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[online version](http://www.charltonslaw.com/amendments-to-the-listing-rules-relating-to-the-regulation-of-sponsors-and-independent-financial-advisers/)

# Amendments To The Listing Rules Relating To The Regulation Of Sponsors And Independent Financial Advisers Effective January 1, 2005

## Introduction

The Stock Exchange of Hong Kong Ltd. (the "Exchange") and the SFC have issued amendments to the Main Board and GEM Listing Rules including a new practice note on sponsor's due diligence as the first of 2 stages of reforms tightening the regulation of sponsors and independent financial advisers ("IFAs"). The amended Rules will come into effect on January 1, 2005.

The second stage will comprise changes to the licensing and regulation requirements for corporate finance advisers under the Securities and Futures Ordinance (the "SFO") to incorporate specific initial and continuing eligibility requirements for sponsors, compliance advisers and IFAs. The SFC expects to conduct market consultation on these proposals later this year or in early 2005.

The purpose of this note is to highlight the principal changes to the Listing Rules. The text in blue can be clicked through to see a summary of the relevant listing rules. To see a full summary of the amendments, please [click here](37783.pdf).

## Appointment

### Sponsors

All new listing applicants (including a deemed new applicant) must appoint a sponsor to assist with their initial listing application. A new applicant may appoint more than one sponsor, in which case each sponsor is responsible for ensuring that the sponsor's obligations under the Listing Rules are discharged and must give the undertaking, declaration of independence and declaration as to due diligence required of sponsors under the amended Rules. If there is more than one sponsor, one must be designated as the principal channel of communication with the Exchange.

#### Appointment of Sponsor (MB Rule 3A.02/GEM Rule 6A.02)

New applicants (including a deemed new applicant (ie. a listed issuer proposing a reverse takeover)) must appoint a sponsor to assist with their initial application for listing.

#### Eligibility to act as Sponsor (MB Rule 3A.02/GEM Rule 6A.02)

##### Main Board

"Sponsor" is defined as "any corporation or authorized financial institution licensed or registered under applicable laws to advise on corporate finance matters" (Rule 1.01).

A sponsor must be acceptable to the Exchange (Rule 3A.02).

##### GEM

Sponsors must be a corporation or authorized financial institution admitted to the GEM list of sponsors.

Note. The GEM sponsor list will eventually be removed when the SFC implements new licensing and regulation requirements for sponsors and IFAs.

### Compliance Advisers

All listed issuers must appoint a compliance adviser for the period commencing on the date of listing and ending:

#### Appointment on Initial Listing (MB Rule 3A.19/GEM Rule 6A.19)

A listed issuer must appoint a Compliance Adviser for the period commencing on the date of its initial listing and ending:

1. for all Main Board issuers: on publication of financial results for the first full financial year after listing; and
2. for GEM issuers: on publication of financial results for the second full financial year after listing.

#### Appointment at any other time (MB Rule 3A.20/GEM Rule 6A.20)

The Exchange can require a listed issuer to appoint a Compliance Adviser at any other time for a period specified by the Exchange. The circumstances in which the Compliance Adviser must be consulted and the responsibilities of the Compliance Adviser will be specified by the Exchange. The issuer need not appoint the same Compliance Adviser as was appointed on initial listing. The Exchange will normally require the appointment of a Compliance Adviser when a listed issuer has breached the Listing Rules, particularly if the breaches are persistent or serious or give rise to concerns about the adequacy of compliance arrangements or the directors' understanding of their obligations under the Listing Rules.

## Impartiality And Independence

Sponsors, compliance advisers and IFAs are required to perform their duties impartially.

### Sponsors

#### Sponsor's Impartiality (MB Rule 3A.06/GEM Rule 6A.06)

A sponsor must perform its duties with impartiality.

#### Sponsor's Independence (MB Rule 3A.07/GEM Rule 6A.07)

At least **one** sponsor must be independent from a new applicant.

