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**Introduction to Listing on  
the Growth Enterprise Market of the Stock Exchange of  
Hong Kong Limited (“the GEM”)**

*based on  
the Rules Governing the Listing of Securities on the Growth Enterprise Market of  
The Stock Exchange of Hong Kong Limited (“GEM Listing Rules”)*

*June 2014*

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**CHARLTONS**  
**易周律師行**  
Solicitors

**Hong Kong**

**Shanghai**

**Beijing**

**Yangon**

[www.charltonslaw.com](http://www.charltonslaw.com)

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## I. INTRODUCTION

GEM was established as an alternative market to the Main Board in November 1999 to provide capital formation opportunities for growth companies. Amendments to the GEM Listing Rules which took effect on 1 July 2008 introduced a streamlined process for GEM listed companies to transfer to the Main Board, thus repositioning GEM as a stepping stone to the Main Board. As GEM is a listing venue for smaller, growth companies, the listing eligibility criteria are lower than for the Main Board. The continuing obligations of GEM listed companies are however virtually identical to those of Main Board listed companies.

## II. GEM QUALIFICATIONS FOR LISTING

Chapter 11 of the GEM Listing Rules sets out the basic requirements that must be met before any initial listing of equity securities on GEM. Chapters 24 and 25 contain additional requirements, modifications and exceptions to those requirements which apply to overseas companies and companies incorporated in the People's Republic of China (the "PRC"), respectively. This note deals with the general requirements for listing on GEM.

The main requirements for GEM listing are summarised below. The Exchange retains an absolute discretion to accept or reject applications for listing and compliance with the relevant conditions will not necessarily ensure that a listing will be granted. The requirements set out below are not exhaustive and the Exchange may impose additional requirements in any particular case.

### (a) Incorporation

The Exchange will accept companies incorporated in Hong Kong, Bermuda, the Cayman Islands and the PRC ("**Recognised Jurisdictions**") for listing on GEM. It will also accept companies incorporated in any other jurisdictions where the standards of shareholder protection are at least equivalent to those provided in Hong Kong.

The opening of Hong Kong's equity listing regime to issuers from more overseas jurisdictions is one of the key policy issues for the Exchange. With the aim of facilitating the listing of more overseas companies on the Exchange, the Exchange and the Securities and Futures Commission published a Joint Policy Statement Regarding the Listing of Overseas Companies (**Joint Policy Statement**) on 7 March 2007 which was updated on 27 September 2013.

#### Shareholder Protection Standards

An overseas listing applicant is required to demonstrate that a combination of its constitutional documents and the laws and regulations of its home jurisdiction provide the key shareholder protection standards specified in the Joint Policy Statement. These are:

- A super-majority of members' votes must be required to approve changes to shareholder rights, material changes to the constitutional documents and a voluntary winding-up;

- Any alteration to the constitutional documents which increase an existing member's liability to the company must be agreed by such member in writing;
- Certain requirements in relation to general meetings including the requirement to hold an annual general meeting each year and that there should be no more than 15 months between one AGM and the next; the requirement to give members reasonable written notice of general meetings; the right of all members to speak and vote at annual general meetings and to appoint proxies, and the right of minority members to convene extraordinary general meetings; and
- The appointment, removal and remuneration of auditors must be approved by a majority of the members or another body that is independent of the board (e.g. the supervisory board in systems that have a two-tier board structure).

### Regulatory Cooperation Arrangements

Where a listing applicant is not incorporated in one of the four Recognised Jurisdictions (Hong Kong, Bermuda, the Cayman Islands and the PRC), it must be able to show that the statutory securities regulator(s) of its jurisdiction of incorporation and place of central management and control (if different) is/are either a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“**MOU**”)<sup>1</sup> or have entered into a bi-lateral agreement with the SFC to provide mutual assistance and exchange of information to enforce and secure compliance with applicable laws and regulations.<sup>2</sup>

The Exchange will consider three factors in determining the applicant's place of central management and control:

- where the senior management directs, controls and coordinates company activities;
- where the principal books and records are kept; and
- where the business operations and assets are located.

### Approved Jurisdictions

The Exchange has approved the following twenty-one “**Acceptable Jurisdictions**” of incorporation for listed issuers: Australia, Brazil, the British Virgin Islands, Canada (Alberta), Canada (British Columbia), Canada (Ontario), Cyprus, France, Germany, Guernsey, the Isle of Man, Italy, Japan, Jersey, the Republic of Korea, Labuan (Malaysia), Luxembourg, Singapore, the United Kingdom, and the states of California

<sup>1</sup> The current signatories to the IOSCO MOU can be viewed at: [http://www.iosco.org/library/index.cfm?section=mou\\_siglist](http://www.iosco.org/library/index.cfm?section=mou_siglist)

<sup>2</sup> Details of the SFC's cooperative arrangements with overseas regulators can be viewed at: <http://www.sfc.hk/web/EN/about-the-sfc/collaboration/overseas/>

and Delaware in the United States. The Exchange has published a Country Guide<sup>3</sup> for each Acceptable Jurisdiction which sets out guidance as to how companies incorporated in the relevant jurisdiction can meet the requirement for equivalent shareholder protection standards and other guidance for applicants incorporated in that jurisdiction.

A listing applicant which is incorporated in an Acceptable Jurisdiction will not need to provide a detailed explanation of how it meets the key shareholder protection standards specified in the Joint Policy Statement if it adopts the arrangements set out in the Country Guide for that jurisdiction. The listing applicant will however be required to confirm to the Exchange that the laws, regulations and market practices contained in the country guide still apply, or provide details of any changes to the Exchange and inform it of any other laws, regulations and market practices that are relevant to the listing applicant.

An overseas company which is incorporated in a jurisdiction which is new to listing (i.e. which has not yet been approved by the Exchange as an Acceptable Jurisdiction) will need to provide the Exchange with a detailed explanation as how the laws and regulations of its home jurisdiction, its constitutional documents and the arrangements it has adopted combine to meet the key shareholder protection standards.

#### Dual Primary Listings

An overseas company which is already listed on another stock exchange can apply for a dual-primary listing on GEM which will require it to comply with the full requirements of the Hong Kong Exchange and those of the overseas exchange. Secondary listings are not possible on GEM, but are allowed on the Main Board of the Exchange.

