their GEM Transfer which provides investors with a concise update of the issuer's affairs during the most recent full financial year and up to the date of the GEM transfer announcement as required in Appendix 28 to the amended Main Board Listing Rules; and
 - appoint a sponsor to conduct due diligence in respect of their activities during the most recent full financial year and up to the date of the GEM Transfer announcement to ensure that the information in the GEM transfer announcement is accurate, complete and not misleading.

For issuers transferring to the Main Board under paragraph (b) above, due diligence must be conducted in accordance with the standards expected of sponsors under paragraph 17 of the SFC's Code of Conduct and the principles set out in paragraph 2 of Practice Note 21 to the Main Board Listing Rules (for this purpose reference to listing document in paragraph 2 of Practice Note 21 to the Main Board Listing Rules shall be substituted with reference to the GEM Transfer announcement).

The sponsor is expected to be closely involved in the preparation of the GEM Transfer announcement. As applicants are not required to publish a listing document in connection with their GEM Transfer applications, provisions of paragraph 17 of the SFC's Code of Conduct referring to the preparation of a listing document, application proof, the contents of a listing document and an expert report will not apply.

Potential GEM Transfer Applicants are reminded to comply with the requirement to formally appoint a sponsor at least two months before the submission of their listing application for the Main Board once the rule amendments take effect.

GEM transfer applications that are not submitted (i) before 15 February 2018 or (ii) by an Eligible Issuer during the transitional period, will be subject to the amended Main Board Listing Rules.

Transitional arrangements

The table below summarises the transitional arrangements.

	Before 15.02.2018	Transitional Period (3 Years from 15.02.2018)	After Transitional Period (from 16.02.2021)
GEM Transfer applications from Eligible Issuers	GEM Transfer applications will be: • processed under the GEM Streamlined Process; and • Main Board eligibility will be assessed in accordance with the Main Board Listing Rules in force at 15.12.2017	GEM Transfer applications will be: • processed under the transitional arrangements; and • Main Board eligibility will be assessed in accordance with the Main Board Listing Rules in force as at 15.12.2017	All GEM Transfer applications will be processed under the amended Main Board Listing Rules
GEM listing applicants	Applications will be processed under GEM Listing Rules in force as at 15.12.2017	Applications will be processed under amended GEM Listing Rules and any subsequent GEM transfer applications will be processed under the amended Main Board Listing Rules	
Main Board listing applicants	Applications will be processed under Main Board Listing Rules in force as at 15.12.2017	Applications will be processed under amended Main Board Listing Rules	

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