MB Rule 3A.07 and GEM Rule 6A.07 set out 10 circumstances in which a sponsor will not be considered to be independent. These are:

1. the sponsor group\* and any director or associate of a director of the sponsor collectively holds, directly or indirectly, more than 5% of the issued share capital of the new applicant, except where the holding results from an underwriting obligation\*\*;
2. the fair value of the sponsor group's direct or indirect shareholding in the new applicant exceeds 15% of the net equity shown in the latest consolidated financial statements of the sponsor's ultimate holding company or, if none, the sponsor\*\*;
3. any member of the sponsor group or any director or associate of a director of the sponsor is an associate or connected person of the new applicant\*\*;
4. 15% or more of the IPO proceeds will be applied directly or indirectly to settle debts due to the sponsor group (excluding debts in respect of fees for sponsorship services);
5. the aggregate of amounts due to the sponsor group from the new applicant and its subsidiaries and all guarantees given by the sponsor group on behalf of the new applicant and its subsidiaries exceeds 30% of the total assets of the new applicant;
6. the aggregate of:
   1. amounts due to the sponsor group from the new applicant, its subsidiaries, its controlling shareholder and any associates of such controlling shareholder; and
   2. all guarantees given by the sponsor group on behalf of the new applicant, its subsidiaries, its controlling shareholder and any associates of such controlling shareholder,

exceeds 10% of the total assets shown in the latest consolidated financial statements of the sponsor's ultimate holding company, or, if none, the sponsor;

1. the fair value of the shareholding (direct or indirect) of a director of the sponsor or any holding company of the sponsor or an associate of such a director in the new applicant exceeds HK$ 5 million;
2. an employee or director of the sponsor who is directly engaged in providing the sponsorship services to the new applicant, or an associate of such an employee or director, holds or will hold shares in the new applicant or has or will have a beneficial interest in shares in the new applicant;
3. any of the following has a current business relationship with the new applicant or a director, subsidiary, holding company or substantial shareholder of the new applicant, which would reasonably be considered to affect the sponsor's independence in performing its duties under Main Board Chapter 3A or GEM Chapter 6A, or might reasonably give rise to a perception that the sponsor's independence would be so affected, except where the relationship arises from the sponsor's engagement to provide sponsorship services:
   1. any member of the sponsor group;
   2. an employee of the sponsor directly engaged in providing sponsorship services to the new applicant or an associate of such an employee; or
   3. a director of any sponsor group member or an associate of such a director;
4. the sponsor or a sponsor group member is the new applicant's auditor or reporting accountant.

\*"Sponsor group" is defined to include a sponsor, any holding company of the sponsor, any subsidiary of any holding company of the sponsor, any controlling shareholder of the sponsor or of any holding company of the sponsor which is not itself a holding company of the sponsor, and any associate of any such controlling shareholder.

\*\* Paragraphs i. to iii. will not apply where the circumstance arises because of an interest held by an investment entity on behalf of its discretionary clients or by a fund manager on a non-discretionary basis such as a managed account or fund or because of an interest held in a market-making or custodial capacity.

Interests which are exempt under Section 323 Securities and Futures Ordinance (the "SFO") from disclosure under Part XV SFO (eg. interests of bare trustees, certain security interests and interests of licensed intermediaries acquiring shares as agent for their clients) are excluded in calculating a sponsor group's percentage interest.

If a sponsor which is required to be independent (eg. where there is a sole sponsor) is not independent, it is a breach of the Listing Rules and the Exchange will not accept documents submitted by such sponsor in support of the listing application.

#### Declaration of Sponsor's Independence (MB Rule 3A.10/GEM Rule 6A.08)

1. Every sponsor appointed by a new applicant must make a declaration of independence to the Exchange by reference to the independence tests. The form of declaration is set out at Appendix 18 of the Main Board Rules and Form K of Appendix 7 of the GEM Rules. The timing for submission of the declaration is the same as for the Sponsor's Undertaking (see section 3 above).
2. Where a sponsor or new applicant becomes aware of any change in the circumstances set out in the declaration of independence, it must notify the Exchange as soon as possible (MB Rule 3A.09/GEM Rule 6A.09).