#### **(b) Mining and Natural Resources Companies**

The particular advantage of qualifying as a Mineral Company for a company seeking a GEM listing is the opportunity to obtain a waiver from the requirement to meet the trading record period of GEM Rule 11.12A. Chapter 18A of the Listing Rules sets out specific requirements for Mineral Companies, which are defined as:

- existing listed issuers that complete a major transaction (i.e. 25% or more of existing activities) or above involving the acquisition of mineral or petroleum assets; or
- new listing applicants whose Major Activities (whether directly or through a subsidiary company) include exploration for, and/or extraction of, natural resources such as minerals or petroleum. A Major Activity is one representing 25% or more of the total assets, gross revenue or operating expenses of the applicant and its subsidiaries.

#### Portfolio of Indicated Resources or Contingent Resources

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<sup>3</sup> The Country Guides for the Acceptable Jurisdictions are available on the Exchange's website at [http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/list\\_of\\_aoj.htm](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/list_of_aoj.htm).

A new applicant Mineral Company is required to have at least a portfolio of Indicated Resources (in the case of minerals) or Contingent Resources (in the case of petroleum) that are identifiable under one of the accepted reporting standards and substantiated in the report of an independent expert (a “**Competent Person**”). The definition of Indicated Resources is based on the one in the 2004 edition of the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (“**JORC Code**”). The definition of Contingent Resources is based on the one in the Petroleum Resources Management System of September 2007 (“**PRMS**”). The portfolio is also required to be meaningful and of sufficient substance to justify a listing.

#### Rights of Active Participation

A new applicant Mineral Company must also be able to demonstrate that it has the right to actively participate in the exploration for and/or extraction of resources either through:

- control over a majority (by value) of the assets in which it has invested together with adequate rights over the exploration for and/or extraction of resources. This will normally be interpreted as an interest of more than 50%. Companies must also disclose full details of their exploration and/or extraction rights; or
- adequate rights arising under arrangements acceptable to the Exchange, which give it sufficient influence in decisions over the exploration for and/or extraction of the resources. Arrangements which may be acceptable include joint ventures, production sharing contracts or specific government mandates. The Exchange has stated that it will adopt a purposive approach to determining what is appropriate in specific circumstances and places the onus on applicants to demonstrate the adequacy of their rights and sufficiency of influence.

#### **(c) Suitability for Listing**

Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing (Rule 11.06). The Exchange may, in its discretion, refuse a listing of the securities of an overseas issuer if it believes that it is not in the interest of the Hong Kong public to list them.

#### **(d) Cash Flow Requirement (Rule 11.12A)**

A new GEM applicant or its group (excluding any associated companies, joint ventures and other entities whose results are recorded in the issuer’s financial statements using the equity method of accounting or proportionate consolidation) is required to have a positive cash flow from operating activities in the ordinary and usual course of business before changes in working capital and taxes paid of HK\$20 million in aggregate for the 2 financial years immediately preceding the issue of the listing document.

A statement of cash flow prepared using the indirect method must be included in the prospectus, if it is not included in the accountants' report.

The operating cash flow requirement was implemented in July 2008 and means that GEM no longer provides a listing venue for start-up companies.

#### Calculation of Positive Operating Cash Flow

An applicant's cash flow from operating activities is required to be calculated using the indirect method as described under International Accounting Standard 7 (IAS7) or Hong Kong Accounting Standard 7 (HKAS7) for the 2 immediately preceding financial years.

Under the indirect method described in HKAS7, positive cash flow from operating activities is determined by adjusting profit or loss for the effects of:

1. changes during the period in inventories and operating receivables and payables;
2. non-cash items including depreciation, provisions, deferred taxes, unrealised foreign currency gains and losses, and undistributed profits of associates; and
3. all other items for which the cash effects are investing or financing cash flows.

Alternatively, the net cash flow from operating activities may be presented under the indirect method by showing the revenues and expenses disclosed in the statement of comprehensive income and the changes during the period in inventories and operating receivables and payables.

#### *Mineral Companies*

*Note 1: Where the Exchange accepts a trading record of less than two financial years, a new applicant must still meet the cash flow requirement of HK\$20 million for that shorter trading record period, in accordance with Rule 11.14.*

#### **(e) Operating History and Management (Rule 11.12A(2) and (3))**

The Exchange requires GEM applicants to have a trading record of at least 2 financial years with:

1. management continuity throughout the 2 preceding financial years; and
2. ownership continuity and control throughout the preceding full financial year.

In both cases, continuity must continue until the date of listing.

#### Trading Record Period of Less Than Two Years

Under Rule 11.14, the Exchange may accept a trading record period of less than 2 financial years (and an accountants' report covering a shorter period) and waive or vary the ownership and management requirements:

- (i) for newly-formed "project" companies (for example a company formed for the purposes of a major infrastructure project);
- (ii) for natural resource exploitation companies; and
- (iii) in exceptional circumstances under which the Exchange considers it desirable to accept a shorter period.

Where the Exchange accepts a trading record of less than 2 financial years, the applicant must nevertheless still meet the cash flow requirement of HK\$20 million for that shorter trading record period.

#### Mineral Companies

The Exchange may accept a trading record period of less than two financial years for rule 11.12A (and an accountants' report covering a shorter period than that specified in rule 11.10) for a new applicant Mineral Company provided that its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing. Individuals relied on must have a minimum of five years relevant industry experience. Details of the relevant experience must be disclosed in the listing document of the new applicant. (GEM Rules 18A.04)

#### **(f) Statement of Business Objectives (Rule 14.19)**

A new applicant must include in its listing document a statement of business objectives setting out the following information:

- (i) general information as to (a) the overall business objectives of the new applicant; and (b) the market potential for the new applicant's business over the period comprising the remainder of the current financial year of the applicant and the 2 financial years thereafter;
- (ii) a detailed description of the new applicant's objectives for each of the products, services or activities (and any other objectives) analysed over the period comprising the remainder of the current financial year of the applicant and the 2 financial years thereafter;
- (iii) A detailed explanation as to how the applicant proposes to achieve the stated business objectives; and
- (iv) a clear explanation of all bases and assumptions in support of the applicant's assessment of its market and growth potential, business objectives and/or description of how it proposes to achieve its business objectives.

#### **(g) Minimum Market Capitalisation (Rule 11.23(6))**

New applicants are required to have a minimum market capitalisation at the time of listing of at least HK\$100 million.

The market capitalisation at the time of listing is calculated by multiplying the number of issued shares by the expected issue price.

**(h) Accountants' Report**

A new applicant must have an accountants' report prepared in accordance with Chapter 7 of the GEM Listing Rules covering at least the 2 financial years immediately preceding the issue of the listing document. Issuers with an operating history of more than 2 years are encouraged to disclose 3 years of financial results in the accountants' report.

