Charltons - Hong Kong Law Newsletter - 30 August 2013

[online version](http://www.charltonslaw.com/stock-exchange-publishes-updated-guidance-on-waiver-applications-for-new-mineral-companies-under-main-board-rule/)

# Stock Exchange Publishes Updated Guidance on Waiver Applications for New Mineral Companies under Main Board Rule 18.04

Hong Kong Exchanges and Clearing Limited (the **Exchange**) has updated [Guidance Letter GL22-10](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl22-10.pdf) (the **Letter**) ([see archive](gl22-10.pdf)) with the stated purpose of providing guidance to new applicant Mineral Companies (**Companies**) on the pre-conditions for a waiver from the financial standards requirements of Main Board Rule 8.05 under Rule 18.04. The Letter superseded Guidance Letter HKEx-GL5-08, which deals with the interaction between Rule 8.05 and the former Rule 18.03 (replaced by Rule 18.04 on 3 June 2010).

## Listing Rule Requirements

Main Board Rules 8.05, 18.04 and paragraph 41(6) of Appendix 1A (GEM Rules 11.12A, 18A.04 and paragraph 41(2) of Appendix 1A) require that a Company that is unable to satisfy:

* the profit test in Rule 8.05 (1);
* the market capitalization/revenue/ cash flow test in Rule 8.05(2); or
* the market capitalization/ revenue test in Rule 8.05 (3)

must establish to the Exchange’s satisfaction that its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Company is pursuing and that details of the relevant experience must be disclosed in the listing document of the new applicant. Individuals relied on must have a minimum of five years relevant industry experience. The Note to Rule 18.04 states that a Company relying on this rule must demonstrate that its primary activity is exploration for and/or extraction of Natural Resources.

## Specific Guidance

Waivers for Companies seeking to list on the Exchange are considered and granted by the Listing Committee on a case-by-case basis after the receipt of the Company’s listing application and the accompanying documents.

The Letter sets out the updated pre-conditions that the Listing Committee would expect the Company to satisfy in an application under Rule 18.04 for a waiver of Rule 8.05 as follows:

### A. Inability to comply with financial standards requirements due to pre-production activities

The Company must demonstrate that its inability to comply with the profit, revenue or cash flow tests of Rule 8.05 is due to the fact that throughout the track record period, the Company has been in a pre-production, exploration and/or development phase. The Company should also demonstrate a clear path to commercial production if that has not yet been stated. These conditions are further set out in the [Consultation Conclusions on New Listing Rules for Mineral Companies](http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp200909mcc.pdf) ([see archive](cp200909mcc.pdf)) published in May 2010 (**Consultation Conclusion**).

Waivers will not normally be available to Companies whose failure to meet the profit test is attributable to economic performance over the track record period. Furthermore, a waiver application is unlikely to be considered favorably if –

* the Company is already in production but unable to present a demonstrable path to profitability;
* the Company is unable to meet the profit requirements with all of its mining assets in operation and no development activity on hand;
* no clear path to commercial production is demonstrated e.g. the funding to be raised by the proposed IPO is insufficient to bring the project to the stage of commercial production, and that further fund raising exercises of a considerable scale will be required.

On the other hand, Companies that still have assets under development are likely to receive favorable consideration. For example, a waiver application is likely to be considered favorably if the Company is incurring expenditure on further exploration or development activities, which have contributed to its inability to meet the profit requirements.

### B. Management experience requirement in Rule 18.04

Companies unable to satisfy the financial standard requirements in Rule 8.05 may still be eligible for listing if it can demonstrate to the Exchange’s satisfaction that –

* its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Company is pursuing;
* individuals relied on must have a minimum of five years relevant industry experience; and
* details of relevant experience, such as biographical information of directors and senior management, are disclosed in the listing document under paragraph 41 of Appendix 1A of the Rules or paragraph 41 of Appendix 1E for the issuers of depository receipts.

### C. Primary Activity in Rule 18.04

Companies relying on Rule 18.04 must demonstrate that its primary activity is exploration for and/or extraction of Natural Resources. This does not have to be their sole activity but should be their main business activity.

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**Charltons - Hong Kong Law Newsletter - Issue 201 - 30 August 2013**