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[online version](http://www.charltonslaw.com/hkex-issues-reminder-to-listed-issuers-regarding-suspension-related-matters-under-the-electronic-disclosure-regime/)

# HKEx Issues Reminder To Listed Issuers Regarding Suspension Related Matters Under The Electronic Disclosure Regime Effective 25 June 2007

## Introduction

HKEx's new regime for the electronic dissemination of regulatory information (the **EDP**) came into effect on 25 June 2007. Under the EDP, the HKEx websites become the primary channel for dissemination of regulatory announcements for both Main Board and Growth Enterprise Market (**GEM**) issuers.

HKEx has issued a reminder to listed issuers that they should review the publication of announcements on the HKEx websites and where necessary, request a suspension in the trading of their securities if they fail to publish an announcement. Issuers are now also required to publish an announcement of the suspension.

## Background

The EDP is being introduced in two phases, the first of which commenced on 25 June 2007. For full details of the Electronic Disclosure regime please refer to our April 2007 newsletter, which can be viewed by clicking [here](/newsletters/hklaw/en/2007/47/nl-hklaw-20070411-47.html). The essential features of the new regime are that:

* **From 25 June 2007**, Main Board issuers must publish announcements on the HKEx website as well as their own website (if they have one);
* **From 25 June 2007**, all documents to be published on the HKEx website must be submitted electronically via the Internet using the HKEx Electronic Publication System (**HKEx-EPS**). Submission by CD-Rom, diskette or fax will no longer be accepted in normal circumstances.
* **Until 24 December 2007**, Main Board issuers publishing announcements on the HKEx website and their own website must also publish in the newspapers a notification informing the public of the publication of an announcement on the HKEx website and the issuer's own website. These notifications must be published in newspapers on the business day following submission of the electronic copy of documents to the HKEx for publication on its website.
* **Until 24 June 2008**, Main Board issuers without their own website must publish full announcements in the newspapers as well as on the HKEx website. From 25 June 2008, every Main Board and GEM listed issuer must have its own website on which it must publish its Listing Rule documents. Failure to meet this requirement will amount to a breach of the Listing Rules.

## Suspension Policy Under The EDP

HKEx's suspension policy takes account of 3 factors: (1) the nature of the announcement; (2) publication of the announcement on the HKEx websites and (3) in the case of Main Board issuers, publication of the notification in the newspapers in the period until 24 December 2007.

In general, trading in the securities of a listed issuer may be suspended due to a publication failure (i.e. failure to publish an announcement on the HKEx websites and a notification in the newspapers) only if the subject matter of the announcement is price sensitive (Listing Rule MB 13.09/GEM 17.10) or it relates to a notifiable transaction and suspension is required under Listing Rules MB 14.37/GEM 19.37. Until 24 December, 2007, a suspension may also be necessary if a Main Board issuer makes no effort to publish a newspaper notification of publication of the full announcement on the HKEx website and the transaction is significant (i.e. the subject matter is price sensitive or relates to a notifiable transaction). This is consistent with the the principle set out in Chapter 6 of the Main Board Listing Rules and Chapter 9 of the GEM Rules that suspension is required only where the HKEx considers it necessary for the protection of investors or the maintenance of an orderly market.

The purpose of this note is to summarise guidelines specific to suspension in trading.

### Main Board Suspension Arrangements for Publication Failure (except for preliminary results announcements)

Electronic copies of announcements must be submitted through HKEx-EPS by 11.00 p.m. of the previous business day (or during the 2 hour (6.00 p.m. to 8.00) p.m. non-business day window) and notification in the newspapers must be published on the morning of the relevant business day.

If the announcement is not submitted to HKEx for publication by 11.00 p.m. but a notification is published in the newspapers

In this situation, a suspension will be required. However, if the announcement is subsequently published during the 6.00 a.m. to 9.00 a.m. publication window, trading in the securities may resume at 2.30 p.m. on the same day. Otherwise, the suspension will continue until the start of the next business day after the announcement is published.

If the announcement is published on the HKEx website, but a notification is not published in the newspapers

In this situation, HKEx will consider the reason for the failure to publish a notification and the nature of the transaction. If the issuer has made no effort to publish the newspaper notification and the announcement is a significant one (i.e. the subject matter is price sensitive or is a notifiable transaction described in Listing Rule 14.37), a suspension for a full day may be required.

In determining whether trading in an issuer's securities should be suspended, HKEx will take account of the following:

1. whether arrangements were made with newspaper publishers for the publication of the notification. The assessment of whether acceptable arrangements were made would take into account the normal operational procedures adopted by newspaper publishers for the publication of such advertisements and would, for example, take into account whether the order was placed before the newspapers' deadlines, whether a typeset draft proof of the notification was produced and whether delivery of the notification was made before the newspapers' deadlines;
2. whether the failure to publish was due to the action or inaction of the issuer. While HKEx recognises that issuers commonly use printers or market professionals to assist in publishing announcements, it takes the view that the obligation to publish the notification, and to demonstrate to HKEx that a suspension is not required, remains with the issuer.

Where suspension is required, trading in an issuer's securities may resume on the next business day following the publication of a resumption announcement on the HKEx website and a notification (of resumption and the transaction) in the newspapers.

