

August 2019

Changes to the GEM Transfer Mechanism – An Overview

I. Amendments to the existing GEM transfer mechanism

1. Amendments to the Listing Rules by The Stock Exchange of Hong Kong Limited (the “**Exchange**”) on listing criteria became effective on 15 February 2018 (the “**Rule Amendment Effective Date**”) pursuant to market consultations concluded in December 2017 (the “**Consultation Conclusions**”) ¹, lifting certain criteria for eligibility of listing for GEM and abolishing the streamline procedure for GEM transfer.
2. One notable feature of such amendments is the removal of the streamlined process for GEM transfers to the Main Board, which resonates resoundingly with the Exchange’s aim of repositioning GEM as a standalone market for small and mid-sized companies rather than as a stepping stone to the Main Board². The rationale being to weed out GEM transfer applicants that are of poorer quality and prevent their exploitation of the lower GEM listing threshold to gain easy access to the Main Board where a more stringent listing mechanism and comprehensive sponsor due diligence regime are in place³. The amendments implemented would thus have the effect of bringing the vetting process of the GEM transfer applicants in line with that of its Main Board counterparts.

¹ Consultation Conclusions –The Review of the Growth Enterprise Market (GEM) and Changes to the Gem and Main Board Listing Rules (2018). Hong Kong: The Stock Exchange of Hong Kong [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2017-Consultation-Paper-on-Review-of-the-Growth-Enterprise-Market/Conclusions-\(December-2017\)/cp2017062cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2017-Consultation-Paper-on-Review-of-the-Growth-Enterprise-Market/Conclusions-(December-2017)/cp2017062cc.pdf?la=en)

² Ibid, Chapter 2

³ Ibid

II. What does the removal of the streamlined process entail for GEM transfer applicants?

1. Under the new GEM transfer mechanism, GEM transfer applications would be subjected to the amended Main Board Listing Rules⁴. With the assessment criteria under the new regime mirroring that of Main Board listing applications, comprehensive due diligence requirements are reinstated such that any GEM transfer application which comes within the new regime would need to (a) have a sponsor appointed at least two months prior to the submission of the listing application and (b) to publish (i) an announcement of such application to transfer to the Main Board (the “**GEM Transfer Announcement**”), (ii) an application proof⁵, (iii) a “prospectus-standard” listing document⁶, and (iv) a formal notice⁷. The initial listing fee payable by a GEM transfer applicant is also raised from 50% to the full standard initial listing fee for the Main Board.
2. In light of the more onerous requirements on GEM transfer applicants as imposed by the new GEM transfer regime, the Exchange has introduced certain facilitative measures⁸ to ease the burden on such applicants. Such facilitative measures include the dispensation of certain documentary requirements⁹, exemptions from the requirements on post-IPO lock-up¹⁰, restrictions on fund raising¹¹, and appointment of compliance adviser.

III. Implementation and Transitional Arrangements

1. Yet pursuant to the transitional arrangements¹², the above new transfer requirements may not be applicable to issuers that, as at 16 June 2017, have

⁴ Ibid, Chapter 4

⁵ Main Board Listing Rules, Practice Note 22

https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/c/o/consol_mb.pdf

⁶ Main Board Listing Rules, Chapter 11

⁷ Main Board Listing Rules, Appendix 11, Form B

⁸ Consultation Conclusions –The Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules (2018). Hong Kong: The Stock Exchange of Hong Kong, Chapter 2

⁹ i.e. the certified copy of the GEM Transfer applicant’s certificate of incorporation or equivalent document (Main Board Listing Rules 9.11(17a)) and a copy of the written notification issued by Hong Kong Securities Clearing Company Limited stating the securities will be eligible securities (Main Board Listing Rules 9.11(30))

¹⁰ Provided that any plan by the controlling shareholders of the issuer to dispose of their interests in the issuer in the next 12 months has been prominently disclosed in the listing document

¹¹ Provided that any plan to raise funds within six months from the date of the transfer of the issuer’s listing to the Main Board has been prominently disclosed in the listing document.