The latest financial period reported on by the reporting accountants must not have ended more than 6 months before the date of the listing document (Rule 11.11)

**(i) Minimum Public Float**

At least 25% of the issuer's total issued share capital must be held by the public at all times (Rules 11.23(7)). At the time of listing, the market capitalisation of the publicly held shares must be at least HK\$30 million.

Where an issuer has more than one class of securities apart from the shares for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total issued capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalisation at the time of listing of at least HK\$30 million (Rule 11.23(9)).

The Exchange has a discretion under Rule 11.23(10) to accept a lower percentage of between 15% and 25%, if the issuer has an expected market capitalisation of over HK\$10 billion at the time of listing and the Exchange is satisfied that the number of securities concerned and the extent of their distribution will enable the market to operate properly with a lower percentage, and on condition that the issuer will make appropriate disclosure of the lower prescribed percentage of public float in the initial listing document and confirm sufficiency of public float in successive annual reports after listing (Rule 17.38A). In addition, where securities are to be marketed both in and outside Hong Kong, a sufficient portion, which must be agreed in advance with the Exchange, must normally be offered in Hong Kong.

The "public" for these purposes means persons who are not: (i) a director, chief executive or substantial shareholder (i.e. a holder of 10%) of the company or its subsidiaries or an associate of any of them; or (ii) a person whose securities have been financed by any person referred to at (i) above or who is accustomed to take instructions from a person referred to at (i) above in relation to his shares.

In relation to a PRC issuer, the Exchange will not regard a promoter, director, supervisor, chief executive or substantial shareholder of the PRC issuer or its subsidiaries or an associate of any of them as a member of the “public”.

**(j) Spread of Shareholders**

Securities new to listing are required to have an adequate spread of shareholders. The number depends on the size and nature of the issue but the general guideline is that there must be at least 100 shareholders (including those whose equity securities are held through CCASS) at the time of listing (Rule 11.23(2)(b)). In addition, not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the 3 largest public shareholders (Rule 11.23(8)).

**(k) Business Competition**

A new applicant will not be rendered unsuitable for listing on the grounds that any director or shareholder has an interest in a business which competes or may compete with the new applicant’s business (Rule 11.03).

However, full disclosure of any competing business or interest of a director, controlling shareholder and substantial shareholder and their respective associates and any other conflicts of interest of any such person with the group must be made at the time of listing. Such disclosure is also required, except in the case of substantial shareholders, in each listing document and circular required under the GEM Listing Rules and in the annual report and accounts, half-year report and quarterly reports of the listed issuer (Rule 11.04). A “controlling shareholder” is any shareholder or persons together entitled to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as the level for triggering a mandatory general offer) or more of the voting power at general meetings of the new applicant or who is or are in a position to control the composition of the majority of the applicant’s board of directors.

Requirement for Independence from the Controlling Shareholder

The listing applicant must however be able to demonstrate, and must disclose in its listing document, that it is able to carry on its business independently of its controlling shareholder and its associates (paragraph 27A of Part A of Appendix 1).

**(l) Sponsor**

A new applicant seeking a listing of equity securities on GEM must appoint one or more sponsors to assist with its listing application (Rule 6A.02). To be eligible to act as the sponsor of a new applicant, a firm must be licensed by the Hong Kong Securities and Futures Commission to conduct sponsor work.

If only one sponsor is appointed, that sponsor must be independent from the applicant in accordance with the independence test set out at Rule 6A.07. If there are 2 or more sponsors, at least one sponsor must be independent and

the listing document must disclose whether each sponsor is independent in accordance with the Rule 6A.07 test (Rule 6A.10(2)). In addition, one sponsor must be designated as the primary channel for communication with the Exchange. Each sponsor is responsible for ensuring that the sponsor's obligations under the Listing Rules are discharged (Rule 6A.10(3)).

Each sponsor is required to give an undertaking and statement of independence to the Exchange in the form of Appendix 7K to the GEM Rules at the time of submission of the listing application. As soon as practicable after the Listing Division's hearing of the listing application but on or before the date of issue of the listing document, sponsors must submit to the Exchange a Sponsor's Declaration (in the form of Appendix 7G) giving specific confirmations as to the applicant's compliance with the conditions for listing, the sufficiency and accuracy of information in the prospectus and as to the adequacy of the applicant's systems and its directors' experience and understanding of the Listing Rules to ensure the applicant's compliance with the Listing Rules post-listing (Rule 6A.13). Sponsors are required to conduct reasonable due diligence inquiries in order to put themselves in a position to give the Sponsor's Declaration (Rule 6A.11(2)). The responsibilities and obligations of sponsors in relation to a new listing application (including as to due diligence) are set out in paragraph 17 of the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC. Certain typical due diligence steps which the Exchange expects of sponsors of initial listing applications are also set out at Practice Note 2 to the GEM Rules. Sponsors are required to document their due diligence planning and significant deviations from their plans and to keep records of their work on listing applications.

A sponsor's main responsibilities to a new applicant are:

- (i) to be closely involved in the preparation of the applicant's listing documents;
- (ii) to conduct reasonable due diligence inquiries to put itself in a position to give the Sponsor's Declaration required by Rule 6A.13;
- (iii) to submit the listing application and all supporting documents on behalf of the applicant;
- (iv) to ensure that there is no unauthorised publication or leakage of publicity material or price sensitive information about a new applicant prior to the hearing of the Listing Division;
- (v) to use reasonable endeavours to address all matters raised by the Exchange in connection with the listing application;
- (vi) to accompany the applicant to meetings with the Exchange unless otherwise requested by the Exchange; and
- (vii) to comply with the terms of the undertaking and statement of independence given to the Exchange pursuant to Rule 6A.03 (Rule 6A.11).

## Mineral Companies

The Rules impose an obligation on any sponsor appointed to or by a new applicant Mineral Company to ensure that the Competent Person or Competent Evaluator meets the requirements of GEM Chapter 18A.

### **(m) Free Transferability**

The securities for which listing is sought must be freely transferable. To facilitate transferability, the securities must be accepted by HKSCC as eligible for deposit, clearance and settlement in CCASS from the date on which dealings are to commence (Rule 11.29).

### **(n) Authorised representatives**

Every issuer must ensure that, at all times, it has 2 authorised representatives (Rule 5.24). The authorised representatives must be 2 individuals from amongst the issuer's executive directors and company secretary (unless the Exchange, in exceptional circumstances, agrees otherwise). The responsibilities of an authorised representative are as follows (Rule 5.25):

- (a) supplying the Exchange with details in writing of how he can be contacted including home, office, mobile and other telephone numbers and, email address and correspondence address (if not based at the registered office), facsimile numbers if available, and any other contact details prescribed by the Exchange from time to time;
- (b) for so long as the issuer continues to have a Sponsor or Compliance Adviser, assisting the Sponsor or Compliance Adviser in its role as the principal channel of communication with the Exchange concerning the affairs of the issuer.

