



Hong Kong

June 2018

HONG KONG LISTING RULE CHANGES ON DELISTING EFFECTIVE 1 AUGUST

A new delisting framework will take effect on 1 August 2018, subject to the legislative process, under amendments to the Main Board Listing Rules (**MB Rules**) and GEM Listing Rules (**GEM Rules**) of the Hong Kong Stock Exchange (the **Stock Exchange** or **HKEx**). The HKEx Listing Rule changes address concerns about prolonged trading suspensions and, as detailed in the Stock Exchange's [Consultation Conclusions on Delisting and other Rule Amendments](#) published 25 May 2018, adopt the vast majority of proposals set out in its September 2017 [Consultation Paper](#). Minor changes were made to the original proposals to reflect comments received during the consultation process.

The [amended MB Rules](#)¹ and [amended GEM Rules](#)², marked to show the amendments, are available on the website of the Hong Kong Stock Exchange at www.hkex.com under "Listing Rule Amendments". The following is a summary of the Listing Rule changes.

A. Main Board Listing Rules

a. Fixed period delisting criterion

The amended HKEx Listing Rules allow the Stock Exchange to delist issuers which fail to resolve the issues which caused their suspension within 18 months. The Stock Exchange is thus given the power to delist in circumstances which do not currently allow delisting under MB Rule 6.01.

1 http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/u/p/Update_121_Attachment_1.pdf

2 http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/u/p/Update_56_Attachment_1.pdf

HKEx had proposed 12, 18 or 24 months for the period after which a suspended issuer would be delisted. 18 months was settled on as a compromise between the 12 and 24-month periods, and as a period considered sufficient for issuers to remedy the issues resulting in their suspension.

Suspended issuers will thus need to adopt and implement a resumption plan to ensure remedy of relevant issues and re-compliance with the Listing Rules. The timeframe will need to allow time for HKEx to complete its vetting process, and issuers will be able to consult HKEx at any point.

The prescribed 18-month period will only be extended in exceptional circumstances.

The Stock Exchange however plans to revisit the duration and will consider shortening it after monitoring the functioning of the new Listing Rules.

b. Delisting process under Main Board Listing Rule 6.01

Revised MB Rule 6.10 will allow the Stock Exchange to:

- publish an announcement stating its right to delist an issuer if the issuer fails to resume trading within the period specified in the notice; or
- delist the issuer immediately in appropriate circumstances. According to the Consultation Conclusions, immediate delisting will only occur in

exceptional circumstances where the issues are fundamental to the general principles for listing and are beyond remedy.

All delisting decisions will be subject to the review procedures of Chapter 2B of the MB Rules.

c. Practice Note 17 removal

Practice Note 17 which sets out a three-stage delisting procedure for issuers without sufficient operations or assets will be removed. HKEx will thus be able to delist issuers that do not have sufficient operations or assets under either the fixed period criterion or the new delisting process of MB Rule 6.01.

The 18-month remedial time period will only be extended in exceptional circumstances, such as where HKEx has approved an A1 application and the issuer needs additional time for implementation.

A note will be added to MB Rule 13.24 setting out the characteristics of issuers that are unable to comply with MB Rule 13.24, that are currently included paragraph 2.2 of Practice Note 17. A separate consultation paper will be issued for the review of Listing Rule 13.24.

d. Removal of material breach as reason for suspension or delisting

Material breach of the MB Rules will be removed as a specific ground for suspension or cancellation of listing (under MB 6.01). MB Rule 2B.07(5) will clarify that decisions concerning cancellation of listing under MB Rule 6.01 are to be made and reviewed under the procedures for non-disciplinary matters set out in Chapter 2B, notwithstanding that the reasons for cancellation include or amount to a breach of the Main Board Listing Rules.

e. Quarterly updates by suspended issuers

Suspended issuers will be required to announce quarterly updates regarding developments and progress on satisfying resumption conditions. A suspended issuer will remain obliged to disclose inside information under the Securities and Futures Ordinance (Cap 571) (SFO) and the Listing Rules.

f. Transitional arrangements

For issuers whose securities have been suspended continuously since before 1 August 2018 (i.e. the effective date of Listing Rule amendments) (the **Effective Date**):

- i. Practice Note 17 will continue to apply to issuers at the first, second and third stage of delisting under that practice note;
- ii. For issuers suspended for less than 12 months at the Effective Date, the 18-month period will commence immediately from the Effective Date; and
- iii. For issuers suspended for 12 months or more at the Effective Date, the 18-month period will be deemed to have commenced 6 months before the Effective Date.