Irrespective of whether a suspension in trading is required, the unpublished notification must be published in the newspapers on the next business day.

### Main Board Suspension Arrangements for Publication Failure of Preliminary Results Announcements

With effect from 25 June 2007, only full (and not short-form) preliminary results announcements are required to be published on the HKEx or GEM website and on the issuer's own website. During Phase 1, Main Board issuers are also required to publish a notification in the newspapers of the publication of the preliminary results announcement.

In the case of Main Board issuers, a preliminary results announcement should be published during the 12.30 p.m. to 1.30 p.m. publication window on the date of the board meeting (if the meeting is in the morning), or during the 4.15 p.m. to 11.00 p.m. publication window of the same day. A newspaper notification should be published on the same or next business day, as appropriate.

Preliminary results announcements may also be published shortly before the market opens. This means that the announcement may be published on the HKEx website between 6.00 a.m. and 9.00 a.m. of the business day after the board meeting provided that a notification is also published in the newspapers on that business day.

Where the announcement is not published before 9.00 a.m. of the business day after the board meeting, but a notification is published in the newspapers

If the morning publication window is not met and confidentiality cannot be maintained, the issuer must request a suspension. The issuer may then publish the announcement during the lunchtime window (12.30 p.m. to 1.30 p.m.) and trading of its securities can be resumed in the afternoon trading session.

Where the announcement is published on the HKEx website, but a notification is not published in the newspapers on the business day following the board meeting

In this situation, HKEx will generally accept that the earlier announcement of the date of the board meeting gave notice to the market of the expected release date of the preliminary results and will not require a suspension.

If there was no prior announcement of the date of the board meeting, a full day suspension will be required. In any event, the newspaper notification must be published on the next business day.

Where the preliminary results announcement is not published on the HKEx website and there is no newspaper notification or prior announcement of the date of the board meeting

In this situation, trading in the issuer's securities will be suspended and HKEx will not consider allowing trading to resume until the preliminary results are published on its website. The issuer must also publish a newspaper notification on the following business day, otherwise the suspension will continue.

### GEM Suspension Arrangements for Publication Failure

GEM issuers must submit announcements for publication on the GEM website by 9.00 a.m. of the relevant business day.

If the announcement (other than preliminary results announcements) is not submitted before the 9.00 a.m. deadline, a full day suspension is required. The suspension will continue until the next business day after publication of the announcement (either during the 4.15 p.m. to 11.00 p.m. window, or the 6.00 a.m. to 9.00 a.m. window of the next business day).

Preliminary results announcements can be published during the 12.30 p.m. to 1.30 p.m. publication window, in which case trading in the securities can resume at 2.30 p.m. of that day.

## Procedure Before Pre-Opening Trading Session

An issuer is required to take reasonable steps to ensure that publication of its announcement on the HKEx website has been successful by noting receipt of e-mail confirmation from HKEx and checking the HKEx website directly. A Main Board issuer should also check the newspapers in the morning to ascertain that the notification was published.

## Disclosure Of Details Regarding Failure To Publish

Where, for whatever reason, a newspaper notification is not published (in the case of Main Board issuers) and/or the announcement is not published on the HKEx website on time, the listed issuer should contact the Listing Division immediately and give details of its efforts to publish the notification, the reasons for non-publication and where appropriate, request a suspension.

## New Requirement For Issuers To Publish A Suspension Announcement

There has been a change to the way in which a suspension of trading is notified to the market. Previously, a suspension of trading in the securities of an issuer was first notified to the public by means of a short notice prepared by HKEx which was published on its website or the GEM website.

The Listing Rules now require a listed issuer to prepare a suspension announcement which it must submit through HKEx-EPS for publication on the HKEx or GEM website (Main Board Listing Rule 2.07(1)(a)(iv)/GEM Listing Rule 16.17(1)(d)). The suspension announcement should inform the investing public that trading in its securities has been suspended and set out briefly the reasons for the suspension.

Where the announcement has already been submitted by the issuer for publication, HKEx will publish it immediately via the HKEx website following suspension of trading in the securities. If the issuer has not submitted the announcement for publication prior to suspension, the issuer must do so as soon as possible after suspension of trading has been effected.

The suspension announcement must also be published on the issuer's own website (if any), but need not be published in the newspapers. Where a suspension is necessary due to publication failures, the listed issuer should disclose the nature of the failures, and where applicable, the expected time for resumption in trading of its securities as set out in its resumption request.

HKEx has published a [summary](http://www.hkex.com.hk/eng/listing/edp/index.htm) of the suspension arrangements and sample templates for announcement of suspension on its website.

## Resumption Announcement

The issuer must also publish a resumption announcement. This may be combined with the unpublished announcement or the suspension announcement. The issuer may apply for resumption in the written suspension request and issue a combined suspension and resumption announcement for example, where:

1. the expected time of resumption can be ascertained (e.g. where the suspension is due to delay in publication and the announcement is published on the HKEx website between 6.00 a.m. to 9.00 a.m.); or
2. a Main Board issuer has failed to make any effort to publish a newspaper notification and if the electronic announcement is already published – trading will resume on the following business day with the publication of a resumption announcement.

This note is intended as a summary only of the suspension arrangements under the new electronic disclosure regime for listed issuers. Specific advice should be sought in relation to any particular situation.

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