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[online version](http://www.charltonslaw.com/exchange-publishes-faq-on-listing-rule-changes-to-complement-the-securities-and-futures-commissions-new-sponsor-regulation/)

# Exchange Publishes Frequently Asked Questions On Listing Rule Changes To Complement The Securities And Futures Commission’s New Sponsor Regulation Effective On 1 October 2013

The Stock Exchange of Hong Kong Limited (the **Exchange**) has published [Frequently Asked Questions Series 24](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_24.pdf) (the **FAQ**s) ([see archive](FAQ_24.pdf)) in relation to the Listing Rule changes to be implemented in connection with 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 (**Code of Conduct**) to come into effect on 1 October 2013.

The FAQs clarify certain concepts or elements in the amended Listing Rules in relation to the new sponsor regulation. They also explain how listing applicants and sponsors should comply with the Listing Rule requirements in certain hypothetical situations.

Previously, we have published a [newsletter](/newsletters/hklaw/en/2013/198/nl-hklaw-20130813-198.html) on the key Listing Rule amendments.

## General

All listing applications, including re-filed applications, that are submitted on or after 1 October 2013 are subject to the Listing Rule changes. An applicant is required to publish on the Exchange's website the advanced proof of the listing document submitted with the listing application under the Listing Rules (the **Application Proof**). No other drafts are required to be published except for the applicant’s Post Hearing Information Pack (**PHIP**) or the final document.

The date of a sponsor’s formal appointment is the effective date of the engagement letter or similar written agreement. A sponsor is required to submit notification of its appointment, by providing a copy of its engagement letter, at least two (2) months before a listing application is submitted. The obligation to notify the Exchange of a sponsor appointment applies irrespective of whether the listing application is submitted.

## Arrangements for listing application submitted/ notification of sponsors before 1 October 2013

A sponsor appointed before 1 October 2013:

* should still submit notification of its appointment, by providing a copy of its engagement letter, to the Exchange as soon as practicable to facilitate processing of the new applicant’s listing application when that application is submitted after 1 October;
* should, where its terms of appointment do not comply with the requirements of paragraph 17.11(b) of the Code of Conduct and Main Board Rule 3A.05/GEM Rule 6A.05, agree revised terms that comply with these requirements not later than the date the sponsor notifies the Exchange of its appointment;
* should, where it ceases to act for a new applicant before 1 October 2013, submit its reasons for ceasing to act as soon as practicable if it has made a notification of appointment to the Exchange;
* should be appointed at least two months before the submission of the listing application if the listing application is submitted on or after 1 October 2013. Where there is more than one sponsor, the listing application can only be submitted at least 2 months after appointment of the last sponsor; and
* is not required to submit notification to the Exchange of its appointment in the case of a listing application that lapsed on or before 30 September 2013 and that is re-submitted on or after 1 October 2013, provided that there is no change in sponsor.

After 1 October 2013, all applicable Listing Rules and Guidance Letters relating to administrative or filing procedures applicable prior to 1 October 2013 can be viewed from a website to be designated by the Exchange.

## Transfer application from GEM to Main Board

The new regime on the regulation of sponsors does not apply to GEM transfer applications because there is no requirement for a sponsor or a listing document.

## Initial listing fee

The initial listing fee will be refunded if the Exchange returns a listing application to an applicant before it issues its first comment letter and it will be forfeited if the Exchange returns a listing application to an applicant after it issues its first comment letter.

## Pre-IPO enquiries

The Exchange will only consider pre-IPO enquiries which are novel and specific and the pre-IPO enquiry process should not be taken as a means to get a document pre-vetted before submission of a listing application. Pre-IPO enquiries on a no-name basis will not be considered.

## Waiver from publication of Application Proof

Unless a waiver is granted, applicants are required to publish their Application Proofs on the Exchange’s website and the Exchange or the SFC may waive or modify the publication requirements based on the facts and circumstances of the applicant. Applicants are encouraged to consult the Exchange early if they foresee difficulties in complying with the requirements (e.g. where the publication of an Application Proof will conflict with the laws of a foreign jurisdiction to which the applicant is subject). In the case of a spin-off from an overseas listed parent, paragraph A.12 of [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)) sets out some of the factors which the Exchange or the SFC may take into account when considering a waiver.

## Complaints/ allegations received

An applicant can publish a statement on the Exchange’s website that complies with the Listing Rules stating that no reliance should be placed on any media reports relating to its Application Proof or PHIP; such statement does not need to be pre-vetted if it is in the standard form set out in Enclosure 3 of [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)), but a copy should be submitted to the Exchange before its publication. Other statements that do not comply with the Listing Rules require the Exchange’s pre-vetting and approval before publication.

### Acceptance for vetting – the 3-Day Check

Although the FAQs do not provide any guidance on whether an Application Proof accepted for vetting after the 3-Day Check is considered substantially complete, guidance letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)) states that an Application Proof accepted for vetting after the 3-Day Check can be later found by the Exchange to be not substantially complete.

### Vetting process

The sponsor will receive a “Notice to hearing [sic]” letter from the Exchange when the Exchange considers that a listing application is ready to be presented to the Listing Committee/GEM Listing Approval Group. Upon receipt of this letter, the listing applicant should submit all relevant documents required under the Listing Rules.

In terms of timing, assuming the Exchange issues two rounds of comments and the sponsor(s) responds within five (5) business days, the Exchange expects that it would normally take about 40 business days to present an application to the Listing Committee/ GEM Listing Approval Group for its consideration, although the timeframe may be shortened in the case of a high quality Application Proof. In the case of a mineral company, the timeframe will also depend on the quality of the Competent Person’s Report.

### Logistical arrangement – posting on the Exchange’s website

During the six-month suspension period from 1 October 2013 to 31 March 2014, applicants are required to submit only the English version, and not the Chinese version, of Application Proofs to the Exchange. The six-month suspension period does not apply to PHIPs in terms of publication on the Exchange’s website and submission of both English and Chinese versions.

The Exchange expects the legal confirmation from an applicant’s legal adviser in relation to the redactions in an Application Proof and a PHIP for publication to follow the wording set out in paragraph 7 to Main Board Practice Note 22/ paragraph 6 to GEM Practice Note 5.

Where an applicant’s application is returned, the applicant’s Application Proof will be removed from the Exchange’s website upon completion of all the review procedures or when the time for invoking such review has passed. The Exchange will only publish the name of the applicant and its sponsor, and the date of the return and such information will remain on the Exchange’s website even if the application is subsequently re-submitted.

The eight weeks moratorium on submitting a new listing application starts from the date of the return letter. A PHIP is required to be published on the Exchange’s website once the applicant has received a post-hearing letter from the Exchange requesting posting of the PHIP and the applicant’s directors have concluded that the material comments from the Exchange and SFC have been addressed. The FAQs provide that an applicant’s directors should form their own view regarding whether the material comments raised have been addressed.

A PHIP can be submitted for publication on the Exchange’s website on a day where there is no HKEx-ESS service available, subject to advance notice given to the Exchange not later than 2.00pm on a business day immediately before the day for the special arrangements to take place.

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