#### Additional Sponsors (MB Rule 3A.10/GEM Rule 6A.10)

A new applicant may appoint more than 1 sponsor. If it does:

1. the Exchange must be advised as to which of the sponsors will be the primary channel of communication with the Exchange for matters concerning the listing application. It is expected (but not required) that this sponsor be independent of the new applicant;
2. the listing document must disclose whether each sponsor satisfies the independence test at MB Rule 3A.07/GEM Rule 6A.07 and, if not, disclose how the lack of independence arises; and
3. each sponsor is responsible for ensuring that the obligations and responsibilities of sponsors under Main Board Chapter 3A and GEM Chapter 6A are fully discharged.

### Compliance Advisers

Compliance advisers are not required to be independent.

### IFAs

#### Eligibility to act as an IFA (MB Rule 13.82/GEM Rule 17.94)

An IFA must be licensed by the SFC and must discharge its duties with due skill and care.

#### Impartiality of IFAs (MB Rule 13.83/GEM Rule 17.95)

IFAs must perform their duties impartially.

#### IFA's Independence (MB Rule 13.84/GEM Rule 17.96)

An IFA must be independent from any issuer for whom it acts. MB Rule 13.84 and GEM Rule 17.96 specify 6 circumstances in which the Exchange will not regard an IFA as being independent:

1. the IFA Group\* and any director or associate of a director of the IFA holds (directly or indirectly) in aggregate more than 5% of the issued share capital of the issuer, another party to the transaction, or an associate or connected person of the issuer or another party to the transaction\*\*;
2. any member of the IFA Group or any director of associate of a director of the IFA is an associate or connected person of the issuer or another party to the transaction\*\*;
3. any of the following exceeds 10% of the total assets shown in the latest consolidated financial statements of the IFA's ultimate holding company or, if none, the IFA:
   1. the aggregate of:
      1. amounts due to the IFA Group from the issuer, its subsidiaries, any controlling shareholder of the issuer and any associates of such controlling shareholder; and
      2. all guarantees given by the IFA Group on behalf of the issuer, its subsidiaries, any controlling shareholder of the issuer and any associates of such controlling shareholder;
   2. the aggregate of:
      1. amounts due from the IFA Group to the issuer, its subsidiaries and any controlling shareholder of the issuer; and
      2. all guarantees given on behalf of the IFA Group by the issuer, its subsidiaries and any controlling shareholder of the issuer;
   3. the aggregate of:
      1. amounts due from the IFA Group to any of the following (referred to in this Rule as the "Other Parties"): another party to the transaction; any holding company of another party to the transaction; any subsidiary of such holding company; any controlling shareholder of another party to the transaction or its holding company (which is not itself a holding company of such other party); and any associate of any such controlling shareholder; and
      2. all guarantees given by any of the Other Parties on behalf of the IFA Group; and
   4. the aggregate of:
      1. amounts due to the IFA Group from the Other Parties; and
      2. all guarantees given by the IFA Group on behalf of any Other Parties;
4. any of the following has a current business relationship with the issuer or another party to the transaction, or a director, subsidiary, holding company or substantial shareholder of the issuer or another party to the transaction, which would be reasonably considered to affect the IFA's independence in performing its duties, or might reasonably give rise to a perception that the IFA's independence would be so affected, except where the relationship arises from the IFA's appointment to give the subject advice: any member of the IFA Group; an employee of the IFA directly engaged in providing the subject advice or his associate; a director of any IFA Group member or his associate\*\*;
5. within 2 years prior to the making of the declaration required by MB Rule 13.85(1)/GEM Rule 17.97(1):
   1. a member of the IFA Group has served as a financial adviser to the issuer or its subsidiaries, another party to the transaction or its subsidiaries or a connected person of the issuer or another party to the transaction; or
   2. an employee or director of the IFA who is directly engaged in providing the subject advice was employed by or was a director of another firm that served as a financial adviser to any of the entities referred to in paragraph a. above and, in that capacity, was directly engaged in the provision of financial advice to the issuer or another party to the transaction;
6. the IFA or a member of the IFA Group is the issuer's auditor or reporting accountant.

