

## TOPIC 2 - OVERVIEW

<b>1. INTRODUCTION</b>	2.5
1.1 Basic Characteristics of the Main Board and the Growth Enterprise Market (GEM)	2.5
1.2 Disclosure	2.5
<b>2. THE ROLES AND RESPONSIBILITIES OF THE STOCK EXCHANGE OF HONG KONG LIMITED</b>	2.6
2.1 Listing Division	2.6
2.2 Listing Committee	2.6
2.3 Listing Appeals Committee	2.6
<b>3. ISSUERS' ROLES AND RESPONSIBILITIES</b>	2.8
3.1 Sponsors	2.8
3.2 Compliance Advisers	2.8
3.3 Independent Financial Advisers	2.9
3.4 Directors	2.9
3.5 Controlling Shareholders	2.10
3.6 Authorised Representatives	2.10
3.7 Audit Committee	2.11
3.8 Remuneration Committee	2.11
3.9 Company Secretary	2.11
3.10 Appointment and Removal of Auditor	2.11
3.11 Compliance Officer for GEM	2.11
<b>4. COMPANIES ORDINANCE</b>	
4.1 Articles of Association	2.12
4.2 Company Structure	2.12
4.3 Private, Public and Guarantee Companies	2.12

<b>5. CAPITAL REDUCTIONS AND VARIATIONS</b>	2.13
5.1 Own Share Purchases	2.13
5.2 Reductions of Share Capital	2.14
5.3 Variations in Shareholders' Rights	2.14
<b>6. FEATURES OF THE COMPANIES ACTS IN TYPICAL OVERSEAS JURISDICTIONS</b>	2.15
6.1 Preliminary	2.15
6.2 People's Republic of China (PRC)	2.15
6.3 Bermuda	2.16
6.4 Cayman Islands	2.16
<b>7. OFFERING SHARES TO THE PUBLIC</b>	2.17
7.1 Prospectus Requirements	2.17
7.2 Responsibilities of Sponsors and the Various Parties that Contribute to the Prospectus	2.18
7.3 Dual Filing	2.18
7.4 Corporate Reorganizations and Restructuring Prior to Listing	2.18
<b>8. METHODS OF LISTING</b>	2.19
8.1 Preliminary	2.19
8.2 Offer for Subscription	2.19
8.3 Offer for Sale	2.19
8.4 Placing	2.20
8.5 Introduction	2.20
8.6 Rights Issue	2.20
8.7 Open Offer	2.20
8.8 Anti-Dilution Rules: Placings, Rights Issues and Open Offers	2.21
8.9 Capitalisation Issue	2.21
8.10 Consideration Issue	2.21
8.11 Exchange or Substitution	2.21
8.12 Transfer of Listing from GEM to the Main Board	2.22
8.13 Secondary Listings	2.22
8.14 Other Methods	2.22

<b>9. LISTING PROCEDURES AND CRITERIA FOR DIFFERENT INSTRUMENTS</b>	2.23
9.1 Equity Securities	2.23
9.2 Depositary Receipts	2.28
9.3 Options, Warrants and Similar Rights	2.28
9.4 Derivative Warrants	2.28
9.5 Convertible Equity Securities	2.29
9.6 Share Option Schemes	2.29
9.7 Mineral Companies and “Project” Companies	2.29
9.8 Overseas Issuers	2.30
9.9 Authorized Collective Investment Schemes and Investment Companies	2.30
9.10 Debt Securities Including Issues to Professional Investors Only	2.30
<b>10. UNDERWRITING/SYNDICATION PROCESS IN AN INITIAL PUBLIC OFFERING OR OTHER OFFERINGS</b>	2.31
10.1 Initial Public Offering Process	2.31
10.2 Price Stabilization	2.31
<b>11. CONTINUING OBLIGATIONS OF A LISTED COMPANY</b>	2.32
11.1 General Obligations	2.32
11.2 Valuations	2.32
11.3 Notifiable Transactions	2.32
11.4 Deterrents to the Circumvention of Rules Applying to New Listings	2.33
11.5 Connected Transactions	2.35
11.6 Cash Companies	2.35

<b>12. TRADING HALT, SUSPENSION, CANCELLATION, WITHDRAWAL OF LISTING AND WINDING UP</b>	2.36
12.1 The SEHK's Power to Direct a Trading Halt or Suspend Dealings	2.36
12.2 The SEHK's Power to Cancel a Listing	2.37
12.3 The SFC's Powers to Order Suspensions	2.37
12.4 Withdrawal of Listing	2.37
12.5 Winding Up	2.37
<b>13. DISCIPLINARY PROCEEDINGS</b>	2.38
13.1 Appeal Process	2.38

## 1. INTRODUCTION

- This Topic reviews the main provisions of the:
  - Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Main Board Listing Rules or **MBLR**)
  - Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (GEM Listing Rules or **GLR**)
- The GLR tend to follow the structure and content of the MBLR, subject to important differences
- General references to listing on SEHK or the Listing Rules refer to both the Main Board and GEM

### 1.1 Basic Characteristics of the Main Board and the Growth Enterprise Market (GEM)

- The **Main Board** is the market where the greatest amount of capital is raised and is of greater importance to the economy of Hong Kong
- **GEM** is designed to accommodate small and mid-sized companies with a higher investment risk than companies listed on the Main Board
- GEM companies are required to make appropriate warnings and disclosures in their listing documents
- Although securities traded on GEM are more susceptible to market volatility and can be subject to less liquidity, they are nevertheless open to all retail investors

### 1.2 Disclosure

- To comply with the Listing Rules, Main Board issuers must submit disclosures through the HKEx electronic publication system to be posted on the SEHK's website
- Announcements must be submitted for publication outside trading hours
- Main Board issuers must publish full announcements on their websites and keep them available for at least 5 years
- GEM listed issuers are required to publish:
  - Audited annual financial statements
  - Half-yearly and quarterly reports (do not require to be audited)

## 2. THE ROLES AND RESPONSIBILITIES OF THE STOCK EXCHANGE OF HONG KONG LIMITED

### 2.1 Listing Division

- SEHK has delegated all its powers and functions regarding listing matters to the **Listing Committee** (Main Board) and the GEM Listing Committee (GEM)
- These committees have sole power and authority to act in relation to all listing matters to the exclusion of the board of the SEHK
- Most of the committee's powers and functions are discharged by the Listing Division and the Chief Executive of the SEHK
- The **Listing Division** handles all day-to-day listing matters and is headed by the Head of Listing
- All applications for listing are submitted to the Listing Division, who may reject or recommend the listing. The **Listing Committee has the final say** on application approvals – an application approved by the Listing Division could be rejected by the Listing Committee
- Subsequent issues by a listed issuer are usually processed by the Listing Division

