Cross-Border Listings Guide - Hong Kong Stock Exchange (GEM)

Continuing obligations/periodic reporting

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# Continuing obligations/periodic reporting

[Last updated: 1 January 2024, unless otherwise noted]

Once a company is listed, it must publish its interim and annual reports within a prescribed timeframe, contents and publication requirements as described below. In addition, the GEM Listing Rules prescribes other continuing disclosure requirements on listed companies, such as immediate disclosure of inside information, notifiable transactions and connected transactions. A new listed company has to consult its compliance adviser before publication of any regulatory announcement, circular or financial report in the first financial years after listing. Except with prior approval of independent shareholders, a new listed company may not affect any fundamental change in its principal business activities in the first 12 months after listing.

*Inside information*. As one of the continuing disclosure requirements under the GEM Listing Rules and the SFO, a listed company is required to notify the public of any information that constitutes inside information.

*Financial statements*. The issuer *must* issue (i) an annual report including annual financial results within four months after the date upon which the financial period ended; and (ii) an interim report including half-year interim results (for the first six months of each financial year) within three months after the end of such period. Overseas issuers and PRC issuers are subject to additional disclosure requirements.

Annual financial statements must be audited by a firm of practising accountants which is a PIE Auditor under the Hong Kong Accounting and Financial Reporting Council Ordinance (AFRCO).  Annual financial statements of an overseas issuer with primary listing on the HKSE must be audited by either (a) a Registered PIE Auditor under the AFRCO; or (b) an overseas firm of practising accountants that is a Recognised PIE Auditor of that issuer under the AFRCO.  Interim financial statements do not need to be audited but the issuer must state whether the interim report has been audited or not.

In addition to disclosing inside information and financial statements, the GEM Listing Rules impose other continuing disclosure obligations on listed companies such as changes of directors, notifiable transactions (which, in some cases, may not only require disclosure but will also require prior approval from shareholders) and corporate actions. Generally, announcements regarding acquisition, disposals, results of shareholders' meeting shall be published on the same day that relevant agreements are signed or on the same day on which shareholders' meeting was held. In any event, announcements shall be published no later than 30 minutes before the commencement of the morning trading session of the next business day. Certain types of announcements and circulars have to be vetted by HKSE before publication.

*Market misconduct.* In Hong Kong, market misconduct is governed by the SFO. The six forms of market misconduct comprise (i) insider dealing; (ii) false trading; (iii) price rigging; (iv) stock market manipulation; (v) disclosure of false or misleading information inducing transactions; and (vi) disclosure of information about prohibited transactions.

The SFO governs the Market Misconduct Tribunal (MMT), which has the power to impose civil sanctions for market misconduct activities. The SFO also contains a parallel criminal regime. There is, however, no "double jeopardy" under the two regimes. Under the civil regime, the MMT may make various orders, such as disqualifying an officer of a listed corporation for up to five years; prohibiting dealings in any securities, futures or leveraged foreign exchange contracts for up to five years; and disgorgement of the amount of any profit gained or loss avoided as a result of the market misconduct. The maximum criminal sanctions are 10 years' imprisonment and fines of HK$10 million (approximately US$1.28 million).

In addition, third party actions in the courts are permitted. A person who has "committed a relevant act in relation to market misconduct" is liable to pay compensation by way of damages to any other person for any pecuniary loss sustained by the other person as a result of the market misconduct. The proceedings of the MMT are admissible in such cases.

The SFO also imposes a duty on a company's officers (including its directors) to take all reasonable measures to ensure that proper safeguards exist to prevent the company from committing any market misconduct. If the company is identified as having engaged in market misconduct, the MMT may impose sanctions on any of its officers (including its directors) so long as the misconduct is attributable, directly or indirectly, to a breach by that officer of the duty imposed on him to take the preventive measures.

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