\*"IFA Group" is defined to include the IFA, any holding company of the IFA, any subsidiary of such holding company, any controlling shareholder of the IFA or any holding company of the IFA (which is not itself a holding company of the IFA) and any associate of any such controlling shareholder.

\*\*In calculating the percentage figure of shares that it holds or will hold for the purposes of paragraphs i., ii. and iv., an entity is not required to include an interest held by an investment entity on behalf of its discretionary clients or by a fund manager on a non-discretionary basis such as a managed account or fund, an interest held in a market-making or custodial capacity, an interest which is exempt from disclosure under Section 323 SFO or an interest held by a member of the entity's group that is an investment manager whose interest would not be aggregated with its holding company by virtue of Section 316(5) SFO.

#### IFA's Declaration and Undertaking (MB Rule 13.85/GEM Rule 17.97)

No later than the earlier of the IFA agreeing its terms of engagement with the issuer and it commencing work as IFA, the IFA must submit to the Exchange:

1. a declaration of independence (in the form of MB Appendix 21/GEM Appendix 13) addressing each of the MB Rule 13.84/GEM Rule 17.96 independence tests; and
2. an undertaking (in the form set out in MB Appendix 22/GEM Appendix 14) to comply with the Listing Rules and to co-operate in any investigation conducted by the Listing Division.

Where an IFA or issuer becomes aware of a change in the circumstances set out in the IFA's declaration of independence during the period of its appointment, the IFA or issuer must notify the Exchange as soon as possible.

## Obligations

Sponsors, compliance advisers and IFAs are required to give an undertaking to the Exchange to comply with the Listing Rules and to cooperate in any investigation conducted by the Listing Division. Sponsors are additionally required to undertake as to the truth and completeness of information provided to the Exchange during the listing application process.

### Sponsors

#### Sponsor's Undertaking to the Exchange (MB Rule 3A.03 and Appendix 17/GEM Rule 6A.03 and paragraph 21 of Appendix 5a)

No later than the date on which any documents in connection with the listing application are submitted to the Exchange (or, if the sponsor is appointed after that date, on the earlier of the sponsor agreeing its terms of engagement and commencing work) the sponsor must give an undertaking to the Exchange to:

1. comply with the Listing Rules applicable to sponsors;
2. use reasonable endeavours to ensure that all information provided to the Exchange during the listing application process is true in all material respects and does not omit any material information and, if the sponsor subsequently becomes aware of information that casts doubt on the truth, accuracy or completeness of information provided to the Exchange, to promptly inform the Exchange of such information; and
3. cooperate in any investigation conducted by the Listing Division, including answering questions, producing documents and attending any meeting or hearing on request.

#### Sponsor's Obligations (MB Rule 3A.11/GEM Rule 6A.11)

In assisting with a new listing application, the sponsor must:

1. be closely involved in preparing the listing documents;
2. conduct reasonable due diligence inquiries having regard to the new due diligence practice note (MB Practice Note 21/GEM Practice Note 2) (the "Practice Note") to be able to give the Sponsor's Declaration required by MB Rule 3A.13/GEM Rule 6A.13;
3. ensure compliance with MB Rules 9.03 and 9.05 - 9.08/GEM Rules 12.07,12.09, 12.10 and 12.12-12.15;
4. use reasonable endeavours to address all matters raised by the Exchange;
5. accompany the new applicant to meetings with the Exchange; and
6. comply with the terms of the Sponsor's Undertaking given under MB Rule 3A.03 and GEM Rule 6A.03 (see section 3 above).