### 2.2 Listing Committee

- Listing Committee consists of at least 28 members, to include at least:
  - 8 individuals representing investor interests
  - 19 members who are a suitable balance of listed issuers and market practitioners, including lawyers, accountants, corporate finance advisers and brokers
  - HKEx Chief Executive
- Members appointed for a maximum term of six consecutive years – not eligible for reappointment for at least two years after completing maximum term
- At any meeting to review an earlier decision, all members must not have been present at the first meeting
- Meeting quorum is five, including the HKEx Chief Executive, however Chief Executive will not attend where a matter is being determined in the first instance or a review leading to disciplinary proceedings

### 2.3 Listing Review Committee (LRC)

- **Consists of at least 20 members** with at least 6 individuals representing the interests of investors and the remaining members representing a suitable balance of relevant professionals
- Members of the Listing Committee and representatives of the SFC/HKEx cannot join the LRC
- The LRC and related **review procedures were established as of 6 July 2019**

- Decisions of the Listing Committee are subject to the review of the LRC in two situations:
  - **Disciplinary decisions**, namely:
    - An appeal against a disciplinary sanction
    - SFC requests a review of a disciplinary decision
  - **Non-disciplinary decisions**, namely:
    - An appeal against the rejection of a listing application
    - An appeal against the termination of an authorised representative
    - SFC requests a review of a non-disciplinary decision

### 3. ISSUERS' ROLES AND RESPONSIBILITIES

#### 3.1 Sponsors

- A company wishing to list on the SEHK **must** appoint a sponsor to assist with its initial listing application
- Sponsors must be licensed/registered for **Type 6 regulated activity** (Advising on Corporate Finance)
- License requirements are set out in the SFC's Fit and Proper Guidelines, including paid-up capital of HK\$10 million
- Although the need to appoint a sponsor is specified by the SEHK, it is the SFC who determines sponsor eligibility

#### Impartiality, Independence and Role of Sponsors

- More than one sponsor can be appointed, however one must be selected as the primary SEHK contact and be independent of the applicant
- **Every sponsor** must:
  - Comply with the listing rules
  - Ensure all information provided to SEHK is true and complete
  - Submit sponsor declaration to the SEHK before listing
  - Promptly report to the SEHK if it subsequently becomes aware of any non-compliance with the Listing Rules or other legal requirements – this obligation continues beyond ceasing to act
  - Cooperate in any investigation conducted by the Listing Division/Committee and/or the SFC
  - Promptly report to the SEHK reasons for ceasing to act as a sponsor
- A sponsor is required to:
  - Be closely involved in preparation of listing documents
  - Conduct reasonable due diligence procedures to be able to make a relevant declaration
  - Address all SEHK queries promptly
  - Accompany new applicant to any meetings with SEHK

#### 3.2 Compliance Advisers

- Listed issuers must appoint a compliance adviser when it initially lists and the appointment must continue up to:
  - The publication of financial results for **first full financial year** after listing for **Main Board** listings
  - The publication of financial results for **second full financial year** after listing for **GEM** listings



- The SEHK may direct a listed issuer to appoint a compliance adviser after the specified minimum period
- Listed issuers should seek advice from their compliance advisers in prescribed circumstances (eg before publishing a regulatory announcement)
- Only persons eligible to act as sponsors can act as compliance advisers

### 3.3 Independent Financial Advisers (IFAs)

- IFAs are required by listed issuers in situations where:
  - A transaction is subject to the vote of independent shareholders
  - An offer is received subject to the Takeovers Code
- An IFA is required to:
  - Be appropriately licensed/registered with the SFC
  - Discharge its responsibilities with due care and skill
  - Be independent from the issuer
  - Act impartially
  - Comply with the listing rules
- An IFA must satisfy itself that:
  - There is a reasonable basis for making statements
  - There is no reason to believe information is not true or omits a material fact

### 3.4 Directors

- Directors of an issuer are expected to:
  - fulfill fiduciary duties (skill, care and diligence)
  - ensure that the listed company complies with listing rules
  - avoid actual or potential conflicts of interest
  - have a general understanding of the issuer's business and monitor its affairs actively; and
  - comply with the **Model Code for Securities Transactions by Directors of Listed Issuers (the Model Code)**
- Every board of a listed issuer must have at least **three independent non-executive directors (INEDs)**, at least one of whom must have appropriate professional qualifications or accounting/financial management expertise. At least one-third of the board of an issuer must be INEDs
- INEDS must submit to the SEHK a written confirmation of their independence. The following circumstances **can compromise independence**:
  - The person holds more than 1% of number of issued shares (5% or more means not independent)
  - The person is or was a director/partner/principal of a professional adviser which provides (or has provided within 2 years) services to the listed issuer or any of its group companies or a controlling shareholder

- The person has a material interest in any principal business activity/dealings with the listed issuer or any of its group companies
  - The person is on the board to protect the interests of an entity whose interests are not the same as the shareholders as a whole
  - The person is/was connected with a director/CEO/substantial shareholder within 2 years of appointment to the board
  - The person is financially dependent on the listed issuer or any of its group companies
- SEHK encourages directors to own shares in the listed issuer
  - A director of a listed issuer **cannot deal in the company's shares** between the end of a financial period and the date of the subsequent results announcement
  - Directors of listed issuers may be removed by an ordinary resolution in general meeting

### 3.5 Controlling Shareholders

- Per Listing Rules, a controlling shareholder is any person, or group of persons, who exercise or control either 30% or more of the voting shares, or who can control the composition of a majority of the board of directors
- An issuer will need to identify the controlling shareholders to address pre- and post-listing considerations, including:
  - Satisfying ownership continuity and control requirements
  - Disclosing interests in competing businesses
  - INED independent status
  - Identification of connected transactions
- Sponsors are expected to carry out the required due diligence procedures to establish the identity of controlling shareholders, rather than just inspect the shareholder register
- Where a corporate is a controlling shareholder, the corporate's shareholders need to be examined to establish if any of them exercise effective control over the listing applicant

### 3.6 Authorised Representatives

- Every listed issuer must appoint two authorized representatives who act as the listed issuer's principal channel of communication with the SEHK
- The two representatives must be:
  - Main Board: two directors or one director and the company secretary
  - GEM: any two from executive directors and company secretary

### 3.7 Audit Committee

- Every listed issuer must establish an audit committee comprising non-executive directors only
- There should be a minimum of 3 members, the majority being INEDs
- At least one INED should have appropriate professional qualifications or accounting/financial management expertise
- The chairman should be an INED

### 3.8 Remuneration Committee

- Every listed issuer must establish a remuneration committee chaired by an INED, with a majority of INEDs
- Committee's authority and duties should be included in written terms of reference provided by board of directors