### **(o) Directors**

The board of directors of an issuer is collectively responsible for the management and operations of the issuer (Rule 5.01). Every director must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of the issuer (Rules 5.02).

### **(p) Company Secretary**

A person will be qualified to act as company secretary if by virtue of his/her academic or professional qualifications or relevant experience he/she is, in the opinion of the Exchange, capable of discharging the functions of a company secretary (Rule 5.14). The academic or professional qualifications which the Exchange considers acceptable are membership of The Hong Kong Institute of Chartered Secretaries and being a Hong Kong solicitor, barrister or certified public accountant.

In assessing a person's relevant experience, the Exchange will consider the individual's length of employment with the issuer and other issuers and the roles he has played, the person's familiarity with the Listing Rules and other relevant Hong Kong laws and regulations, relevant training undertaken and professional qualifications in other jurisdictions.

A company secretary is not required to be resident in Hong Kong.

**(q) Service Agent**

An overseas issuer must appoint, and maintain throughout the period its securities are listed on the GEM the appointment of, a person authorised to accept service of process and notices on its behalf in Hong Kong (Rule 24.05(2)).

**(r) Register of Shareholders**

Provision must be made by an overseas issuer for a register of holders to be maintained in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally (Rule 24.05(3)).

### **III. CORPORATE GOVERNANCE REQUIREMENTS**

**(a) Compliance Adviser**

An issuer is required to retain a compliance adviser for the period commencing on the date of listing and ending on the publication of its financial results for the second full financial year after listing (Rule 6A.19). A compliance adviser must be either a corporation licensed or authorised institution registered to advise on corporate finance matters under the Securities and Futures Ordinance. It must also be licensed or registered to undertake sponsor work. A compliance adviser must act impartially but is not required to be independent of the issuer. An issuer is not obliged to appoint as its compliance adviser the same firm that acted as the sponsor of its initial public offering.

Issuers are required to consult with, and if necessary, seek advice from their compliance advisers on a timely basis in the following 4 situations:

- (i) before publication of any regulatory announcement, circular or financial report;
- (ii) where a notifiable or connected transaction is contemplated;
- (iii) where the issuer proposes to use the IPO proceeds differently to the manner detailed in the listing document or where the issuer's business activities, developments or results deviate from any forecast, estimate or other information in the listing document; and
- (iv) where the Exchange makes an inquiry of the issuer under Rule 17.11 regarding unusual movements in the price or trading volume of its securities (Rule 6A.23).

The Exchange may also require an issuer to appoint a compliance adviser at any other time after the second full financial year after listing, for example if the issuer has breached the Listing Rules (Rule 6A.20). In this case the Exchange will specify the period of appointment and the circumstances in which the compliance adviser must be consulted.

**(b) Independent Non-executive Directors**

Every issuer must ensure that, at all times, its board of directors includes at least 3 independent non-executive directors (“INEDs”). At least one INED must have appropriate professional qualifications or accounting or related financial management expertise (Rule 5.05). Rule 5.05A further requires at least one third of an issuer’s board of directors to be INEDs. Each INED must confirm his independence in accordance with the guidelines under Rule 5.09 to the Exchange at the time of submission of his declaration, undertaking and acknowledgement.

**(c) Audit committee**

Every issuer must establish an audit committee comprising non-executive directors only and a minimum of 3 members, at least one of whom is an INED with appropriate professional qualifications or accounting or related financial management expertise (Rule 5.28). The majority of the committee members must be INEDs of the issuer. The audit committee must be chaired by an INED. The duties of the audit committee are set out in the Corporate Governance Code and include:

- (i) reviewing the issuer’s annual report and accounts, half-year report and quarterly reports before submission to the board ;
- (ii) reviewing the issuer’s financial controls, internal control and risk management systems; and
- (iii) reviewing and reporting to the board on the adequacy of the resources, staff qualifications and experience, training programmes and budget of the issuer’s accounting and financial reporting function.

Should the listed issuer choose to deviate from the Code Provision requirements, it will be required to include an explanation in its Corporate Governance Report.

**(d) Remuneration Committee**

Every issuer must establish a remuneration committee chaired by an independent non-executive director and comprising a majority of independent non-executive directors with terms of reference. Issuers must publish an announcement containing the relevant details and reasons if they fail to meet these requirements.

**(e) Compliance Officer**

Every GEM listed issuer must ensure that, at all times, one of its executive directors assumes responsibility for acting as the issuer's compliance officer (Rule 5.19). The compliance officer's responsibilities must include, as a minimum, the following matters:

- (i) advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the issuer complies with the GEM Listing Rules and other relevant laws and regulations applicable to the issuer; and
- (ii) responding promptly and efficiently to all enquiries directed at him by the Exchange.

**(f) Corporate Governance Code**

The Corporate Governance Code contains two levels of recommendations: the code provisions and recommended best practices. Issuers are expected to comply with, but can choose to deviate from, the code provisions. They must however disclose whether the code provisions have been complied with, and give considered reasons for any deviations, in their half-year reports and in the corporate governance report which is required to be included in their annual reports.

#### **IV. CONTINUING OBLIGATIONS**

The principal continuing obligations of GEM listed issuers are summarised below.

**(a) Disclosure of Inside Information under Part XIVA Securities and Futures Ordinance ("SFO")**

Listed issuers are under an obligation to disclose price sensitive information (called "inside information") under Part XIVA of the SFO. Guidance on this obligation is provided in the SFC's Guidelines on Disclosure of Inside Information ("SFC Guidelines").<sup>4</sup>

Meaning of Inside Information

"Inside information" is defined in Section 307A SFO as:

"specific information that:

- 1) is about:
  - i. the corporation;
  - ii. a shareholder or officer of the corporation; or
  - iii. the listed securities of the corporation or their derivatives; **and**
- 2) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if

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<sup>4</sup> These Guidelines are available on the SFC's website at [http://en-rules.sfc.hk/net\\_file\\_store/new\\_rulebooks/h/k/HKSFC3527\\_4262\\_VER10.pdf](http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_4262_VER10.pdf)

generally known to them be likely to materially affect the price of the listed securities.

#### When Inside Information must be Disclosed

A corporation must disclose inside information to the public **as soon as reasonably practicable** after any inside information has come to its knowledge (section 307B(1) SFO). Inside information has come to the corporation's knowledge if:

- 1) the inside information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; **and**
- 2) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation (section 307B(2) SFO).