### Sponsors' Declarations

The Exchange has dropped what was probably the most controversial of the original proposals, that the sponsor and lead underwriter should give a declaration in the prospectus as to the due diligence performed.

Each sponsor must however submit a declaration to the Exchange after the listing hearing but before the issue of the listing document confirming (among other things) that all documents required to be submitted by the Listing Rules have been submitted and that, having made reasonable due diligence inquiries, the sponsor has reasonable grounds to believe and does believe that:

* the answers provided in the directors' declarations are true and complete;
* the new applicant complies with all conditions for listing;
* the listing document contains sufficient particulars and information to allow a reasonable person to form an opinion of the shares and the financial condition and profitability of the applicant;
* the information in the non-expert sections of the listing document contains all information required by relevant rules and regulations, is true in all material respects (or, if it consists of opinions or forward looking statements, such opinions or statements have been made after due and careful consideration and on bases and assumptions that are fair and reasonable) and does not omit any material information;
* the new applicant has established adequate procedures, systems and controls to enable it and its directors to comply with the Listing Rules and other legal and regulatory requirements and to enable the directors to properly assess the applicant's financial position and prospects and to release timely information to the market; and
* the new applicant's directors have the experience, qualifications and competence to manage its business and comply with the Listing Rules.

In relation to the expert sections of the listing document, the sponsors' declarations must confirm that having made reasonable due diligence inquiries, the sponsor has reasonable grounds to believe and does believe (to the standard reasonably expected of a sponsor which is not itself expert in the matters dealt with in the section) that:

* where the expert does not verify any material factual information on which it relies for the purposes of the expert section, such information is true in all material respects and does not omit any material information;
* all bases and assumptions on which the expert sections are founded are fair, reasonable and complete;
* the expert is appropriately qualified, experienced and resourced to give the opinion and its scope of work is appropriate to the required opinion;
* the expert is independent of the new applicant, its directors and controlling shareholder(s); and
* the listing document fairly represents the expert's views and contains a fair copy of or extract from the expert's report.

### Sponsors' Due Diligence

Sponsors are required to have regard to a new practice note "Due Diligence by Sponsors in respect of Initial Listing" which sets out the due diligence steps which the Exchange typically expects a sponsor to perform in order to give the required sponsor's declaration. Actual due diligence steps may need to be different to and more extensive than the steps set out in the Practice Note depending on the circumstances. The practice note applies only to sponsor firms and not to IFAs or individuals.

The practice note is comprehensive. The expected due diligence steps include:

* making a critical assessment of information provided by the new applicant and its directors and being alert to information that contradicts or questions the reliability of such information;
* documenting due diligence planning, any significant deviations from plans and the conclusions reached as to the applicant's compliance with the listing conditions;
* in relation to the applicant's directors, the sponsor's review should include reviewing each director's past performance as director of the applicant including participation in board meetings and decision making; assessing directors' individual and collective financial literacy, corporate governance experience and competence; and reviewing the financial and regulatory track record of other publicly listed companies of which any director was previously a director;
* in relation to compliance with the conditions for listing, the sponsor's review should include a company search and a review of material financial information including interviewing the applicant's accounting staff, auditors and reporting accountants;
* in relation to the applicant and its listing document, the sponsor must cover a range of matters including assessing the financial information in the listing document; assessing the applicant's performance and finances, business plan and any profit forecast or estimate and assessing the reasonableness of budgets, projections and assumptions; assessing whether any change since the last audited balance sheet date should be disclosed in the listing document; assessing whether it is reasonable to conclude that the IPO proceeds will be used as proposed by the applicant; a physical inspection of material assets; reaching an understanding of the applicant's production methods and management of its business; a review of material contracts and relevant legal proceedings; an analysis of relevant economic, political or legal conditions; a consideration of the industry and target markets, assessing the applicant's rights to material assets and its intangible rights; reaching an understanding of the technical feasibility of material new products; assessing the stage of development of the applicant's business and its business plan, including reaching an understanding of the commercial viability of its products or services;
* in relation to the expert sections of the document, the sponsor's review should include interviewing the expert and reviewing its terms of engagement and publicly available information about the expert; verifying any material factual information relied on, but not verified, by the expert; assessing whether the expert's assumptions are fair, reasonable and complete; assessing the adequacy of disclosure of any qualifications to the opinion; and obtaining confirmation of the expert's independence; and
* in relation to the applicant's accounting and management systems and directors' understanding of the listing rules' obligations, the sponsor should review the applicant's compliance manuals, policies and procedures and interview all directors and senior managers with key responsibilities for compliance with the Listing Rules.