B. GEM Listing Rules

a. Fixed period delisting criterion

The Stock Exchange will be able to delist a GEM-listed issuer after 12 months of continuous suspension under GEM Rule 19.13A(1). A 12-month period will give additional time for an issuer to identify the underlying issues and prepare its remedial action. The fixed period duration is intended to be revisited and potentially shortened in the future.

b. Transitional arrangements

For issuers suspended at the Effective Date, the fixed period will commence from the Effective Date. A decision of HKEx and any notice period for delisting that has already imposed on an issuer and has commenced will continue to apply.

c. Delisting process

GEM Rule 9.15, will be aligned with the changes to MB Rule 6.10, so that the Stock Exchange will be able to:

- i. delist an issuer under any existing delisting criteria immediately; or
- ii. publish a delisting announcement giving the issuer a period of time (typically 6 months) to remedy the relevant issues to avoid delisting.

d. Removal of material breach as reason for suspension or delisting

GEM Rule 9.04(5), which provides that a material breach of the GEM Rules is a specific ground for suspension and cancellation of listing, will be removed. GEM Rule 4.07(6) will clarify that decisions regarding the cancellation of listing under Chapter 9 will be made and reviewed under the procedures for non-disciplinary matters set out in Chapter 4.

e. Quarterly updates by suspended issuers

GEM Rule 17.26A will be amended to require issuers to produce quarterly updates on developments.

C. Trading suspensions and related matters

a. Non-publication of notifiable transactions

The following Listing Rules will be removed:

- i. MB Rule 14.37(1) and GEM Rule 19.37(1), which in effect assume that a share or a major transaction are inside information; and
- ii. MB Rule 14.37(2) and GEM Rule 19.37(2), which provide that an issuer who signed an agreement in respect of a notifiable transaction (which it reasonably believes would require disclosure pursuant to Part XIVA of the SFO) must immediately apply for a trading halt or suspension pending announcement of the agreement.

b. Resumption of trading at the direction of the Stock Exchange

The Stock Exchange will delegate authority for directing resumption of trading to the Listing Department to expedite review procedures. New measures adopted will include requiring any review application to be submitted by the issuer within 5 business days (modified from the initially proposed 2 days) of a decision to direct resumption. An issuer will continue to have two levels of review.

D. Guidance letter on Long Suspension and Delisting

The Stock Exchange also published a [Guidance Letter HKEX-GL95-18](#) on long suspension and delisting (**Guidance Letter**), which provides guidance on the amended delisting Listing Rules, general obligations and the Stock Exchange's

regulatory actions during the resumption process. The Guidance Letter supersedes the previous guidance for long suspended companies in Guidance Letter GL66-14. The Guidance applies to both the MB and GEM Rules.

The Guidance Letter addresses:

- i. Circumstances in which the Stock Exchange would impose a shorter specific remedial period;
- ii. Exceptional circumstances under which the Stock Exchange would grant an extension of the remedial period;
- iii. Remedial actions expected from suspended issuers;
- iv. The Stock Exchange's regulatory actions; and
- v. Resumption process guidance for three specific suspension cases:
 - a. Failure to maintain sufficient operations or assets;
 - b. Failure to publish financial results or inside information due to material irregularities; and
 - c. Insufficient public float.

The Guidance Letter stresses that the deadline of the remedial period is intended for resolution of the relevant issues and resumption of trading, and not for the submission of a resumption proposal as in the previous regime.

The Stock Exchange also reminds issuers that the Securities and Futures Commission (**SFC**) has powers to request the Stock Exchange to suspend trading in an issuer's securities under Rule 8 of the Securities and Futures (Stock Market Listing) Rules (**Rule 8 suspension**), regardless of whether trading has been suspended under the Listing Rules.

The Stock Exchange will be able to commence or continue the delisting of an issuer that was suspended under the Listing Rules notwithstanding that the SFC has issued a Rule 8 suspension. If trading in an issuer's shares has been suspended only under Rule 8, the prescribed remedial period under Rule 6.10A after which the Stock Exchange will be able to delist the issuer will still apply.