### 3.9 Company Secretary

- Every listed issuer must appoint a company secretary with **academic/professional qualifications** or relevant experience acceptable to SEHK
- An issuer's company secretary must be a member of **The Hong Kong Institute of Chartered Secretaries**, or a solicitor/barrister, or a certified public accountant, or some other qualification acceptable to the SEHK
- No less than 15 hours of relevant professional training per year is required

### 3.10 Appointment and Removal of Auditor

- An auditor should hold office from one AGM to the next
- If an auditor **is removed from office** before the end of the term of office, shareholder approval is required at a general meeting
- Any **written representation** from the auditor to be removed must be sent to shareholders no less than ten business days before the general meeting. The auditor can attend the meeting and make a verbal presentation

### 3.11 Compliance Officer for GEM

- A GEM issuer must appoint a compliance officer from among its executive directors
- Compliance officer's responsibilities must include:
  - Advising/assisting the board of directors in implementing procedures to comply with GEM listing rules and other laws/regulations
  - Responding promptly to SEHK enquiries

## 4. COMPANIES ORDINANCE

- Companies Ordinance (CO) applies to all companies incorporated in Hong Kong
- CO applies to companies incorporated outside Hong Kong for specific matters
- Certain aspects of CO only apply to Hong Kong listed companies

### 4.1 Articles of Association

- A company's articles regulate the affairs of the company

### 4.2 Company Structure

- A company has the capacity and the rights, powers and privileges of a natural person
- A company may do anything permitted or required by its articles/ordinance
- Hong Kong companies normally have only one class of shares
- Hong Kong companies may establish separate classes of shares with different voting rights

### 4.3 Private, Public and Guarantee Companies

There are 3 distinct types of companies.

#### 4.3.1 Private Company

- Restricts the right to transfer its shares
- May not have more than 50 members
- May not offer shares (or debentures) to the public
- Is not limited by guarantee

#### 4.3.2 Public Company

- Does not restrict the right to transfer its shares
- May have more than 50 members
- Is not a guarantee company

#### 4.3.3 Guarantee Company

- Does not have share capital
- Members liability is limited by the company's articles to the amount that the members undertake to contribute to the assets of the company in the event of its being wound up

## 5. CAPITAL REDUCTIONS AND VARIATIONS

### 5.1 Own Share Purchases

- An issuer is allowed to purchase its own shares on the SEHK or any other stock exchange recognised by SFC/SEHK
- Share Buy-backs Code allows buy-backs to be executed on-market or off-market through an exempt share buy-back or a general offer
- A breach of the Share Buy-backs Code is considered a breach of the Listing Rules
- A company with its primary listing on SEHK **can only purchase its own shares on the SEHK if:**
  - The shares are fully paid up
  - The company has sent an **Explanatory Statement** to its shareholders
  - Shareholders have given specific approval or general mandate to make such purchases
- The **Explanatory Statement** should contain the following, to enable shareholders to make an informed decision:
  - Total number of shares to be purchased
  - Reasons for buy-backs
  - Source of funds for purchases
  - Any material impact on working capital/gearing
  - Names of any directors who intend to sell shares
  - Compliance with Listing Rules/company law
  - Details of purchases within past six months
  - Any core connected persons intending to sell shares
  - Highest and lowest prices at which shares have traded in the past 12 months
- Dealing restrictions set out in the MBLR:
  - No purchase if price is 5% or more higher than 5-day average closing price
  - Purchases to be made for cash
  - No purchase can be made until price-sensitive information has been made publicly available, in particular from 1 month before earlier of
    - Board meeting approving financial results
    - Deadline to publish announcement of financial results, ending on results announcement date
  - Maintenance of minimum public shareholding

## 5.2 Reductions of Share Capital

- All proposed changes in capital must be notified to the SEHK
- A reduction of share capital must be by way of a **special resolution**, supported by a solvency statement or confirmation by court order
- Any creditor or non-approving shareholder may apply to the court for cancellation of the resolution
- Creditors need protection, otherwise shareholders could return all available capital to themselves, leaving no funds to repay creditors

## 5.3 Variations in Shareholders' Rights

- Companies seeking a variation in shareholders' rights must comply with the Listing Rules and applicable company law

## 6. FEATURES OF THE COMPANIES ACTS IN TYPICAL OVERSEAS JURISDICTIONS

### 6.1 Preliminary

- Hong Kong stock market is unusual as the majority of listed companies are **incorporated outside Hong Kong**
- Important for all listed issuers to play on a **level playing field** – investors are investing in listed companies with similar rights and protections in their respective home jurisdictions
- MBLR lay down basic rules applicable to the contents of the articles of association of all issuers, wherever incorporated
- SEHK has introduced specific requirements for companies incorporated in Bermuda, the Cayman Islands and the PRC

### 6.2 People's Republic of China (PRC)

- Shares in PRC-incorporated companies listed and traded on the SEHK are known as **“H” shares**
- With permission of the China Securities Regulatory Commission (CSRC and China's securities regulator), PRC-incorporated companies may apply for a listing on the SEHK
- **PRC issuers** can only list on SEHK if:
  - Incorporated in PRC as a joint stock limited company
  - Adequate communication/cooperation between SEHK and relevant PRC securities regulator
  - Sufficient level of shareholder protection
- **Responsibilities of the sponsor** are increased in the case of a PRC issuer:
  - Sponsor must be satisfied that the PRC issuer is suitable for listing
  - As Listing Rules will be new and foreign to the PRC issuer, the sponsor will normally have to hold training sessions for management and the accounts department
- **Compliance adviser** must inform PRC issuer promptly of any changes to the MBLR and any new/amended applicable Hong Kong laws, regulations or codes
- As **authorized representatives** are often outside of Hong Kong, the Compliance Adviser must act as principal channel of communication with SEHK
- Accounts must conform to standards comparable to those of Hong Kong or International Financial Reporting Standards or China Accounting Standards
- Additional requirements for **contents of listing documents**:
  - Whether CSRC has approved issue and timetable
  - Requirements for shareholder general meetings
  - Taxation rates
  - Sufficiency of foreign currency to pay forecast/planned H share dividends
  - Risk factors and relevant differences between HK and PRC laws

### 6.3 Bermuda

- Laws are based on English company law, however **SEHK has set out some additional requirements:**
  - Memorandum/bye laws cannot be changed without a members' special resolution (75%)
  - Bye laws must stipulate 21 days' notice for a meeting addressing a special resolution and 14 days' notice regarding meetings for ordinary resolutions
  - Director payments must be approved in general meeting
- **MBLR stipulates** reporting of:
  - Provisions of constitutive documents
  - Relevant Bermuda regulations

### 6.4 Cayman Islands

- Extra requirements are similar to those of Bermuda
- Articles must provide that an AGM is held each year and audited accounts are sent to shareholders, together with a notice of the meeting
- Articles to restrict the making of loans to directors and close associates
- Directors must declare any material interest in any contracts with the issuer at the earliest board meeting