### Compliance Advisers

Compliance advisers are required to advise and guide issuers in 4 situations in which issuers are obliged to seek their advice:

* before publication of any regulatory announcement, circular or financial report;
* where a notifiable or connected transaction is contemplated;
* 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
* where the Exchange makes an inquiry of the issuer regarding unusual movements in the price or trading volume of its securities.

#### Compliance Adviser's Undertaking to the Exchange (MB Rule 3A.21/GEM Rule 6A.21)

A Compliance Adviser must give an undertaking to the Exchange to comply with the Listing Rules applicable to Compliance Advisers and to cooperate in any investigation conducted by the Listing Division. That undertaking must be given no later than the earlier of (i) the Compliance Adviser agreeing its terms of engagement and (ii) it commencing work for the listed issuer. The required form of undertaking is set out at Appendix 20 of the Main Board Rules and Form M of Appendix 7 of the GEM Rules.

#### Compliance Adviser's Obligations (MB Rule 3A.24/GEM Rule 6A.24)

When consulted by a listed issuer in any of the circumstances under section 4 above, the compliance adviser must discharge the following duties with due skill and care:

1. ensure the listed issuer is properly guided and advised as to compliance with the Listing Rules and other applicable laws, rules, codes and guidelines;
2. accompany the issuer to meetings with the Exchange;
3. no less frequently than at the time of reviewing the financial reporting of the issuer and upon the issuer notifying the Compliance Adviser of a proposed change in the use of proceeds of the IPO, discuss with the listed issuer:
   1. its operating performance and financial condition by reference to the issuer's business objectives and use of issue proceeds as stated in its listing document;
   2. compliance with the terms and conditions of any waivers granted from the Listing Rules;
   3. whether any profit forecast or estimate in the listing document will be or has been met and advise the issuer to notify the Exchange and inform the public in a timely and appropriate manner; and
   4. compliance with the undertakings provided by the issuer and its directors at the time of listing and, in the event of non-compliance, discuss the issue with the issuer's board and make recommendations to the board regarding appropriate remedial steps;
4. if required by the Exchange, deal with the Exchange in respect of any or all matters listed in MB Rule 3A.23/GEM Rule 6A.23 (see section 5 above);
5. in relation to an issuer's application for a waiver from any MB Chapter 14A/GEM Chapter 20 requirements, advise the listed issuer of its obligations and, in particular, the requirement to appoint an independent financial adviser; and
6. assess the understanding of all new appointees to the listed issuer's board of the nature of their responsibilities and fiduciary duties as a director of the listed issuer, and, if the compliance adviser forms an opinion that a new appointee's understanding is inadequate, discuss the inadequacy with the board and recommend to the board appropriate remedial steps such as training.

### IFAs

An IFA is required to take all reasonable steps to satisfy itself that:

* it has a reasonable basis for making the statements required by paragraphs (1) to (5) of MB Rule 14A.22 or GEM Rule 20.22; and
* there is no reason to believe that any information relied on by the IFA in forming its opinion or any information relied on by any third party expert on whose opinion or advice the IFA relied in forming its opinion, is not true or omits a material fact.