1. A shorter specific remedial period

The Stock Exchange may set a remedial period that is shorter than 18 months:

- i. if it believes that the nature of the issues to be remedied is such that the issuer should remedy the issues and resume trading within less than 18 months (such as insufficient public float); and
- ii. if the period of suspension was prolonged due to the issuer failing to take adequate action to remedy the issues.

2. Extension of the remedial period

The remedial period can only be extended by the Listing Committee in exceptional circumstances, such as when an issuer has largely implemented the steps that will lead to resumption of trading, but is unable to meet the planned timeframe due to factors outside of its control (normally procedural in nature), and therefore requires a short extension of time for finalisation. It is expected that the Listing Committee would not grant a second extension of the remedial period.

3. Guidance on suspended issuers' remedial actions

Trading can only resume after the Stock Exchange confirms the remedy of issues by the issuer and its re-compliance with the Listing Rules. Until then, a suspended issuer's announcements must include a statement that trading will remain suspended, with an explanation of the reasons for the continued suspension.

A suspended issuer will need to take the following steps:

- i. identify and review the issues that caused suspension promptly after the suspension of trading;
- ii. devise a resumption plan with actions that it intends to take to remedy the issues and re-comply with the Listing Rules;
- iii. work diligently in accordance with the resumption plan. In case of a delay, adjustments to the timetable, commensurable with ensuring resumption of trading before the remedial period end, would be expected;

iv. promptly announce the resumption plan, the timetable, any material change in the plan and timetable, and material developments to the fulfilment of the resumption conditions or guidance;

v. where applicable, make announcements about corporate actions under its resumption plan in accordance with the Listing Rules' requirements;

vi. announce quarterly updates on its business operations and the progress of implementing its resumption plan under MB Rule 13.24A, and satisfying the resumption conditions and guidance given by the Stock Exchange, including reasons for and impact of any delays;

vii. publish periodic financial results and reports, or, if they are not available, management accounts;

viii. maintain adequate internal controls and procedures for ensuring full compliance with its continuing obligations under the Listing Rules and the disclosure requirements under the inside information regime of Part XIVA of the SFO at all times; and

ix. seek the Stock Exchange's confirmation, by providing sufficient information and a draft resumption announcement for pre-vetting, if it considers that the issues have been remedied and the Listing Rules re-complied with.

4. The Stock Exchange's regulatory actions

Throughout the remedial period of a suspended issuer, the Stock Exchange will:

i. issue resumption conditions/guidance to the issuer on the requirements for the issuer to fulfil before resumption of trading;

ii. monitor the issuer's on-going compliance with the Listing Rules and its resumption progress by reviewing the issuer's quarterly and other announcements, make enquiries where appropriate, and it may also require publishing of supplemental announcements. Any documents relevant to the announcements may be requested by the Stock Exchange for review;

iii. give guidance if sought by the issuer;

iv. pre-vet the issuer's announcements under MB Rule 13.52(2) and circulars as required under the Listing Rules;

- v. process the issuer's A1 application where the resumption plan is treated as a new listing application;
- vi. publish monthly long suspension reports on the HKEXnews website; and
- vii. upon the issuer's request, confirm within 10 business days after receipt of the request, whether it is satisfied that the issuer has remedied the issues and re-complied with the Listing Rules to meet the resumption conditions/guidance.

If the resumption conditions or guidance are not satisfied before the lapse of the remedial period, the matter will be taken to the Listing Committee and the issuer will be recommended for delisting.

5. Resumption process guidance

The Guidance Letter gives detailed guidance on the resumption process for three specific suspension cases.

a. Failure to maintain sufficient operations or assets under MB Rule 13.24

Issuers that fail to maintain sufficient operations or assets under MB Rule 13.24 will normally be given a remedial period of 18 months. Re-compliance with MB Rule 13.24 will require the Stock Exchange to be satisfied that the issuer's business is of substance and is viable and sustainable in the long term³.

If a resumption plan includes an acquisition, an announcement will be required, as well as compliance with the requirements of Chapters 14 or 14A of the Listing Rules. If the acquisition is substantial or it includes a reverse takeover, pre-vetting by HKEx will normally be required. In the case of a reverse takeover, an A1 application will need to be submitted to HKEx along with the necessary documentation as soon as practicable. HKEx recommends allowing at least 6-months from the date of the A1 application filing to the resumption date.

Quarterly announcements on resumption progress will be required, as well as announcements of financial results and reports for the purpose of demonstrating financial performance and position.