## 7. OFFERING SHARES TO THE PUBLIC

### 7.1 Prospectus Requirements

- Provisions apply to any person offering shares in a company to the public
- Any document by which an offer is made is deemed a prospectus and will have to comply with requirements in the **Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO)**, sometimes abbreviated to Companies Ordinance
- Offering of **structured products** are exempt from the CO provisions – they are covered by the **SFO**
- All prospectuses must be **registered with the Registrar of Companies**
- **SFC is authorized to review prospectuses** under the CWUMPO and to issue a certificate of exemption where CWUMPO compliance would be unduly cumbersome or irrelevant for registration

#### Vetting

- **To remove duplication of regulation between SFC/SEHK/Registrar of Companies, SFC's functions under the CWUMPO regarding vetting of prospectuses have been transferred to the SEHK**
- **SEHK vets every prospectus** for compliance with Listing Rules and CWUMPO and has power to authorize registration with the Registrar of Companies
- Once the **SEHK** is satisfied that a prospectus can be authorized for registration, it **will issue a certificate** and issuer will then need to **deliver the prospectus** to the Registrar of companies
- The issue of a certificate of authorization by the SEHK does **not** confirm that the prospectus complies with the CWUMPO

#### Minimum Content

- English and Chinese translations are required and can be printed separately
- Statements required include:
  - A statement on the business
  - Description of share capital
  - Sufficient information to allow investors to make informed decisions
  - Description of business founders
  - Amount of shares to be issued; capital to be raised and what it will be spent on

#### Timetable

- No allotment of shares can be made until **three days after a prospectus is issued** and **not after 30 days** from the date of issue
- An application for shares after the prospectus is issued cannot be revoked until **the fifth day after** the opening of the subscription lists
- Public holidays, Saturdays and Sundays are not included in the five-day period

## 7.2 Responsibilities of Sponsors and the Various Parties that Contribute to the Prospectus

- There are both **civil and criminal liabilities** for material misstatements in a prospectus
- **Directors** are responsible for the contents and issue of the prospectus and will need to check and confirm that all information contained is true and correct
- **Sponsors, lawyers, accountants and property valuers** are also potentially liable under the NCO for any prospectus misstatement
- Any statement by an expert (sponsor, accountant, property valuer) must be approved by the expert before the prospectus is issued
- The promoters of a company issuing a prospectus can also be held liable under the CO

## 7.3 Dual Filing

- SFC has issued **subsidiary legislation** covering regulation of information disclosure by listed companies and listing applicants:
  - Securities and Futures (Stock Market Listing) Rules
  - Securities and Futures (Transfer of Functions – Stock Exchange Company) Rules
- A listing applicant is required to file its listing application with the SFC – **to avoid duplication**, the company can authorize the SEHK to make the SFC filing on its behalf
- SFC can object to the listing within 10 days on the basis of **insufficient or inadequate disclosure** or if the listing is not in the public interest
- **SEHK remains point of contact** with the listing applicant and conducts the front-line review
- Where the SFC objects to a listing, applicant has right of appeal to the Securities and Futures Appeal Tribunal
- SFC has the right to suspend dealing in a security

## 7.4 Corporate Reorganizations and Restructuring Prior to Listing

- Companies often change auditors to one with previous listing experience, in preparation for a listing
- Any **group restructuring** (holding company plus operating subsidiaries) is likely to require appointment of new lawyers
- Any **scheme of arrangement**, involving group reorganisation and movement of assets across companies, requires court approval
- As part of any **capital reconstruction**, excess cash (capital) may be taken out of the company and distributed to shareholders by way of a special dividend
- Reorganisation of **large PRC companies** takes time, energy and money and the work will be built into the listing timetable
- **Management and financial accounting systems of PRC issuers** often require reorganisation to bring them up to international standards

## 8. METHODS OF LISTING

### 8.1 Preliminary

- A listing applicant faces many methods (and combinations) of listing and it is the sponsor(s) who should propose the most appropriate method(s)
- Methods used by new listing applicants:
  - Offer for subscription
  - Offer for sale
  - Placing
  - Introduction
- Existing listed companies can issue further new shares by way of:
  - Rights issue
  - Open offer
  - Capitalisation issue
  - Consideration issue
  - Exchange or substitution
  - Transfer of listing from GEM to Main Board
  - Other methods
- Initial **large listings** often involve an offer for subscription to the general public combined with an allocation to institutions (institutional tranche usually makes up the majority of the funds being raised)
- A GEM listing can be solely by way of placement
- SEHK should be consulted to ensure that the proposed method of listing is appropriate

### 8.2 Offer for Subscription

- An offer of new securities to the public by or on behalf of an issuer
- The listing document must assure both investors and the issuer that the listing will raise the full amount of funds
- Subscription must be fully underwritten

### 8.3 Offer for Sale

- An offer of securities to the public by or on behalf of holders of securities already in issue
- As with offer for subscription, the stock exchange must be satisfied of the fairness of a tender process and a listing document must be prepared

## 8.4 Placing

- A sale of securities to a selected group of persons rather than to the general public
- An intermediary (investment bank) identifies investors and arranges for the placing of securities
- The stock exchange may not allow this method of listing if there is likely to be a significant public demand for the securities
- A placing by a new applicant must be supported by a listing document, however a placing of securities already in issue will **not require a listing document**
- Once an issuer is listed, it can only do a placing if it is authorised by shareholders – this applies to both Main Board and GEM

## 8.5 Introduction

- The listing of securities already in issue where no marketing activities are required as the amount and dispersion of the securities underpin their marketability
- Introductions are appropriate where:
  - Securities are already listed on another exchange
  - Securities are distributed by a listed issuer to its shareholders or the shareholders of another listed issuer
  - A holding company is formed and its shares are exchanged for those of one or more listed issuers
- Only permitted in exceptional circumstances. A listing document is still required

## 8.6 Rights Issue

- The offer of a right to existing shareholders allowing them to subscribe for additional securities in proportion to their existing holdings, usually at a discount to the market price
- Normally, a rights issue must be fully underwritten
- Rights are useful ways of enabling shareholders to support the issuer's ongoing financial needs
- Increased regulatory scrutiny has been required as a result of abusive practices to dilute the interests of minority and other shareholders
- See section 2 of Topic 4 for further coverage

## 8.7 Open Offer

- An offer to existing securities holders for additional securities, irrespective of their existing holdings
- Not renounceable – the rights cannot be sold
- May be combined with a placing
- A listing document is required

- Open offers are not required to be underwritten, however, **where an open offer is underwritten** and the issuer's controlling shareholder or substantial shareholders act as the underwriters, the securities can only be offered to independent places
- An open offer must remain open for a minimum of 10 business days (can be extended to 15 days if issuer has a large number of overseas investors)