#### IFA's Due Diligence

Note 1 to MB Rule 13.80/GEM Rule 17.92 sets out a non-exhaustive list of what the Exchange typically expects "reasonable steps" to include. They include:

1. obtaining all information and documents of the issuer relevant to an assessment of the fairness and reasonableness of the transaction's terms (eg., if it involves the purchase or sale of products or services, information and documents showing the prices at which the issuer buys and sells such products/services to independent 3rd parties);
2. researching the relevant market and other conditions and trends relevant to the pricing of the transaction;
3. reviewing the fairness, reasonableness and completeness of any assumptions or projections relevant to the transaction;
4. in relation to any third party expert providing an opinion or valuation:
   1. interviewing the expert including as to its expertise and any current or prior relationships with the issuer, other parties to the transaction and connected persons of the issuer or another party to the transaction;
   2. reviewing the terms of engagement (with particular regard to the scope of work, whether the scope of work is appropriate to the opinion required to be given and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert; and
   3. where the IFA is aware the issuer or another party to the transaction has made formal or informal representations to the expert, assessing whether the representations are in accordance with the IFA's knowledge; and
5. reviewing and assessing any alternative offers and any reasons given by management for rejecting those offers.

#### IFA's Letter of Advice

Note 2 to MB Rule 13.80/GEM Rule 17.92 requires any letter given by an IFA under MB Rule 14A.22/GEM Rule 20.22 to take account of the following:

1. the source for any fact which is material to an argument should be clearly stated, including sufficient detail to enable the significance of the fact to be assessed: however, if the fact was included in a document recently sent to shareholders, a cross reference may be made instead;
2. a quotation (eg. from a newspaper or a stockbroker circular) should not be included out of context and details of the origin should be included. Quotations should not be used unless the IFA has corroborated or substantiated them;
3. pictorial representations, charts, graphs and diagrams should be presented without distortion and, when relevant, should be to scale; and
4. comparables referred to in a document must be a fair and representative sample and the bases for compiling such comparables must be clearly stated in the document.

## New Applicants' And Listed Issuers' Obligations

The Rules impose obligations on new applicants and their directors to assist sponsors in the performance of their duties and on listed issuers to assist IFAs. In particular, experts' terms of engagement are required to contain provisions entitling each sponsor or IFA, as applicable, access to the expert and relevant documentation and information.

## Transitional Arrangements

The amended Rules will come into force on January 1, 2005.

### Sponsors

* The Rule amendments do not apply to listing applications (ie. submission of Form A1 or 5A) made on or before October 19, 2004;
* For listing applications made after October 19 but before January 1, 2005 where the listing application has been finalised before January 1, 2005 (eg. the applicant has been listed or has withdrawn its listing application), the amendments do not apply;
* For listing applications in progress on January 1, 2005, the Rule amendments will apply commencing on January 1, including in respect of stages in the application process that have already passed. Accordingly, on January 1, 2005, a sponsor will be required to submit the sponsor's undertaking and declaration of independence required under the amended Rules. The Exchange may modify these requirements at its discretion if a new applicant can show that it would cause the new applicant significant hardship to comply.

## IFAs

The amended Rules will apply to all appointments of an IFA made after January 1, 2005. Appointment will be taken as the earlier of the IFA agreeing its terms of engagement and commencing work.

*This note is intended as a summary only of the amendments to the Listing Rules. The full text of the new Listing Rules is available on the Exchange's website:* [*Main Board rules (English version)*](http://www.hkex.com.hk/rule/mbrule/mb_ruleupdate.htm) *and* [*(GEM rules) (English version)*](http://www.hkex.com.hk/rule/gemrule/gemrule_update.htm)*. The Conclusions Report on the Rule amendments is available on the same website:* [*English version*](http://www.hkex.com.hk/consul/conclusion/consultcon.htm) *and* [*Chinese version*](http://www.hkex.com.hk/consul/conclusion/consultcon_c.htm)*.*

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