

# Hong Kong Capital Markets Update

ISSUE 2018-04 | June 2018

## HKEX's consultation conclusions on Delisting and Other Rule Amendments

On 25 May 2018, the Hong Kong Stock Exchange (the Exchange) published the [conclusions](#) to an earlier [consultation](#) on delisting and other rule amendments.

The consultation sought to address market concerns revolving prolonged trade suspension of listed securities. It was widely supported by respondents and the Exchange will be implementing the amendments proposed in the consultation. The revised Listing Rules will come into effect on 1 August 2018 (Effective Date).

This Capital Markets Update provides an overview of the amendments to the Listing Rules following the consultation conclusions.

### *Highlights of Listing Rules Amendments*

- Addition of separate delisting criterion to enforce the delisting of an issuer after its continuous suspension for a prescribed period of 18 months (GEM: 12 months)
- Specification of a new delisting process, allowing the Exchange to (i) publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting, or (ii) delist the issuer immediately in appropriate circumstances
- Removal of Practice Note 17 from the Main Board Listing Rules as the new delisting process will also apply to issuers without sufficient operations or assets
- Transitional arrangements for issuers whose securities are under suspension immediately before the effective date
- Introduction of a number of rule amendments relating to suspension requirements, in the interest of shortening suspensions

### Background of Delisting and Other Rule Amendments

It has been observed that there are a number of issuers whose securities had been suspended for a prolonged period<sup>1</sup>. While a trading suspension gives an issuer the opportunity to remedy the issues causing the suspension, a prolonged suspension can prevent the proper functioning of the market. Such concerns prompted the Listing Committee to review the delisting policy in 2015 and the committee concluded that a more robust delisting regime is required to maintain Hong Kong's reputation as an international financial centre.

The current delisting framework focuses mainly on the resumption of trading instead of facilitating delistings. While this approach protects minority shareholders from holding shares in an unlisted vehicle without a way to exit, it has resulted in prolonged suspensions for issuers that are unable or fail to remedy the issues. This prevents the market from functioning properly and leads to uncertainty on whether and when the issuer would be relisted (or delisted).

<sup>1</sup> According to the Exchange's Monthly Prolonged Suspension Status Report for the month ended 30 April 2018, as of 30 April 2018 there were 65 issuers whose securities had been suspended for three months or more and 49 of these issuers had been suspended for a year or more.

It can be difficult for the Exchange to delist issuers on a timely basis under the current delisting framework:

- (i) If an issuer is suspended for a prolonged period, but is taking steps to remedy the issues that led to the suspension, there is no clear benchmark to support a delisting decision. The Listing Rules<sup>2</sup> do not specify what amounts to a “prolonged period” or “adequate action”. As result, issuers are not under time pressure or have enough incentives to take active steps to rectify matters.
- (ii) The Exchange may have insufficient grounds to support a delisting decision under the existing Listing Rules<sup>3</sup>. If, for example, an issuer fails to publish its financial results due to allegations on accounting or other corporate irregularities, the Exchange is unlikely to have enough evidence to come to a delisting conclusion. Any investigation would take a considerable amount of time, thereby prolonging the period of suspension.
- (iii) For Practice Note 17 (PN17) companies<sup>4</sup>, the three-stage delisting process can take more than 18 months as an assessment (based on two reviews) has to be conducted for every stage. If a PN17 company decides to review the Exchange’s decision during any of the three stages, the delisting process would be further prolonged.

### Amended Delisting Framework

Based on market feedback, the Exchange will amend the Listing Rules to: (i) facilitate an orderly exit of poor quality issuers; (ii) incentivise suspended issuers to act promptly towards trading resumption; and (iii) provide a deterrent effect against issuers committing material breaches of the Listing Rules. Key changes to the Listing Rules include:

#### **Fixed period delisting criterion**

The Exchange will add a separate delisting criterion under the amended Listing Rules to allow the Exchange to delist a Main Board issuer if it has been continuously suspended for 18 months (12 months for GEM issuers). The amended Listing Rules will give suspended issuers an explicit deadline, incentivising them to act promptly towards trading resumption. This essentially provides the Exchange with a clear basis to delist an issuer.

#### **Delisting process**

According to the amended Listing Rules, for delistings based on the delisting criterion set out in Main Board Listing Rule 6.01 and GEM Listing Rules 9.01 and 9.04, the Exchange may:

- (i) publish a delisting notice and give an issuer a period of time (length of time will be provided on a case-by-case basis) to remedy the relevant issues in order to avoid a delisting; or
- (ii) delist an issuer immediately (only in exceptional circumstances whereby the matters are fundamental to the general principles for listing and are beyond remedy)

#### **PN17 removal**

As issuers without sufficient operations or assets may now be delisted through the fixed period delisting criterion or the delisting process for MB Rule 6.01, PN17 is no longer required and has been removed from the Main Board Listing Rules.

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<sup>2</sup> MB Rule 6.04 sets out the general principle that the continuation of a suspension for a prolonged period without the issuer taking adequate action to obtain restoration of listing may lead to the Exchange cancelling the listing.

<sup>3</sup> Existing MB Rule 6.01 specifies four circumstances under which the Exchange may cancel a listing, including where an issuer:

- (a) is in material breach of the Rules;
- (b) fails to maintain sufficient public float;
- (c) fails to maintain sufficient operations or assets; and
- (d) is no longer suitable for listing

<sup>4</sup> For issuers without sufficient operations or assets, Practice Note 17 sets out a three-stage delisting procedure (of at least six months each) for Main Board issuers. At the end of each stage, the Exchange must assess whether it is appropriate to proceed to the next stage, depending on whether the issuer has submitted a viable resumption proposal.