In determining whether information is discloseable as “inside information”, the test is an objective one – i.e. would a “reasonable officer”, based on his knowledge of all relevant facts and circumstances at the relevant time, consider the information to be inside information. Corporations must therefore have effective systems and procedures in place to ensure that any material information which comes to the knowledge of any of their officers is promptly identified and escalated to the board to determine whether it needs to be disclosed.

According to the SFC Guidelines, “as soon as reasonably practicable” means that the corporation should immediately take all steps that are necessary in the circumstances to disclose the information to the public. The necessary steps that the corporation should immediately take before the publication of an announcement may include: ascertaining sufficient details; internal assessment of the matter and its likely impact; seeking professional advice where required and verification of the facts (paragraph 40 of the SFC Guidelines).

The corporation must ensure that the information is kept strictly confidential until it is publicly disclosed. If the corporation believes that the required degree of confidentiality cannot be maintained or that there may have been a breach of confidentiality, it should immediately disclose the information to the public (paragraph 41 of the SFC Guidelines). The SFC Guidelines also raise the possibility of a corporation issuing a “holding announcement” to give the corporation time to clarify the details and likely impact of an event before issuing a full announcement.

#### Manner of Disclosure

Inside information should be disclosed by publication of an announcement through the electronic publication system operated by the Exchange. Where a corporation is listed on more than one stock exchange, it should ensure that inside information is disclosed to the public in Hong Kong at the same time as it is released to the overseas markets. If inside information is released to an overseas market while the Hong Kong market is closed, the

corporation should issue an announcement in Hong Kong before the Hong Kong market opens for trading.

Where an issuer applies to the SFC for a waiver from the disclosure requirements of Part XIVA of the SFO, it must send a copy of the application to the Exchange and on receiving the SFC's decision, must copy that to the Exchange (GEM Rule 17.10(2)(b)).

#### Safe Harbours that allow Non-disclosure of Inside Information

Section 307D SFO provides four safe harbours to permit corporations to not disclose or delay disclosing inside information. These are where:

- 1) disclosure would breach an order by a Hong Kong court or any provisions of other Hong Kong statutes;
- 2) the information relates to an incomplete proposal or negotiation;
- 3) the information is a trade secret; and
- 4) the Government's Exchange Fund or a Central Bank provides liquidity support to the corporation.

The safe harbours at (2) to (4) above are only available if:

- 1) the corporation takes reasonable precautions for preserving the confidentiality of the information; and
- 2) the confidentiality of the information is preserved.

Knowledge of inside information of a corporation must therefore be restricted to those who need to have access to it and any recipients of the information must be made aware that the information is confidential and of their obligations to maintain confidentiality. If confidentiality is lost or the information is leaked, the safe harbour will cease to be available and the corporation must disclose the inside information as soon as practicable.

#### Sanctions for Breach of Obligation to Disclose Inside Information

A corporation which breaches the obligation to disclose inside information may be fined up to HK\$8 million. The officers of a corporation are also under an obligation to ensure that proper safeguards exist to prevent the corporation's breach of the inside information disclosure requirement (section 307G(1)). Although an officer's breach of that provision is not actionable of itself, an officer will be regarded as having breached the inside information disclosure obligation if the listed corporation has breached such obligation and either:

- (a) the breach resulted from the officer's intentional, reckless or negligent conduct; or
- (b) the officer has not taken all reasonable measures to ensure that proper safeguards exist to prevent the breach (section 307G(2) SFO).

An officer found to have breached the inside information disclosure provision may also be fined up to HK\$8 million. The Market Misconduct Tribunal may also impose a number of other sanctions on officers, such as an order disqualifying the person from being a director or officer of a corporation for up to five years and an order to pay the costs of the SFC investigation.

**(b) Obligation to Announce Information Necessary to Avoid a False Market and Responding to Exchange Enquiries**

If in the view of the Exchange there is or is likely to be a false market in an issuer's securities, the issuer must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market in its securities (Rule 17.10(1)).

This obligation exists whether or not the Exchange makes enquiries under Rule 17.11. A note to Rule 17.10(1) also states that if an issuer believes that there is likely to be a false market in its listed securities, it must contact the Exchange as soon as reasonably practicable.

Where the Exchange makes enquiries under Rule 17.11 concerning unusual movements in the price or trading volume of its listed securities, the possible development of a false market in its securities or any other matter, the issuer must respond promptly by:

- (i) providing to the Exchange and, if requested by the Exchange, announcing, any information relevant to the subject matter of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
- (ii) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under Part XIVA SFO, and if requested by the Exchange, make an announcement containing a statement to that effect.

**(c) Financial Reporting**

Annual Reporting

Not less than 21 days before the date of the listed issuer's annual general meeting and not more than 3 months after the financial period ended, a listed issuer must send to all of its members and every other holder of its listed securities, a copy of either (i) the directors' report and its annual accounts and, if the issuer prepares group accounts, the group accounts, together with a copy of the auditors' report or (ii) its summary financial report. 1 copy of the English and Chinese versions of these documents must be sent to the Exchange at the same time as they are sent to shareholders. All of these documents must either be in English accompanied by a Chinese

translation, or in Chinese accompanied by an English translation. If the issuer is late in issuing its directors' report and accounts, the Exchange may suspend dealings in or cancel the listing of the securities of the issuer.

The issuer must also publish a preliminary announcement of its annual results, which has been agreed with its auditors, on the next business day after approval by the board and, in any event, within 3 months of the financial year end.

Chapter 18 also requires issuers to prepare half-year or summary half-year reports for the first 6 months of each financial year and quarterly reports in respect of each of the first 3 and 9 month periods of each financial year, within 45 days of the end of each period.

Issuers must publish preliminary announcements of their half-year and quarterly results, in each case on the business day following their approval by the board and no later than 45 days after the period end.

The annual and half-year reports published during the 2 financial years following listing must contain a detailed statement regarding actual business progress, as measured against the original Statement of Business Objectives (as set out in the listing document).

**(d) Maintenance of Public Float**

The prescribed minimum percentage of listed securities required to be held by the public must be complied with at all times (Rule 11.23(7)). If an issuer becomes aware that the number of its listed securities which are held by the public has fallen below the prescribed minimum percentage, it must immediately inform the Exchange and publish an announcement and seek to resume compliance as soon as is practicable (Rules 17.36 and 17.37).

The Exchange has the right to suspend trading or cancel the listing where the Exchange considers that there are insufficient securities in the hands of the public (Rule 17.37).

