

Introduction to delisting framework under HKEX rules

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Issuers should take a holistic approach in assessing their operations and conduct regular reviews.

The pandemic has significantly impacted the economy, making it increasingly difficult for businesses, particularly listed companies, to thrive under current circumstances. As of 31 July, a total of 26 company listings were cancelled in 2022, pursuant to delisting procedures under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (listing rules).

This article provides an overview of the delisting framework, including the delisting process, and grounds for suspension of listing, concluding with some practical tips.

DELISTING PROCESS

The current delisting framework under the listing rules came into effect on 1 August 2018. Under rule 6.01 (GEM rules 9.01 and 9.04), the Hong Kong Stock Exchange may at

any time suspend or cancel the listing of any securities to protect investors or maintain an orderly market, where an issuer: (1) fails to maintain a sufficient public float; (2) fails to maintain sufficient operations or assets; or (3) is no longer suitable for listing.

Other cases include failure to publish financial results, or inside information due to material irregularities, and disclaimer and adverse audit opinions on financial statements.

The procedure for delisting is set out in rule 6.10 (GEM rule 9.15), which involves the exchange issuing a delisting notice specifying a remedial period. On expiry, the exchange may cancel the listing, or in exceptional circumstances delist the issuer immediately. The prescribed remedial period is 18 months for main board issuers and 12 months for Growth Enterprise Market (GEM) issuers from the date of trading suspension.

GROUNDS FOR SUSPENSION

Failure to maintain a sufficient public float. Where trading is suspended due to insufficient public float, issuers are expected to address the issue within a reasonably short period of time, devising an action plan to restore the required minimum public float with a clear timeframe.

Failure to maintain sufficient operations or assets. A common ground for suspension or cancellation of listing is failure to maintain sufficient operations or assets pursuant to rule 13.24 (GEM rule 17.26), which may be particularly relevant in the current economic environment.

Issuers may fall foul of this requirement under various circumstances - as set out in an exchange guidance letter (GL106-19) - including business deterioration or discontinuation, corporate actions leading to minimal operations, or other circumstances where financial difficulties seriously impair the business.

The exchange may request an issuer to address its concerns on compliance with rule 13.24 (GEM rule 17.26) after assessing its periodic financial results and other disclosures. The issuer must demonstrate to the exchange's satisfaction that its business has substance, and is viable and sustainable in the longer term.

If the issuer fails to address the concerns within a specified period of time, the exchange will make a decision regarding the non-compliance, subsequent to which the issuer should publish an announcement on

the decision, including a statement that trading in its shares will be suspended.

Failure to publish financial results or inside information due to material irregularities. Accounting irregularities or significant weaknesses in internal controls resulting in failure to publish periodic financial results or inside information are also frequent reasons for suspension.

Examples include failure to keep proper books and records, discrepancies between accounting records on transactions and information obtained by the auditors, and lack of information or evidence to substantiate the existence or ownership of material assets.

Such potential irregularities could give rise to serious issues about the accuracy and credibility of the issuer's disclosures, management integrity, and lack of adequate internal controls, which in turn cast doubt on the issuer's suitability for continued listing.

Disclaimer and adverse audit opinion on financial statements. Under rule 13.50A (GEM rule 17.49B), trading will normally be suspended if an issuer publishes a preliminary results announcement for a financial year and the auditor has issued - or has indicated it will issue - a disclaimer of opinion or adverse opinion on the issuer's financial statements.

Until the issuer has provided comfort that a disclaimer or adverse opinion would no longer be required, the suspension will remain in force.

The exchange's guidance letter (GL95-18) provides examples of how such comfort may be provided, including providing a full financial year audit of the financial statements, or a special engagement of the auditor to perform audit on a single financial statement.

CONCLUSION

Through the new delisting framework, the exchange demonstrates stronger determination in providing certainty on the

delisting process, and facilitating close monitoring of the market.

Issuers should take a holistic approach in assessing their operations and conduct regular reviews to identify any potential issues that may affect their suitability for continued listing. It is essential that issuers take timely remedial action to address exchange concerns and resume trading within the specified remedial period.

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