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# Exchange Publishes Rule Changes To Come Into Effect On Or After 1 October 2013 Regarding New Statutory Regime On The Regulation Of Sponsors

The Stock Exchange of Hong Kong Limited (the **Exchange**) has published rule changes to complement the Securities and Futures Commission’s (**SFC**) new regime on the regulation of sponsors under new paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the **Code of Conduct**) to come into effect 1 October 2013. The Exchange’s rule changes will come into effect on or after 1 October 2013 (the implementation of certain rules relating to publication will be suspended from 1 October 2013 to 31 March 2014).

The Exchange’s new regime involves amendments to the Rules Governing the Listing of Securities (the **Listing Rules**) and revised or new Guidance Letters designed to implement the publication of the advanced proof of the listing document submitted with the listing application under the Listing Rules (the **Application Proof**) and the requirements of new paragraph 17 of the Code of Conduct. The Exchange has also amended the checklists and forms which are required to be submitted.

The Exchange’s [news release](http://www.hkex.com.hk/eng/newsconsul/hkexnews/2013/130723news.htm) ([see archive](Exchange_Publishes_Rule_Changes_to_Complement_New_Sponsor_Regulation.pdf)), the amendments to the [Main Board Listing Rules](http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb_nlr_1310.pdf) ([see archive](mb_nlr_1310.pdf)) and the [GEM Listing Rules](http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/Documents/gem_nlr_1310.pdf) ([see archive](gem_nlr_1310.pdf)) as well as related new and revised [Guidance Letters](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/gl_newrg.htm) ([see archive](New_and_Revised_Guidance_Letters_for_Rule_Changes_to_Complement_New_Sponsor_Regulation.pdf)) and revised [Checklists and Forms](http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/guidelines.htm) ([see archive](Checklists_and_Forms.pdf)) are available on the Exchange’s website. The following is a summary of the key changes to the Listing Rules and guidance. More detailed materials on the new sponsor regime will be published in due course.

## Publication of Application Proof

Amendments to the Main Board Listing Rules and the GEM Listing Rules [[1]](#footnote-34) will require the publication of Application Proofs on the Exchange’s website when a listing application is submitted and publication of Post Hearing Information Packs (**PHIP**s). A new listing applicant is not required to publish an Application Proof on its own website [[2]](#footnote-35) and an Application Proof does not require pre-vetting or clearing from the Exchange or the SFC before its publication. Regarding the content of the published Application Proof, certain information must be redacted to the extent necessary for the published Application Proof not to constitute a prospectus under section 2(1) of the Companies Ordinance or an invitation to the public in breach of section 103(1) of the Securities and Futures Ordinance. Guidance on information that must be redacted, such as information on cornerstone investors, offer price and the terms of the underwriting agreement, is given in Table A of new Guidance Letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)). The Application Proof must also contain the minimum warning and disclaimer statements set out in Part B of Enclosure 1 of Guidance Letter [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)). The applicant’s legal adviser is required to confirm that an Application Proof complies with the Exchange’s guidance on redactions in an Application Proof and the inclusion of the required warning and disclaimer statements. [[3]](#footnote-40)

New applicants which have been listed on a recognised overseas exchange for not less than five years and which have a significantly large market capitalisation (as determined by the Exchange from time to time – currently as US$200 million) at the time of filing their listing application, are entitled to make a confidential filing of their Application Proofs and are not required to comply with the publication requirements for the Application Proof unless requested to do so by the Exchange or the SFC. In the case of an Application Proof of a spin-off from an overseas listed parent, the Exchange or the SFC may waive or modify the publication requirements for an Application Proof upon application by the applicant at least two months before the filing of its Application Proof, if it envisages any difficulties in compliance with the publication requirements. [[4]](#footnote-41)

The requirement for applicants to publish Application Proofs on the Exchange’s website will be suspended from 1 October 2013 to 31 March 2014 (the **Suspension**) and submission of a Chinese version of an Application Proof is not required during the Suspension period.

## Substantially Complete Listing Application

An Application Proof submitted with a listing application for vetting must be substantially complete except in relation to information that by its nature can only be finalised and incorporated at a later date. [[5]](#footnote-43) Table A of new Guidance Letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)) sets out the disclosure requirements expected for a substantially complete Application Proof. For vetting purposes, certain information is permitted to be included in square brackets while other information is permitted to be omitted.

