

The Stock Exchange of Hong Kong Limited's ("HKEX") latest reforms to the GEM Listing Rules

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Hong Kong has long been recognized as a leading global financial hub, attracting both domestic and international applicants and investors. In its continued efforts to support and encourage listings of small and/or medium sized enterprises ("SME"), a consultation paper was published by the HKEX on 26 September 2023 proposing reforms to be made to the Rules Governing the Listing of Securities on the GEM of HKEX (the "GEM Listing Rules"), followed with consultation conclusions published by the HKEX on 15 December 2023. Such reforms have taken effect on 1 January 2024. This article will discuss the key changes applicable to intended and presently listed GEM issuers.

1. New Alternative Financial Eligibility Test

Previously, GEM issuers must satisfy the following cash flow test as part of its initial listing requirement. With a view to attracting high growth enterprises primarily engaged in research and development ("R&D") activities, a new alternative "market capitalization / revenue / R&D test" has been introduced in addition to the existing cash flow test. The requirements are as follows: -

Previous (Existing) Requirements	New Alternative "Market Capitalization / Revenue / R&D Test"
<u>Trading Record</u> : At least two financial years.	<u>Trading Record</u> : At least two financial years.



<p><u>Market Capitalisation</u> : At least HK\$150 million at the date of listing.</p> <p><u>Cash Flow</u> : At least HK\$100 million in aggregate for the two most recent audited financial years, with year-on-year growth over the two financial years.</p>	<p><u>Market Capitalisation</u> : At least HK\$250 million at the date of listing.</p> <p><u>Revenue</u> : At least HK\$100 million in aggregate for the two most recent audited financial years, with year-on-year growth over the two financial years.</p> <p><u>R&D Expenditure</u> : At least HK\$30 million in aggregate for the two financial years prior to the date of listing. The R&D expenditure incurred for each financial year must be at least 15% of its total operating expenditure for the same period.</p>
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Kindly note that the previous financial eligibility requirements are still in force. Accordingly, companies with a sufficient track record may still opt to list by satisfying the already existing cash flow test.

Further, the remaining previous listing requirements regarding ownership continuity and management continuity are still applicable under both tests.

2. Post-IPO Lock Up Period Shortened

GEM issuers were previously subject to a 24-month post-IPO lock up period (set period where controlling shareholders of the company are prohibited from disposing their shares). This period is reduced to 12 months under the amendments in order to increase trading flexibility for potential investors. The key changes are as follows: -



Previous Requirements	Key Changes
<ul style="list-style-type: none"> • Restricted from disposing of any shares within the first 12 months after listing; and • Within the second 12 months after listing, restricted from disposing of shares that would result in them ceasing to be the controlling shareholder(s). 	<ul style="list-style-type: none"> • Restricted from disposing of any shares within the first 6 months after listing; and • Within the second 6 months after listing, restricted from disposing of shares that would result in them ceasing to be the controlling shareholder(s).

3. Certain Continuing Obligations Removed

A. Removal of Mandatory Quarterly Reporting and Changes in Periodic Reporting Obligations

GEM issuers are no longer obliged to issue a quarterly report, but are instead only recommended under GEM's Corporate Governance Code to continue such practice.

Periodic reporting deadlines have also been amended to align with those of the Main Board. GEM issuers must, therefore, publish the following after the date upon which the financial period has ended: -

1. Annual Reports not later than four months;
2. Interim Reports not later than three months; and
3. Preliminary announcements of results for the first six months of each financial year not later than 2 months.



B. Removal of Obligation to Engage Compliance Officer and Changes in the Engagement of Compliance Advisers

GEM issuers are no longer required to engage one executive director to be its compliance officer and may terminate the engagement of its compliance adviser after the date of publication of financial results of the first full financial year after listing, as opposed to the second full financial year. Additional obligations previously only applicable to compliance advisers of GEM issuers have also been removed under the new GEM Listing Rules.

4. Streamlined Transfer Mechanism to the Main Board

Lastly, under the previous transfer mechanism (which will remain in force), GEM issuers must, *inter alia*, (1) appoint a sponsor at least 2 months prior to submitting its transfer application to carry out due diligence on the listing documents and (2) to produce a “prospectus-standard” listing document when applying to transfer to the Main Board.

GEM issuers may now opt to transfer under an additional new streamlined mechanism, which does not impose the above previous requirements. The prospective companies must, however, satisfy the following to qualify as an eligible transferee under the new mechanism:

1. Satisfy all qualifications for listing under the Main Board;
2. Satisfy the financial eligibility tests of the Main Board for three full financial years prior to the date of transfer, including ownership continuity and control, and no fundamental change in its principal business within that period;
3. Satisfy a Minimum Daily Turnover Threshold of HK\$50,000 on at least 50% of the 250 trading days immediately preceding the transfer application and



until the commencement of dealings on the Main Board (the “**Reference Period**”);

4. Hold a volume weighted average capitalization over the Reference Period that could meet the minimum market capitalization requirement for listing on the Main Board;
5. Have maintained a clean compliance record over the 12 months preceding the transfer application and until the commencement of dealings on the Main Board; and
6. Publish an announcement as soon as practicable before the intended date that dealings in the issuer’s shares on the Main Board are expected to commence.

Conclusion

Implementation of the above reforms have been long anticipated in hopes to enliven the currently stagnant GEM board market by attracting investors and SME companies wishing to list in Hong Kong. We remain optimistic and trust that such changes will contribute to the continuing prosperity and growth of Hong Kong’s economy and status as a key international financial centre.

For any further enquiries or information in relation to this article, please contact our team and we will be happy to advise you.



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