## 8.8 Anti-Dilution Rules: Placings, Rights Issues and Open Offers

- **Placings, rights issues and open offers can be used abusively to dilute the interests of minority shareholders of listed issuers** – eg a series of rights issues over a limited period, which could dilute the interests of minority shareholders with limited available funds
- **Issuers may not** undertake a specific mandate placing, rights issue or open offer if:
  - It has raised capital through one or more of these methods within the 12 months prior to the announcement of the proposed issue; **and**
  - The combined effect would be a dilution of 25% or more of the issuer's share price
- SEHK may allow the proposed capital raising in response to exceptional circumstances – eg a rescue plan for an issuer in financial difficulty
- A valid rights issue or open offer must be made only with the approval of minority shareholders in a general meeting at which controlling shareholders and their associates abstain from voting (if none, then executive directors and CEO)

## 8.9 Capitalisation Issue

- An issue of securities to existing shareholders in proportion to their existing holdings and fully funded out of the issuers' reserves or profits, avoiding any need for monetary payment
- Must be supported by a listing document in the form of a circular to shareholders

## 8.10 Consideration Issue

- Securities are issued as consideration in a transaction or in connection with a takeover or merger
- Must be announced through a press notice

## 8.11 Exchange or Substitution

- The exchanging, substituting or converting of existing listed securities into other classes of securities
- Must be supported by a listing document in the form of a circular to shareholders

## 8.12 Transfer of Listing from GEM to the Main Board

- A GEM issuer can apply to the Listing Division for a transfer to the Main Board, which is more simplified than a straight Main Board Listing
- The issuer must have been listed on GEM for a full financial year without breaching any SEHK rules and must meet Main Board listing criteria
- A transferring GEM issuer must satisfy the eligibility and other requirements of the Main Board Listing Rules - accordingly, it will **need to appoint a sponsor** and produce a “prospectus-standard” listing document
- No need for a Post Hearing Information Pack
- Transferring companies with a compliance adviser will need to continue maintaining the adviser, whereas those no longer subject to the compliance adviser requirement, will not require an adviser

## 8.13 Secondary Listings

- A secondary listing is where a company has its **shares listed on another exchange** and is seeking an additional listing for its shares on the SEHK
- The minimum public float requirement does not apply
- SEHK must be satisfied that the primary listing is on an exchange where the standards of shareholder protection are at least equivalent to those of Hong Kong

## 8.14 Other Methods

- Exercise of options, warrants or similar rights as described in MBLR
- Issue of securities on exercise of share option scheme of an executive/employee

## 9. LISTING PROCEDURES AND CRITERIA FOR DIFFERENT INSTRUMENTS

### 9.1 Equity Securities

- The **basic criteria for an initial listing** is as follows:
  - Must be incorporated, but not a private company
  - The latest financial period reported on by the reporting accountants must not have ended more than six months before the date of the listing document
  - An approved share registrar needs to be appointed to maintain the register of members in Hong Kong
  - Both issuer, and its business, must in the opinion of SEHK be suitable for listing (eg a company consisting primarily of cash or near cash would not be deemed suitable)
  - Issuer must satisfy **one** of the following tests:
    - **Profits test:** Profits for the most recent year must not less than HK\$20 million **and those of the two preceding years in aggregate must not be less than HK\$30 million**; or
    - **Market Capitalisation/Revenue/Cash Flow Test:** The issuer must have a market capitalization at the time of listing of at least HK\$2 billion, revenue for most recent audited financial year of at least HK\$500 million and positive cash flow for the preceding three financial years of at least HK\$100 million; or
    - **Market Capitalisation/Revenue Test:** The issuer must have a market capitalization at time of listing at least HK\$4 billion and revenue for the most recent audited financial year of at least HK\$500 million
  - New applicants must have a **trading record** of at least three years under substantially the **same management**, while **ownership** should be substantially the same for at least the most recent audited financial year.
  - “**Continuous ownership and control**” refers to voting rights by a controlling shareholder or, where there is no controlling shareholder, the single largest shareholder
  - For a new applicant, the **latest financial period** reported on by the reporting accountants must be within the six months before the date of listing document
  - At least 25% of the issuer’s total number of shares must be **held by the public** and the public holding of shares must be **at least HK\$125 million** – for issues over HK\$10 billion, the SEHK may accept a lower percentage of between 15% and 25%
  - For new listings that involve placings, the **placing tranche** must not be less than HK\$25 million, and not less than 25% of the placing tranche must be made available by the lead broker to the general public

- **“Public”** refers to persons:
  - Who are not a director, chief executive or substantial shareholder of the issuer, or their close associates
  - Who are not being directly or indirectly financed by any of the core connected persons in the acquisition of securities
  - Who are not accustomed to taking direction from any of the core connected persons regarding acquisition, disposal or voting of the securities
- Expected market capitalisation of a new applicant must be at least HK\$500 million at time of listing and there must be a **sufficient spread of shareholders** with a minimum of 300
- Not more than 50% of the securities **in public hands** at the time of listing can be beneficially owned by the **largest 3 public shareholders**
- If a new applicant has a **controlling shareholder** with an interest in a business that competes (or may compete), this must be disclosed
- A new applicant for a primary listing must have **sufficient management presence** in Hong Kong (at least 2 executive directors resident in Hong Kong)
- **Directors** of the listing applicant, their **close associates** and **existing shareholders** who wish to subscribe for shares in an offering are **prohibited from receiving any preferential treatment**
- The securities must be **freely transferable**
- A new applicant must appoint **an approved share registrar** in Hong Kong to maintain register of members
- Proposed directors must meet certain requirements
- SEHK may accept a shorter trading period and/or may waive the profit or financial standards requirements
- A **Biotech Company** is primarily engaged in using science and technology to research, develop, apply and commercialise products that have a medical or biological application. Important points to note:
  - R&D costs of Biotech Companies often mean that they are unable to generate sufficient revenue to make profits for some time
  - **Pre-revenue Biotech Companies** are able to gain access to the public capital market during this period of development



- To be considered for a Main Board listing, the following must be satisfied:
  - Meaningful funds previously been raised from at least one sophisticated investor
  - A two-year trading record under substantially the same management
  - An initial market cap of at least HK\$1.5 billion
  - A public float at time of listing of at least HK\$375 million – shares held by cornerstone investors are not included in the public float
  - Sufficient working capital to cover at least 125% of the group's costs for at least 12 months from date of listing document
- Biotech companies are prohibited from fundamentally changing their business, without prior SEHK consent
- Companies with **Weighted Voting Rights (WVR)** will have investors who have more voting power than a holder of one ordinary share
- With the amendment of the Listing Rules in April 2018, HKEx will consider listing applications from companies demonstrating innovation and growth wishing to list with a WVR structure. Points to note:
  - WVR shareholders must collectively hold at least 10% of the underlying economic interest in the issuer's share capital at time of initial listing
  - WVR shares cannot be admitted to listing
  - The maximum number of votes that WVR can carry is 10 times that of an ordinary share
  - At least 10% of the votes eligible to be cast at the issuer's general meetings must belong to non-WVR shareholders
  - WVR shares can only be issued to members of the issuer's board of directors and cease to carry the extra rights if the WVR shares are sold or the holder ceases to be a board director
  - On listing, no new WVR shares may be created, so their number can only decrease
  - Companies with WVR structures are subject to enhanced disclosure requirements