³ Applicable Listing Decisions are LD75-1, LD116-2017, LD118-2018, LD112-2017, LD117-2017; Guidance Letters are GL78-14 and GL84-15

If the failure to maintain sufficient operations or assets is due to financial difficulties, the issuer will need to promptly announce the corporate actions it undertakes, e.g. capital reorganization, equity fundraisings or a scheme of arrangement, to resolve such difficulties. Demonstration of re-compliance with MB Rule 13.24 will require the issuer to produce a circular with the information supporting viability and sustainability of the restructured group's business.

b. Failure to publish financial results or inside information due to material irregularities

If an issuer failed to announce periodic financial or inside information due to alleged material accounting or corporate governance irregularities or significant weaknesses in internal controls, it will be suspended from trading. These irregularities include:

- i. Accounting irregularities detected by the issuer's auditors. The following issues not explained by the issuer would count as material issues:
 - discrepancies between the group's accounting records on transactions and balances with certain customers and/or suppliers and the information independently obtained by the auditors;
 - concern about the authenticity of documents in the group's accounting records on bank balances;
 - lack of information and evidence to substantiate the existence or ownership of material assets;
 - concern about the nature and commercial substance of some material transactions; and/or
 - failure to keep proper books and records for the group.
- ii. Corporate irregularities, including potentially fraudulent activities, discovered by the board of directors, auditors, media, market commentaries or rumours, the SFC or other regulators.

The issuer must satisfy HKEx that all the material issues have been addressed or remedied as follows:

- i. audit issues raised by the auditors have been addressed;

- ii. any allegations or findings of material irregularities raised by forensic investigators, media, market commentaries or rumours, or regulators, have been addressed;
- iii. any material misstatements or errors in its financial statements have been rectified and accurate information has been published;
- iv. any outstanding financial statements have been published and any audit qualifications or modifications are addressed;
- v. management integrity has been demonstrated;
- vi. if there are issues about material weaknesses of internal control systems, adequate internal controls and procedures to rectify such weaknesses are demonstrated, and the issuer has ensured compliance with the Listing Rules and safeguarded the interests of the issuer; and
- vii. all inside information required to be disclosed under Part XIVA SFO has been announced and the market has been informed of all other material information for the issuer's shareholders and investors to appraise its position.

An issuer will be expected to take the following steps to achieve resumption:

- i. consider setting up an independent committee to review the matter if a director is suspected of being involved;
- ii. engage forensic accountants to investigate the matter if it concerns fraudulent activities. The findings should be reviewed and addressed by the board or an independent committee;
- iii. engage independent control system experts to review the internal control system and identify material weaknesses with remedial actions if the matter concerns the adequacy of the internal control system. The experts' findings should be reviewed and addressed by the board or an independent committee; and
- iv. if the failure to publish financial results stems from unresolved audit issues, consult the auditors on ways to resolve such issues. Replacement should be sought immediately if the auditors have resigned.

Periodic financial results and reports must continue to be published, and if the issuer is unable to publish these, it should publish its unaudited financial results and management accounts.

Quarterly announcements will also need to be published, as HKEx will rely on them in assessing the issuer's resumption progress. The issuer will need to announce:

- a. the findings of a forensic investigation report, if there is one, together with the board's or the independent committee's view, and a plan for further action, and provide a copy of the report to HKEx; and
- b. the outstanding results and reports with audit qualifications or modifications addressed in cases where the issuer failed to publish financial results.

When the issuer seeks confirmation on resumption of trading, it will need to make a written submission with all relevant information to HKEx.

c. Insufficient public float

If insufficient public float is the reason for trading suspension, the matter is expected to be resolved within a reasonably short period of time. The boards of issuers will therefore be expected to promptly devise and announce a detailed action plan to meet the minimum public float requirement, which should include a clear timeframe for each stage.

The Stock Exchange believes that unduly long suspensions due to insufficient public float are normally caused by the shareholders refusing to cooperate with the management, and such circumstance will not be considered a valid ground for the Stock Exchange to extend the remedial period for the issuer.

If the issuer is considered to fail to take adequate action to restore the minimum public float, the Stock Exchange may impose a specific remedial period of no longer than 6 months on the issuer.

Material developments and action plan progress will need to be announced at least quarterly over the suspension of trading period. Completion of any relevant transactions and arrangements causing the issuer to restore sufficient public float must be announced and confirmation will need to be sought from the Stock Exchange on the resumption of trading.

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