The Exchange may return a new listing applicant’s listing application and all related documents to its sponsor on the ground that the information in the listing application form, Application Proof or any related document is not substantially complete under Main Board Listing Rule 9.03(3) or GEM Listing Rule 12.09(1) (a **Return Decision**). A Return Decision will provide written reasons for the return of the listing application. If the Exchange returns a listing application to a sponsor before issuing its first comment letter to the sponsor, the initial listing fee will be refunded but in other cases it will be forfeited. [[6]](#footnote-44)

If an application is returned, a new application cannot be submitted until 8 weeks after the Return Decision. The names of the applicant and sponsor(s) together with the return date will also be published on the Exchange’s website. During the Suspension period, however, in the case of a returned listing application, applicant names, sponsor names and return dates will not be published on the Exchange’s website.

The Exchange anticipates that the submission of substantially complete Application Proofs will result in a faster, streamlined review process. The regulators’ commenting process will focus on major issues such as eligibility, suitability, sustainability, compliance with the Listing Rules, Companies Ordinance and Securities and Futures Ordinance and any material disclosure deficiencies.

## Initial 3-day Check

From 1 October 2013 to 30 September 2014, the Application Proof will be subject to an initial 3-day check by the Exchange based on a prescribed checklist in Table B of Guidance Letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf)([see archive](gl56-13.pdf)) (the **Initial 3-day Checklist**). If an Application Proof fails to include matters listed in the Initial 3-day Checklist or it is considered not substantially complete for other reasons (e.g. failure to include material information), the Exchange may return the listing application. At the end of this 3-day check, the Exchange will either confirm acceptance of the listing application for detailed vetting or will return the listing application with a letter detailing the reasons for its return. Since the initial 3-day check involves only a limited qualitative assessment, the Exchange may return a listing application for not being substantially complete after it accepts an application for detailed vetting following the 3-day check period.

Listing applications returned during the initial 3-day check are also subject to an 8-week moratorium on filing a new application and the publication of the names of the sponsor(s) and listing applicant together with the date of the return. The SFC and the Exchange will review the initial 3-day check process during the first six months of its implementation to determine whether to continue it during the following six months.

## Review Procedure

Where the Exchange returns a listing application, a listing applicant may, within five business days of receipt of the Return Decision, request a review of the decision in a written request setting out the reasons for seeking a review. Following receipt of the review request, a review hearing with the Listing Committee or GEM Listing Approval Group, as appropriate, will be scheduled. In a review hearing of a Return Decision, the directors of the new listing applicant and/or one representative of each sponsor have the right to attend the hearing and make submissions. Other parties who may attend include one representative of each of the new applicant’s financial adviser, legal adviser and auditors and the legal adviser of each sponsor. [[7]](#footnote-47) If the parties seeking a review decide not to attend the hearing, the hearing will proceed on the basis of the documents submitted for hearing. Following the review hearing, the listing applicant may, within five days of receipt of the decision of the Listing Committee or GEM Listing Approval Group, request a review of the decision by the Listing (Review) Committee in a second review hearing through a written request setting out the grounds for review and the reasons for such review. The decision of the Listing (Review) Committee is conclusive and binding. On the date of completion of all review procedures or when the time for invoking them has lapsed, the sponsor and listing applicant’s names will be displayed on a designated Exchange webpage.

For applications which were previously returned by the Exchange, the listing applicant can only submit a new listing application and Application Proof eight weeks after the Return Decision. [[8]](#footnote-48)

## Information on the Exchange’s Website

The Exchange will publish status marks and information on the Exchange’s website to indicate the status of each listing application. The various status marks are as follows: “Active”; “Inactive” comprising “Lapsed”, “Withdrawn” or “Rejected”; “Listed”; or “Returned”. For listing applications that are “Lapsed”, “Withdrawn” or “Rejected”, the contents of previously published documents will no longer be available on the Exchange’s website, but there will be a record of the date and description of these documents. [[9]](#footnote-50)