Issuers are required to include a statement of sufficiency of public float in their annual reports (Rule 17.38A).

**(e) Fundamental change in the nature of the business (Rules 19.88 and 19.89)**

In the first 12 months after dealings in an issuer's securities commence on GEM, an issuer is prohibited from entering into any transaction or arrangement which would result in a fundamental change to its principal business activities or those of its group. The Exchange may grant a waiver of this prohibition if the circumstances are exceptional and the transaction or arrangement is approved by the shareholders in general meeting by a resolution on which any controlling shareholder (or if there are no controlling shareholders, any chief executive or directors (other than INEDs) of the listed issuer) and their respective associates are required to abstain from voting in favour. Shareholders with a material interest in the

transaction and their associates are also required to abstain from voting on the transaction.

**(f) Restrictions on Disposals by Controlling Shareholders following Listing**

The Listing Rules impose restrictions on the disposal of securities by a controlling shareholder following a company's new listing. Any person shown by the listing document to be a controlling shareholder of the issuer at the time of listing must not:

- (i) dispose of, or enter into any agreement to dispose of, or create any options, rights, interests or encumbrances in respect of, any shares which the listing document shows to be beneficially owned by him in the period commencing on the date on which disclosure of the shareholding is made in the listing document and ending 6 months from the date on which dealings in the securities of the new applicant commence on the Exchange; or
- (ii) dispose of, or enter into any agreement to dispose of, or create any options, rights, interests or encumbrances in respect of, any shares which the listing document shows to be beneficially owned by him if such disposal would result in him ceasing to be a controlling shareholder in the period of 6 months commencing on the date on which the period referred to in (i) above expires (Rule 13.16(A)).

There are exceptions to the above prohibitions on disposals by controlling shareholders for:

- (i) pledges or charges of shares created in favour of an authorised financial institution (as defined in the Banking Ordinance) as security for a bona fide commercial loan;
- (ii) disposals made pursuant to a power of sale under a pledge or charge referred to at (i) above;
- (iii) disposals on the death of a controlling shareholder or in other exceptional circumstances approved by the Exchange.

Controlling shareholders must however immediately inform the issuer if they pledge or charge any of their shares in favour of an authorised institution or pursuant to a waiver granted by the Exchange during the period commencing on the date by reference to which the shareholding is disclosed in the listing document and ending 12 months from the date on which dealings commence on the Exchange (Rule 13.19).

**(g) Restrictions on the Issue of New Shares**

The Listing Rules prohibit further issues of shares or securities convertible into shares of a listed issuer, or the entering into of an agreement for such an issue, within 6 months from the date on which dealing in the issuer's securities commence on GEM (and whether or not such issue of shares or securities will be completed within six months from the commencement of dealing) (Rule 17.29), except for:

- (i) the issue of shares pursuant to a share option scheme under Chapter 23 of the GEM Listing Rules;
- (ii) the exercise of conversion rights attaching to warrants issued as part of the initial public offering;
- (iii) any capitalisation issue, capital reduction or consolidation or subdivision of shares;
- (iv) the issue of shares or securities pursuant to an agreement entered into before the commencement of dealing and disclosed in the issuer's listing document; and
- (v) the issue of shares or securities convertible into shares where the issue:
  - a. is for the purpose of an acquisition of assets which would complement the listed issuer's business and the acquisition does not constitute a major transaction, very substantial acquisition or reverse takeover under Chapter 19;
  - b. does not result in a controlling shareholder of the listed issuer ceasing to be a controlling shareholder after the issue and does not result in a change in control of the listed issuer within the meaning of the Takeovers Code; and
  - c. any transaction relating to it is made subject to shareholders' approval where voting is by way of poll and the following persons are required to abstain from voting:
    - (i) any connected person and their associates; and
    - (ii) any shareholder who has a material interest in the issue and/or the related transaction (other than an interest arising solely from a shareholding in the listed issuer); and
  - d. the shareholders' circular in respect of the issue and the related transaction complies with the requirement of Chapter 19 and contains such information as is necessary to enable the independent shareholders to make an informed judgment.

**(h) Sufficient Level of Operations**

A sufficient level of operations or tangible assets of sufficient value and/or intangible assets for a potential value should be demonstrated to the Exchange to ensure continued listing (17.26)

**(i) Notifiable Transactions**

The Listing Rules set out various categories of notifiable transactions, the classification of which is determined by comparing the size of a transaction with the size of the issuer proposing to enter into the transaction. The thresholds for categorising notifiable transactions under the percentage ratios are as follows:

<b>Transaction Type</b>	<b>Assets ratio</b>	<b>Consideration ratio</b>	<b>Profits ratio</b>	<b>Revenue ratio</b>	<b>Equity capital ratio <sup>(Note 1)</sup></b>
<b>Share transaction</b>	Less than 5%				
<b>Discloseable transaction</b>	5% or more but less than 25%				
<b>Major transaction (disposal)</b>	25% or more but less than 75%				N/A
<b>Major transaction (acquisition)</b>	25% or more but less than 100%				
<b>Very substantial disposal</b>	75% or more				N/A
<b>Very substantial acquisition</b>	100% or more				
<p>Note 1: The equity capital ratio relates only to an acquisition (and not a disposal) by a listed issuer issuing new equity capital.</p> <p>Note 2: In the case of a transaction involving both an acquisition and a disposal, the transaction will be classified by reference to the larger of the acquisition or disposal (Rule 19.24).</p>					

The table below summarises the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction:

	<b>Notification to the Exchange</b>	<b>Announcement</b>	<b>Circular to Shareholders</b>	<b>Shareholders' Approval</b>	<b>Accountants' Report</b>
<b>Share transaction</b>	Yes	Yes	No	No <sup>(Note 1)</sup>	No
<b>Discloseable transaction</b>	Yes	Yes	No	No	No
<b>Major transaction</b>	Yes	Yes	Yes	Yes <sup>(Note 2)</sup>	Yes <sup>(Note 3)</sup>
<b>Very substantial disposal</b>	Yes	Yes	Yes	Yes <sup>(Note 2)</sup>	Yes <sup>(Note 5)</sup>
<b>Very substantial acquisition</b>	Yes	Yes	Yes	Yes <sup>(Note 2)</sup>	Yes <sup>(Note 4)</sup>
<b>Reverse takeover</b>	Yes	Yes	Yes	Yes <sup>(Notes 2&amp;6)</sup>	Yes <sup>(Note 4)</sup>

Note 1: No shareholders' approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to rule 17.41(2), to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.

Note 2: Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.

Note 3: For acquisitions of businesses and/or companies only. The accountants' report is for the 3 preceding financial years on the business, company or companies being acquired (see also rule 19.67(6)).