- The **main points covering a GEM initial listing** are as follows:
  - Targets growth companies from all industries and of all sizes
  - Qualifications for listing generally lower, to accommodate companies without a performance track record
  - Operates on the philosophy of “buyer beware” and “let the market decide” - based on strong disclosure
  - **Requirements for listing:**
    - **Performance track record** only required for 2 years with a positive cash flow from operating activities of at least HK\$30m for those two years
    - The applicant must show that it has been **focused on one line of business** under substantially same management
    - Shorter periods for trading, ownership and management continuity may be acceptable for newly-formed project companies
    - **Market capitalization** at time of listing must be at least HK\$150 million
    - **Public ownership** must be at least 100 persons at time of listing
    - At least 25% of the issuer’s total number of shares must be **held by the public** and the public holding of shares must be at least HK\$45 million – at least 10% of all securities offered must be offered to the public
    - Up to 10% of shares may be offered on a preferential basis to employees, past-employees, dependents of foregoing or a pension scheme for such persons
  - Factors that have led to the **rejection of both Main Board and GEM listings** include:
    - Deteriorating financial performance that is unlikely to be short-term in nature
    - Concerns over the integrity, competence, required skill, care and diligence of applicant’s directors
    - Applicant not having operated the business with its own personnel, systems and processes during the track record period
    - Inadequate controls leading to non-compliance with laws and regulations during the track record period
    - A director of the applicant’s board being considered unsuitable due to prior misconduct
    - Concerns about the sustainability of the applicant’s business due to off-market arrangement
    - A lack of commercial rationale for listing and no genuine funding needs

- **Procedures to be followed by a new listing applicant:**
  - Form A1, together with various documents, must be submitted by the sponsor
  - SEHK must review all publicity material to be released in Hong Kong relating to the new issue
  - At least four clear business days prior to hearing date, various other documents must be submitted
  - SEHK may delay listing timetable if applicant does not reply to its enquiries on a timely basis
  - Normally, no more than 10% of any securities being marketed for listing can be offered to employees or past employees on a preferential basis
- **Listing documents** are required for all of the following:
  - Offers for subscription
  - Offers for sale
  - Placings by or on behalf of a new applicant
  - Introductions
  - Rights issues
  - Open offers
  - Capitalisation issues
  - Exchange or substitution
- Listing documents **must not contain reference to future profits** or contain dividend forecasts based on assumed future profits unless supported by a formal profit forecast
- A **formal notice** must be published on the date of issue of the listing document stating the name and country of incorporation of the issuer with details of the securities to be issued and the date when the listing is expected to commence
- With offers for subscription/offers for sale/open offer, the **results and basis of share allotment** must be published not later than the next business day after allotment letters are posted
- Issuers and their directors have a statutory responsibility under the SFO to disclose inside information as soon as reasonably practicable
- The **Application Proof** needs to be published on the HKEx website when the listing application is made
- After the listing hearing and no later than the start of institutional book-building, a near final prospectus (**Post Hearing Information Pack**) must be published on the HKEx website

## 9.2 Depositary Receipts

- **Hong Kong Depositary Receipts (HDRs)** are certificates issued by a depository bank, representing foreign shares held by the bank, and listed on the Main Board
- HDRs carry the same risks as the underlying foreign share (ie currency, political and economic)
- HDRs were one of the initiatives of the HKEx Strategic Plan 2007-09
- HDRs are similar to other DRs providing local investors with an opportunity to invest in overseas stocks, thus providing further portfolio diversification
- HDRs are traded, settled and pay dividends in HK dollars – the depository takes care of currency conversion, delivery of corporate information and details of corporate actions
- HDRs must be freely convertible into shares of the issuer, must be freely transferable and must be fully paid and free from all liens
- The depository must be a suitably authorized and regulated financial institution acceptable to the SEHK
- A custodian must hold the shares deposited with the depository in a segregated account for the benefit of the HDR holders

## 9.3 Options, Warrants and Similar Rights

- All warrants (including options and similar rights) traded on the SEHK must be approved by the SEHK and will only be **approved if the issue does not exceed 20%** of the issued shares of the issuer
- Minimum term of **1 year, maximum term of 5 years**
- A **circular** must be sent to shareholders with details of the issue
- **Shareholders must approve such issues** at either an annual general meeting or an extraordinary general meeting
- The warrants cannot be convertible into further subscription rights

## 9.4 Derivative Warrants

- Derivative warrants are issued by a third party, usually an investment bank, independent of the issuer of the underlying assets
- They give the holder the right to buy or sell a specified number of securities at a predetermined exercise price (or receive a cash settlement)
- The issuer must be incorporated, not a private company and, in the case of non-collateralised warrants, have:
  - NAV of not less than **HK\$2 billion**
  - Have the required credit rating, or be regulated by SFC/HKMA or be a government or state
- Where derivative warrants are to be guaranteed, the guarantor must not be a private company and must meet the same requirements as an issuer of derivative warrants
- Derivative warrants cannot be listed on GEM

## 9.5 Convertible Equity Securities

- Convertible equity securities which are convertible into new securities or other outstanding securities of the issuer, must be approved by the SEHK
- Can only be listed if underlying shares are listed on an exchange recognized by the SEHK
- Shareholder approval can be obtained either on a general basis via a general mandate from shareholders or on a specific basis
- In the case of GEM, the underlying securities must be listed on GEM

## 9.6 Share Option Schemes

- The total number of securities which may be issued upon exercise of all options to be granted **must not exceed 10% of the relevant class of securities**
- The exercise period must **not exceed 10 years** from the date of grant of option
- The life of the scheme must not exceed 10 years
- All schemes must be **approved by the shareholders** in general meeting
- A **scheme previously adopted by a new applicant** does not need to be approved after listing, however all terms must be clearly set out in the prospectus
- A grant of options cannot be made until after **inside information** has been released
- A grant of options cannot be made during the one-month period prior to the release of interim or final results
- Options granted to directors, CEOs or substantial shareholders must be approved by the INEDs
- Any grant of options to a substantial shareholder or an INED, that results in shares issuable under any options **exceeding 0.1%** of the relevant class of shares and having a **value greater than HK\$5 million** must be approved by shareholders