¹² Main Board Listing Rules Appendix 28

either already been listed or had submitted a valid application for listing on GEM and subsequently so listed pursuant to such application (or a renewal of such) (the “**Eligible Issuers**”)¹³. Such Eligible Issuers are entitled to a grace period of 3 years, starting from the Rule Amendment Effective Date (i.e. 15 February 2018) and ending on 14 February 2021 (the “**Transitional Period**”) for submission of GEM transfer applications, during which their eligibility for listing on the Main Board is to be assessed in accordance with the Main Board Listing Rules in force as at the date of the Consultation Conclusions¹⁴.

2. Under such transitional arrangements, an Eligible Issuer would be required to (i) prepare a GEM Transfer Announcement and (ii) appoint a sponsor to conduct due diligence in respect of its activities during the most recent full financial year and up till the date of the GEM Transfer Announcement to ensure that all information contained therein is accurate, complete and not misleading¹⁵. For those Eligible Issuers who have changed their principal businesses and/or controlling shareholders since their listing on GEM, the publishing of a “prospectus-standard” listing document would be required on top of the sponsor appointment requirement¹⁶.

3. The table below summarises the GEM Board to Main Board transfer mechanism:-

GEM Board to Main Board transfer mechanism

<i>Submission time</i>	<i>Submitted before 15 February 2018</i>	<i>Submitted between 15 February 2018 and 14 February 2021</i>	<i>Submitted after 14 February 2021</i>
Who is eligible	GEM issuer that has (1) published at least one full financial year of financial statements after GEM listing; and (2) not been subject	Issuer that as at <u>16 June 2017</u> , has either already been listed or had submitted a valid application for listing on GEM and subsequently so listed pursuant to such	All GEM issuers

¹³ Main Board Listing Rules 9A.01A

¹⁴ Ibid

¹⁵ Main Board Listing Rules Appendix 28 paragraph 4(2)(a)

¹⁶ Main Board Listing Rules Appendix 28 paragraph 9

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	to disciplinary investigations for 12 months	application (or a renewal of such)	
Steps to be taken	<p>The streamlined process, i.e.</p> <p>(1) No sponsor requirement</p> <p>(2) Requires the publishing of a transfer announcement only</p>	<p><i>Where there is no change in principal businesses and controlling shareholders since listing:</i></p> <p>(1) Prepare a GEM Transfer Announcement; and</p> <p>(2) Appoint a sponsor to conduct due diligence during the most recent full financial year and up to the date of the GEM Transfer Announcement</p> <p><i>Where there is a change in principal businesses and controlling shareholders since listing:</i></p> <p>(1) Appoint a sponsor to conduct due diligence</p> <p>(2) Publish a “prospectus-standard” listing document</p>	<p>(1) Appoint a sponsor to conduct due diligence 2 months prior to the submission of the application; and</p> <p>(2) Publish</p> <p>(i) a GEM Transfer Announcement;</p> <p>(ii) an application proof;</p> <p>(iii) a “prospectus-standard” listing document; and</p> <p>(iv) a formal notice</p>
Rules to be assessed on	<p>Main Board Listing Rules in force as at 16 June 2017, with only one renewal application permitted after 15 February 2018</p> <p>Any further renewal applications be</p>	Main Board Listing Rules in force as at 16 June 2017 applicable	Amended Main Board Listing Rules

	assessed on the amended Main Board Listing Rules		
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IV. Application for GEM transfer by Eligible Issuers

The deadline for Eligible Issuers to apply for GEM transfer under the transitional arrangements is 14 February 2021. As the draft announcement submitted for GEM transfer applications is expected to contain the published financial information of the applicant for the most recent three financial years, it seems that the Eligible Issuers would have to rely on their financial information for 2017, 2018, and 2019 if their financial year end is set on 31 December 2019, as there may be insufficient time for auditing and publishing 31 December 2020 financials for the purposes of GEM transfer applications.

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