Note 4: An accountants' report for the 3 preceding financial years on any business, company or companies being acquired is required (see also rule 19.69(4)).

Note 5: An accountants' report on the listed issuer's group is required (see also rule 19.68(2)).

Note 6: Approval of the Exchange is necessary.

### **Exemptions for Qualified Property Acquisitions which constitute major transactions or very substantial acquisitions**

Under rule 19.33A, a Qualified Property Acquisition (as defined in rule 19.04(10C)) constitutes a major transaction or very substantial acquisition is exempt from shareholders' approval if it can meet the conditions set out thereunder.

The Qualified Issuer must publish an announcement for a Qualified Property Acquisition falling under rule 19.33A and send a circular to its shareholders.

The announcement and circular requirements under chapter 19 apply to the acquisition and the joint venture, if any, according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

#### **(j) Connected Transactions (Chapter 20)**

The Listing Rules also seek to prevent the connected persons of listed issuers from taking advantage of their positions. Connected transactions are subject to reporting, disclosure and independent shareholders' approval requirements. In some cases, it is also necessary to establish an independent board committee and appoint an independent financial adviser to advise shareholders as to whether the transaction is fair and reasonable and in the interests of the shareholders as a whole. There are a number of exemptions, including where the transaction falls below the following size specifications:

	<b>Based on the percentage ratios used for classifying notifiable transactions</b>
<b>De minimis threshold for exemption from reporting, announcement and independent shareholders' approval requirement</b>	A connected transaction on normal commercial terms where each of the percentage ratios (except the profits ratio) is: <ul style="list-style-type: none"> <li>a. less than 0.1%; or</li> <li>b. less than 1% and the transaction is connected only because it involves a person connected at the level of the issuer's subsidiary/ies; or</li> <li>c. less than 5% and the consideration is less than HK\$3 million.</li> </ul>
<b>De minimis threshold for exemption from independent shareholders' approval requirement</b>	A connected transaction on normal commercial terms where each of the percentage ratios (except the profits ratio) is: <ul style="list-style-type: none"> <li>a. less than 5%; or</li> <li>b. less than 25% and the consideration is less than HK\$10 million.</li> </ul>

### **Exemptions for Qualified Property Acquisitions**

Pursuant to rule 20.72, a Qualified Property Acquisition undertaken on a joint venture basis with a Qualified Connected Person is exempt from the independent shareholders' approval requirements if it can meet the conditions set out thereunder.

A Qualified Issuer must publish an announcement for a Qualified Property Acquisition falling under rule 20.72 and send a circular to its shareholders.

The announcement, circular and reporting requirements under chapter 20 apply to the acquisition and the joint venture according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

### **(k) Securities Transactions by Directors**

Absolute prohibitions include, but are not limited to, the following provisions:

1. A director must not deal in any of the securities of the listed issuer at any time when he is in possession of unpublished inside information in the relation to those securities (Rule 5.54).
2. A director must not deal in the securities of a listed issuer when, by virtue of his position as a director of another listed issuer, he is in possession of unpublished inside information in the relation to those securities.

3. A director must not deal in any of the securities of the listed issuer (unless the circumstances are exceptional) during the period of 60 days immediately preceding the publication date of the annual results or 30 days immediately preceding the publication date of the half-year and quarterly results or, if shorter, the period commencing from the end of year, half-year or quarter-year period or any other interim period and ending on the date of the results announcement (whether or not required under the GEM Listing Rules), a director must not deal in any securities of the issuer unless the circumstances are exceptional, for example, where a pressing financial commitment has to be met as described in rule 5.67. In any event, he must comply with the procedure in rules 5.61 and 5.62.

## V. APPLICATION PROCEDURES AND REQUIREMENTS

### The Role of the Sponsor and Form 5A

For new applicants, the sponsor is responsible for lodging the application for listing, together with all supporting documents, and for dealing with enquiries from the Exchange. A chart summarising the process for a listing application for shares on GEM is set out below.

A new applicant must apply for listing by submitting Form 5A, a substantially complete draft of the listing document (the “Application Proof”) and all other relevant documents, together with the initial listing fee. The listing application form must include a draft timetable, which is subject to the approval of the Exchange. A listing application must be submitted at least two months after the date of the sponsor’s formal appointment,<sup>5</sup> or if there is more than one sponsor, at least two months after the date of formal appointment of the last sponsor to be appointed (Rule 6A.02B). The completed Form 5A is valid for 6 months; if an applicant delays its proposed timetable beyond 6 months from the date of its submission, a new Form 5A must be lodged with the Exchange and a further initial listing fee will be payable. Where an applicant changes its sponsor(s) (including by adding or removing a sponsor), the applicant is obliged to submit a new listing application form with a new listing timetable to the Exchange, accompanied by a further initial listing fee.

### Discretionary Powers of the Exchange

It should be noted that the Exchange retains the power to refuse a listing application or to alter the timetable for listing. Additionally, the requirements discussed here are not exhaustive and the Exchange may demand that an applicant for listing provide such other documentation or information as it sees fit.

### Publication of Application Proof on the GEM website and requirement for information to be “substantially complete”

The Application Proof of the listing document is required to be published on the GEM website. The information contained in the Application Proof, the Form A5

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<sup>5</sup> The date of a sponsor’s formal appointment will normally be the date of the engagement letter. However, if the Exchange considers that a sponsor has not notified it in writing of its appointment as soon as practicable as required under Rule 6A.02(1), it may treat the date of notification as the date of formal appointment when determining whether the two month requirement is met. The Exchange normally expects notification of a sponsor’s appointment within five business days from the date of the engagement letter. (Question 5 of the Exchange’s FAQ Series 24).

and other documents submitted with Form A5 is required to be substantially complete, except for information that, by its nature, can only be finalised and included at a later date. If the Exchange does not consider the information to be substantially complete, it will return the listing application and all other documents to the sponsor. If an application is returned, the Exchange will publish on the GEM website the names of the listing applicant and its sponsor(s) and the date of its decision to return the listing application (“Return Decision”). It will also refund the initial listing fee unless it returns the listing application after issuing its first comment letter, in which case the initial listing fee will be forfeited. The applicant can resubmit the Form A5 and a new Application Proof, but cannot do so until 8 weeks after the date of the Return Decision to return the listing application.

The Listing Division’s decision to return a listing application on the ground that the listing application is not “substantially complete” can be reviewed by the Listing Committee. If the Listing Committee endorses the decision of the Listing Division to return the listing application on the ground that the listing application is not “substantially complete”, the decision of the Listing Committee can be reviewed by the Listing (Review) Committee. The decision of the Listing (Review) Committee on the review is conclusive and binding on the listing applicant and the sponsor.