## 9.7 Mineral Companies and “Project” Companies

- MBLR and GLR set out requirements for the listing of both companies involved in exploration/extraction of natural resources and “project companies” involved in infrastructure projects
- SFC has issued a list of factors that it will take into account when assessing listing applications of **infrastructure project companies**, based on mitigating perceived levels of risk

## 9.8 Overseas Issuers

- Rules for overseas issuers depend on whether they are seeking a **primary or a secondary listing**
- A **secondary listing** is where a listed issuer obtains an additional listing for the same securities on another market – for marketing purposes or because a number of investors are located locally
- For issuers incorporated outside Hong Kong, additional requirements for a **primary listing** apply:
  - Shareholder protection standards in the overseas jurisdiction must be at least equivalent to Hong Kong's
  - A Hong Kong person must be authorized to accept services of process and notices
  - Where two or more share registers are maintained, Hong Kong register needs only record Hong Kong holders
  - Accounts needs to be audited to the same standard as Hong Kong
- SEHK may make some allowances when considering an **application for a secondary listing** – each case will be discussed with the SEHK, which may waive certain requirements/impose additional requirements

## 9.9 Authorized Collective Investment Schemes and Investment Companies

- To be listed, a collective investment scheme (CIS) must be authorized by the SFC
- SFC authorization does not guarantee a listing
- CISs include unit trusts and mutual funds
- CISs not authorized by the SFC may be listed as investment companies

## 9.10 Debt Securities Including Issues to Professional Investors Only

- Debt securities can be listed by offer for subscription, offer for sale, placing, exchange or other methods
- A listing agreement must be signed between an issuer and its guarantors
- Issue of convertible securities must be approved by the SEHK
- Debt can be listed under a **debt issuance programme** where the SEHK will accept listings of securities under the programme within 12 months after publication of the listing document

## 10. UNDERWRITINGS/SYNDICATION PROCESS IN AN INITIAL PUBLIC OFFERING OR OTHER OFFERINGS

### 10.1 Initial Public Offering Process

- IPO process involves a number of parties in the preparation of listing documents and marketing of shares to be listed
- The **sponsor** (often, but not always the lead underwriter) coordinates the process putting together the underwriting syndicate
- **Underwriters** are paid an underwriting fee to subscribe for any shares that are not taken up by investors
- Underwriting agreements for both public offer and placing tranches normally contain **force majeure** clauses
- **Lead underwriters/global coordinators** will devise a **roadshow** – company senior management formally present the investment story to investors in Hong Kong, and possibly overseas
- For offers with public and placing tranches, the placing tranche will be subject to a **claw-back mechanism** to meet any excess demand from the public offer in Hong Kong
- As investors are prohibited from making **multiple applications**, sponsors need to establish measures to identify multiple applications
- A placing-only listing may not be permitted if there is likely to be a significant **public demand** for the securities
- In large issues, the **initial allocation to the public** tranche is typically set at 10% of the overall offering
- Issuer must **announce the results of a public offer** on the next business day after allotment

### 10.2 Price Stabilization

- Price stabilization occurs when issuers or underwriters of newly issued securities may buy or sell the stock to prevent or minimize a **decline in the price**
- The SFC considers that it is in the **public interest** to permit and regulate price stabilizing action connected with public offerings
- The **Securities and Futures (Price Stabilizing) Rules** provide a safe harbour for permitted stabilizing activity (otherwise it would be considered stock market manipulation – a form of market misconduct)
- Price stabilization is permitted for **30 days** from the start of trading for offers not less than **HK\$100 million**
- Stabilizing manager must keep a **register of stabilizing actions** available for inspection by the SFC; the register must be retained for seven years from the end of the stabilizing period
- The maximum price that can be paid by these permitted actions can never be higher than the initial offer price

## 11. CONTINUING OBLIGATIONS OF A LISTED COMPANY

### 11.1 General Obligations

- Primary obligation is continuing compliance with MBLR
- The issuer's directors are collectively and individually responsible for ensuring compliance
- Directors have a statutory obligation to disclose information as soon as reasonably practicable

### 11.2 Valuations

- Company directors can be involved in the act of valuing assets, including companies
- Given the duties of directors, they should **properly appraise the worth of any asset** with an appropriate degree of due diligence, in line with the best interests of the company
- Directors may seek **appropriate professional advice**, such as a corporate finance adviser or professional valuer – under the CFA Code of Conduct, an adviser should ensure an appropriate valuation methodology is adopted
- Considerable care should be taken when preparing an asset valuation – failure to undertake an appropriate valuation may result in the **distribution of false or misleading information**, which could lead to prosecution under the SFO's market misconduct provisions

### 11.3 Notifiable Transactions

- Classification of notifiable transactions is determined by comparing size of transaction with the size of the issuer
- Types of transactions:
  - Share transaction\*
  - Discloseable transaction\*
  - Major transaction
  - Very substantial disposal
  - Very substantial acquisition
- Upon meeting specified thresholds, notification to SEHK is required as well as an announcement. A circular to shareholders and shareholder approval are required except for those marked \* above



## 11.4 Deterrents to Circumvention

- SEHK may impose additional listing requirements if it considers a transaction is an attempt to get around the Listing Rules
- SEHK has set out specific requirements regarding:
  - Reverse takeovers
  - Extreme transactions
  - Large scale issues of securities
  - Disposals or distributions “in specie”

### 11.4.1 Reverse Takeovers (RTO)

- The problem with an RTO is that **control of the issuer will change and its business may substantially change**. This can present challenges to an orderly and properly informed market and could prejudice investor interests
- An RTO involves an acquisition or series of acquisitions of assets where there is (or will be) a change in control
- The SEHK has devised two primary types of test of such transactions:
  1. **Quantitative “bright line” tests** where any of the percentage ratios reach the very substantial acquisition threshold (100% or more) or where there is an injection of assets by the incoming controlling shareholder within 36 months of him gaining control and it had not been previously considered a reverse takeover
  2. **Principle based test** where the SEHK will form an opinion as to whether the listing requirements for new applicants are being circumvented, taking a number of factors into consideration, including:
    - Size of acquisition relative to size of issuer
    - Whether there has been a fundamental change in the issuer’s principal business
    - Nature and scale of issuer’s business before acquisition
    - Quality of acquisition targets
    - Whether there has been a change in control of the listed issuer
- Where a transaction or series of transactions are treated as an RTO, the SEHK will treat the listed issuer as if it were a new listing applicant and shareholder approval of the transaction will be required. The enlarged group or assets acquired **must be able to meet the listing requirements**