### Transitional arrangements

For PN17 companies whose securities have been suspended prior to the Effective Date, the practice note will continue to apply. The following arrangements are applicable to other Main Board issuers if, as at the Effective Date, their securities have been continuously suspended:

- (i) for less than 12 months, the fixed period under the fixed period criterion would commence immediately from the Effective Date; or
- (ii) for 12 months or more, the fixed period under the fixed period criterion would be deemed to have commenced 6 months before the Effective Date.

For GEM issuers suspended prior to the Effective Date, the fixed period will commence from the Effective Date.

### Other amendments

For other minor amendments supporting the improvements and clarifications of the delisting framework, please refer to Appendix I for details.

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If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

**Paul Lau**

Partner, Head of Capital Markets  
KPMG China  
Tel.: +852 2826 8010  
[paul.k.lau@kpmg.com](mailto:paul.k.lau@kpmg.com)

**Louis Lau**

Partner, Capital Markets Advisory Group  
KPMG China  
Tel.: +852 2143 8876  
[louis.lau@kpmg.com](mailto:louis.lau@kpmg.com)

**Katharine Wong**

Partner, Capital Markets Advisory Group  
KPMG China  
Tel.: +852 2978 8195  
[katharine.wong@kpmg.com](mailto:katharine.wong@kpmg.com)

**Terence Man**

Director, Capital Markets Advisory Group  
KPMG China  
Tel.: +86 1085085548  
[terence.man@kpmg.com](mailto:terence.man@kpmg.com)

[kpmg.com/cn](http://kpmg.com/cn)

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## Appendix I – Overview of Changes to the Listing Rules

The following is a comparison between current and the newly amended Listing Rules relating to delisting following the conclusion to the consultation papers.

Topic	Board Affected	Pre-existing Rules	Newly implemented Rules
<b>Fixed period delisting criterion</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>No clear benchmark on what amounts to a “prolonged period” or “adequate action” to support a delisting decision</li> </ul>	<ul style="list-style-type: none"> <li>Fixed period delisting criterion to enforce the delisting of an issuer after its continuous suspension for 18 months (GEM: 12 months)</li> </ul>
<b>Delisting process</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>The Exchange may at any time cancel the listing of any securities for the purpose of protecting investors or maintaining an orderly market, however, the MB Rules do not provide a specific delisting process unless the issuer is considered to be no longer suitable for listing</li> </ul>	<ul style="list-style-type: none"> <li>The following delisting processes will apply to all the delisting criteria in MB Rule 6.01 and GEM Rules 9.01 and 9.04:               <ol style="list-style-type: none"> <li>publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting; or</li> <li>delist an issuer immediately (only in exceptional cases)</li> </ol> </li> </ul>
<b>PN17 removal</b>	Main Board only	<ul style="list-style-type: none"> <li>For issuers without sufficient operations or assets, PN17 sets out a three-stage delisting procedure (of at least six months each)</li> <li>At the end of each stage, the Exchange must assess whether it is appropriate to proceed to the next stage, depending on whether the issuer has submitted a viable resumption proposal</li> </ul>	<ul style="list-style-type: none"> <li>PN17 removed from the MB Rules. Issuers without sufficient operations or assets will now be delisted through the fixed period delisting criterion or the new delisting process for MB Rule 6.01.</li> </ul>
<b>Transitional arrangements</b>	Main Board / GEM	N/A	<ul style="list-style-type: none"> <li>MB issuers who were subject to PN17 will continue to apply PN17</li> <li>For other MB issuers who were suspended less than 12 months prior to 1 August 2018 (“effective date”), the fixed period will commence from the effective date; for other MB issuers who have been suspended for 12 months or more, the fixed period will be deemed to have commenced 6 months before the effective date</li> <li>For GEM issuers who were suspended prior to the effective date, the fixed period will commence from the effective date.</li> </ul>
<b>Material breach of the Listing Rules as reason for suspension or delisting</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>Confusion on whether a material breach of the Listing Rules leading to suspension or cancellation of a listing should be treated as a non-disciplinary decision or a disciplinary decision</li> </ul>	<ul style="list-style-type: none"> <li>Removed material breach of the Listing Rules from the circumstances specified in MB Rule 6.01 and GEM Rule 9.04</li> <li>Clarified that cancellation of a listing will be made and reviewed under procedures for non-disciplinary matters, even if the reason for cancellation include or amount to a breach of the Listing Rules</li> </ul>
<b>Quarterly updates by suspended issuers</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>Suspended issuers are required to published “periodic” updates on their development progress on satisfying resumption conditions</li> </ul>	<ul style="list-style-type: none"> <li>Suspended issuers are required to published “quarterly” updates on their development progress on satisfying resumption conditions</li> </ul>
<b>Non-publication of notifiable transactions</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>requirement to suspend trading where an issuer believes it has inside information subject to disclosure</li> </ul>	<ul style="list-style-type: none"> <li>No change to the principles of the rule. Certain sections have been removed due to redundancy.</li> </ul>
<b>Resumption of trading at the direction of the Exchange</b>	Main Board / GEM	<ul style="list-style-type: none"> <li>The Exchange has the authority to direct the resumption of trading, however, the power cannot be exercised without first giving the issuer an opportunity of being heard by the Listing Committee</li> </ul>	<ul style="list-style-type: none"> <li>Listing Department has been delegated the authority to direct the resumption of trading</li> <li>Issuers are required to submit review application within 5 days of a decision to direct resumption</li> </ul>