#### Exchange’s Power to Delay the Hearing

During the review process, if the Exchange forms the view that any of the following will not be achieved by the applicant at least four business days before the provisional hearing date, it may delay the hearing:

- (a) the submission of the revised proof of the listing document containing sufficient and appropriate disclosure of all information required under the Listing Rules;
- (b) the submission of any outstanding documents requested by the Exchange; and
- (c) the Exchange’s queries and comments being satisfactorily addressed in a timely fashion.

The Exchange notes that while the review process is ongoing, the sponsor(s) should not revise the contents of the listing document in a fragmentary, bit-by-bit manner. A revised proof of the listing document must completely address all the Exchange’s comments on the previous proof. Otherwise, the Exchange may refuse to review the revised proof.

If any document is amended subsequent to its submission, a corresponding number of further copies marked up to show all changes are required to be submitted to the Listing Division for review.

The listing document cannot be made public until the Exchange informs the issuer that it has no further comments to make on the document, although new applicants are permitted to release a draft or preliminary listing document, clearly marked as such, in order to assist in the underwriting procedure.

#### Publicity Material

The Exchange must be given the opportunity to review all publicity material (which must conform to statutory requirements) made available in Hong Kong in relation to an issue of securities by a new applicant and such material cannot be released until the Exchange has stated that it has no comment to make on the material. If the Exchange believes information regarding a new applicant's listing has been leaked, it will normally delay the application process. For these purposes, publicity material does not include material whose purpose is to promote the issuer, its products or business rather than the promotion of the securities to be issued.

Other documents which can be published without review by the Exchange are:

- an Application Proof published on the GEM website;
- a Post Hearing Information Pack (“**PHIP**”) published on the GEM website;
- a statement by the applicant (and published on the GEM website) that no reliance should be placed on media reports on the applicant subsequent to the publication of the Application Proof or PHIP which is in the standard form set out in Enclosure 3 of Guidance Letter HKEx-GL57-13; or
- the invitation or offering document, and drafts of agreements to be entered into in connection with the issue of securities (as long as any obligations they impose are conditional upon listing being granted).

The consequence of any material relating to a proposed listing by a new applicant being made public without prior review by the Exchange before the hearing, is that the Exchange may delay the hearing by up to a month.

#### Release of Price Sensitive Information

Listed issuers have a statutory duty to keep all details of the proposed listing confidential before it is announced.

#### Dealing in the Securities of the Applicant

There must be no dealing in the securities to be listed by any connected person from 4 clear business days before the expected hearing date until listing is granted. The directors of the issuer seeking to list the securities in question have a duty to inform the Exchange of any such dealing or suspected dealing which comes to their knowledge. The application may be refused if any directors or their associates are discovered to have taken part in such dealing.

## Listing Process for GEM

The following chart summarises the process for a listing application for shares on GEM:

Process	
<b>Appointment of Sponsors</b> <ul style="list-style-type: none"> <li>Appointment of a sponsor at least 2 months before submission of an application and to notify the Exchange</li> </ul>	
	
<b>Submission of the Listing Application</b> <p>(no Chinese AP-Publication before 1st April 2014)</p> <ul style="list-style-type: none"> <li>Submit listing application Form A1, Application Proof (AP) and all other relevant documents under GEM Rule 12.09</li> <li>Information must be substantially complete</li> </ul>	
	
<b>3-Day Check</b> <p>(From 1 October 2013 - 30 September 2014)</p> <ul style="list-style-type: none"> <li>From 1 October 2013 to 30 September 2014, the Exchange will conduct an initial check ("3-Day Check") with limited qualitative assessment on all AP-Vetting based on the prescribed checklist in Table B ("3-Day Checklist")</li> </ul>	
	
<b>Accepted</b>	<b>Returned</b>
	
<b>Detailed Vetting</b> <p>Qualitative assessment</p> <ul style="list-style-type: none"> <li>Eligibility</li> <li>Suitability</li> <li>Sustainability</li> <li>Compliance with Listing Rules, Companies Ordinance and Securities and Futures Ordinance</li> <li>Material disclosure deficiencies</li> </ul> <p>Application may still be returned by SFC or HKEx for not being substantially complete</p>	<b>Accelerated review process</b> <ul style="list-style-type: none"> <li>Available for reviewing the Listing Division's decision to return a listing application</li> <li>Applicant and sponsor(s) has the right to have a Listing Division's decision to return an application ("Return Decision") and Listing Committee's decision that endorses the Return Decision reviewed</li> </ul> <p>Two levels of review:</p> <ul style="list-style-type: none"> <li>a review of the Return Decision by the Listing Committee</li> <li>a review of a Listing Committee's decision endorsing a Return Decision by the Listing (Review) Committee</li> </ul>

<p><b>Timing of Comments</b></p> <ul style="list-style-type: none"> <li>▪ First round of comments - within <b>10 business days</b> from receipt of application</li> <li>▪ Second and further rounds of comments (if any) within <b>10 business days</b> from receipt of reply to previous comment letter</li> <li>▪ Expect replies from sponsor to be full and complete, otherwise the Exchange will not start to vet (e.g. will not accept replies such as “to be provided in due course”)(except updated financial information under Guidance Letter GL6-09A)</li> <li>▪ Competent persons report is reviewed by an external mining consultant selected from a panel. Although nearly all consultants agreed to the streamlined process, there may be cases where some delay may be expected</li> </ul> <p><b>Expected Hearing Timetable</b></p> <p>Depending on the sponsor’s response time and quality of response</p> <p>Assuming sponsor takes 5 business days to respond to each of the two rounds of comments, an application can be presented to the Listing Committee in <b>around 40 business days</b> from the date of listing application</p> <p>In the case where only one round of comments is raised and sponsor takes 5 business days to respond, an application can be brought to the Listing Committee in <b>around 25 business days</b></p> <ul style="list-style-type: none"> <li>▪ From 1 April 2014 - Publication of AP-Publication</li> </ul>	
	
<p><b>Hearing</b></p>	<p><b>8 weeks moratorium (after any accelerated review process)</b></p>
	
<p>Post-Hearing Information Pack (PHIP)</p> <ul style="list-style-type: none"> <li>▪ Please view the Guidance on logistical arrangements for publication of Application Proofs, Post Hearing Information Packs and related materials on the Exchange's website for listing applicants</li> </ul>	
	
<p>Dealing of Shares Commences</p>	

**June 2014**

*This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.*