### 11.4.2 Extreme Transactions

- Where the principle-based test results in a transaction being regarded as an RTO, the **issuer can ask for the transaction to be reclassified as an extreme transaction**
- The issuer will need to show that the transaction was not an attempt to get around the new listing requirements **by satisfying the following requirements:**
  - Issuer has been under the control of the same person or group of persons for at least 36 months and the **transaction would not result in a change of control**
  - **Issuer's business is of a substantial size** and this will continue (annual revenue or total asset value of at least HK\$1 billion in most recent financial statements)
- For a transaction to **be treated as an extreme transaction**, the following is required:
  - Preparation of circular to shareholders and approval of shareholders
  - Appointment of financial adviser to undertake additional due diligence followed by a declaration to the SEHK regarding issuer's ability to satisfy Listing Rules admission criteria

### 11.4.3 Large Scale Issues of Securities

- SEHK has indicated that **equity fund raising with the following characteristics** would be an attempt to circumvent the Listing Rules and would not attract listing approval:
  - Fundraising is large relative to size of issuer and is not linked to the needs of the issuer's existing principal business
  - The business to be developed/acquired bears little relation to the issuer's existing principal business
  - The business to be acquired and subsequently operated is expected to be substantially larger than the original business
  - The investor would obtain control over the issuer

### 11.4.4 Disposals or Distributions "in specie"

- **"In specie" means** transferring an asset in its current form, without the need to convert that asset to cash. For example, to pay off a debt
- **Listing Rules prohibit an issuer** from conducting, within 36 months of a change in control, disposals or distributions in specie involving a material part of the business, unless the remaining assets continue to satisfy quantitative requirements of the Listing Rules
- A distribution in specie that would amount to a very substantial disposal would require **prior approval of independent shareholders**

## 11.5 Connected Transactions

- Unless exempt under the MBLR, connected transactions may be subject to disclosure, reporting and shareholders' approval requirements
- The following persons are regarded as a "connected person" of the listed issuer:
  - Director, chief executive or substantial shareholder of listed issuer or any of its subsidiaries
  - Anyone who was a director of the issuer within previous 12 months
  - A supervisor of a PRC issuer
  - Any associate of the above (relative/family)

## 11.6 Cash Companies

- A cash company is an issuer or group with **assets comprised wholly or substantially of cash or short-dated securities** (less than a year's maturity)
- **Cash companies will not normally be regarded as suitable** for listing and trading in its securities will be suspended
- In determining whether an issuer should be treated as a cash company, the **SEHK applies a principle-based approach**, taking into account:
  - Value of issuer's cash and short-term investments relative to total assets, level of operations and financial position
  - Nature of issuer's business and its cash needs in ordinary course of business
- **Exemptions may be available** to the likes of banks, insurance companies and securities houses

## 12. TRADING HALT, SUSPENSION, CANCELLATION, WITHDRAWAL OF LISTING AND WINDING UP

### 12.1 The SEHK's Power to Direct a Trading Halt or Suspend Dealings

- The SEHK may halt/suspend a listing where it considers it necessary for the protection of the investor or **maintenance of an orderly market**
- Should a **trading halt** exceed two trading days, it will automatically become a trading suspension
- A **trading halt** is necessary when the listed issuer:
  - Has material information to be disclosed to avoid a false market
  - Needs to disclose inside information
  - Reasonably believes that confidentiality may have been lost in respect of inside information
- A **trading halt** may also be necessary when the listed issuer intends to issue an announcement **responding to market commentaries/rumours** with allegations of fraud, material accounting or corporate governance irregularities
- **Suspension or a trading halt can be initiated** by:
  - The listed company
  - SEHK or GEM
  - SFC for untoward movements in prices or volumes
- **SEHK may also call a trading halt/suspension** if:
  - There are insufficient shares in the hands of the public;
  - The issuer does not have a sufficient level of operations or sufficient assets to warrant a continued listing; or
  - It considers that the issuer is no longer suitable for listing
- Listed securities **should be continuously traded** save in exceptional circumstances and therefore, the SEHK requires an issuer-requested suspension to be kept as short as possible
- An issuer must have a **sufficient level of operations or tangible assets** to warrant continued listing on the SEHK. A listing may be cancelled if the issuer fails to:
  - Take adequate action to restore its listing for a prolonged period
  - Address matters identified by the SEHK within the specified time

- **SEHK may agree to a suspension request** where:
  - An issuer is subject to an offer, but is also subject to agreeing detailed terms;
  - It is intended to maintain an orderly market
  - It considers that the issuer is no longer suitable for listing
  - Issuer goes into receivership or liquidation
  - Issuer confirms it will be unable to disclose periodic financial information

## 12.2 The SEHK's Powers to Cancel a Listing

- SEHK may cancel a listing where it considers it necessary for the **protection of investors** or maintenance of an orderly market
- SEHK may cancel a listing where it considers that the issuer does not have a sufficient level of operations or sufficient assets to support its operations – this covers the **operation of shell companies**
- SEHK may also cancel a listing where it considers that:
  - There are **insufficient securities in the hands of the public**
  - The issuer of its business is **no longer suitable for listing**
  - The issuer has been **suspended from trading for a continuous period of 18 months**

## 12.3 The SFC's Powers to Order Suspension or Cancellation

- SFC has power to direct the SEHK to suspend dealings where it considers:
  - Any document issued contains materially false, incomplete or misleading information
  - It is in the interests of maintaining an orderly and fair market on the SEHK
  - It is in the interest of the investing public or in the public interest or for the protection of investors

## 12.4 Withdrawal of Listing

- A voluntary withdrawal of listing can occur in three situations:
  - Issuer has an alternative listing or a primary listing on another recognized exchange
  - Issuer has no alternative listing
  - In the context of a takeover

## 12.5 Winding Up

- The company will have to inform the exchange
- An issuer may not voluntarily withdraw its listing without shareholder approval
- **Three months' notice** of a withdrawal of listing must be given to shareholders to allow them to sell their shares before the listing is withdrawn

### 13. DISCIPLINARY PROCEEDINGS

- Listing Division or Listing Committee can commence disciplinary proceedings against a listed issuer for a breach of the Listing Rules
- SEHK will try to avoid such a measure so will only proceed in serious cases
- Persons who may be disciplined include:
  - Listed issuer, its directors and any of its subsidiaries
  - Any member of senior management
  - Any substantial shareholder
  - Any professional adviser of the listed issuer/subsidiaries
  - Any authorized representative of a listed issuer
  - Any supervisor of a PRC issuer
  - Any independent issuer of a listed issuer
- Sanctions which may be imposed include:
  - Issuing a private reprimand
  - Issuing a public statement involving criticism or issuing a public censure
  - Reporting conduct to SFC/other regulatory body
  - Banning a professional adviser from appearing before Listing Division/Listing Committee
  - Requiring remedial action to be taken

#### 13.1 Appeal Process

- A request for a review of any decision of the Listing Division/Listing Committee must be made to the SEHK within 7 days of the decision