## Sponsor Appointment or Termination

A sponsor must notify the Exchange in writing of its appointment as soon as practicable and must provide a copy of its engagement letter to the Exchange, regardless of whether a listing application has been submitted. [[10]](#footnote-52) A sponsor’s written engagement letter must comply with the requirements of Main Board Rule 3A.05/GEM Rule 6A.05 as to certain obligations which it must impose on the listing applicant and its directors. If a sponsor ceases to act for a new listing applicant at any time after its appointment, the sponsor must inform the Exchange in writing of its reasons for ceasing to act, irrespective of whether a listing application has been submitted. A listing application cannot be submitted less than two months from the date the sponsor is formally appointed, and where more than one sponsor is appointed, the listing application can only be submitted not less than two months from the date the last sponsor is formally appointed. [[11]](#footnote-53)

## Publicity Materials

No publicity material on an issue of securities by a new listing applicant can be released unless and until the Exchange has reviewed it and confirmed to the applicant that it has no comments. If the Exchange believes that a new applicant or its advisers have permitted information to leak, the Exchange will normally delay the application for the listing of those securities. Publication of an Application Proof, a PHIP or any statement by a listing applicant that no reliance should be placed on any media reports about the new applicant published subsequent to the publication of its Application Proof or the PHIP (**Rule 9.08/12.10 Statements**) do not need to be submitted for prior review. [[12]](#footnote-55) Publication of Rule 9.08/12.10 Statements on the Exchange’s website is voluntary: their purpose being to allow listing applicants to notify the public that they should not rely on media reports regarding them following the publication of their Application Proof or PHIP. They may be published without vetting by the Exchange if they are in the standard form set out in Enclosure 3 of Guidance Letter [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)), although applicants must submit a copy to the Exchange prior to publication. If a Rule 9.08/12.10 Statement is not in the standard form, it may only be published with the Exchange’s consent.

## Replacement of WPIP regime with PHIP regime

Effective 1 October 2013, the requirement to post a Web Proof Information Pack, or WPIP, will be replaced in its entirety with a new requirement to publish a PHIP. A new applicant must submit a PHIP for publication on the Exchange’s website following the receipt of a post hearing letter from the Exchange together with a request to post a PHIP and the directors of the new applicant concluding that the material comments of the Exchange and the SFC have been addressed. No pre-vetting or clearance from the Exchange or the SFC is required before publication of the PHIP. A new applicant does not need to publish its PHIP if it delays its listing plan by informing the Exchange and the SFC and if the listing is by way of introduction and the final listing document is to be issued immediately after the obligation to publish a PHIP arises. [[13]](#footnote-57) Information to be redacted in a PHIP should follow the guidance set out in Table A of Guidance Letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)) and the PHIP must contain the minimum warning and disclaimer statements set out in Part B of Enclosure 1 of Guidance Letter [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)).

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1. References to Listing Rules are to the amended Listing Rules to come into effect 1 October 2013. [↑](#footnote-ref-34)
2. GEM Listing Rule 16.19(1). [↑](#footnote-ref-35)
3. Main Board Practice Note 22 at paragraph 7 and GEM Practice Note 5 at paragraph 6. [↑](#footnote-ref-40)
4. Practice Note 22 to Main Board Listing Rules and Practice Note 5 to GEM Listing Rules. [↑](#footnote-ref-41)
5. Main Board Listing Rule 9.03 and GEM Listing Rule 12.09. [↑](#footnote-ref-43)
6. Note 2 to Main Board Listing Rule 9.03(1)(b) and Note to GEM Listing Rule 12.14. [↑](#footnote-ref-44)
7. Main Board Listing Rule 2B.11(9) and GEM Listing Rule 4.11(9). [↑](#footnote-ref-47)
8. Main Board Listing Rule 9.03(3) and GEM Listing Rule 12.09(3). [↑](#footnote-ref-48)
9. Practice Note 22 to Main Board Listing Rules and Practice Note 5 to GEM Listing Rules. [↑](#footnote-ref-50)
10. Main Board Listing Rule 3A.02A and GEM Listing Rule 6A.02A. [↑](#footnote-ref-52)
11. Main Board Listing Rule 3A.02B and GEM Listing Rule 6A.02B. [↑](#footnote-ref-53)
12. Main Board Listing Rule 9.08 and GEM Listing Rule 12.10. [↑](#footnote-ref-55)
13. Practice Note 22 to Main Board Listing Rules and Practice Note 5 to GEM Listing Rules. [↑](#footnote-ref-57)