

The Hong Kong Stock Exchange – IPO Overview

The Stock Exchange of Hong Kong (the “**Exchange**”) ranked second among world stock exchanges in terms of IPO funds in 2013. This continues a trend that has seen it placed in the world’s top five stock exchanges in terms of IPO funds raised for 12 consecutive years since 2002.¹ In terms of market capitalisation, the Exchange was the world’s 6th largest stock exchange at the end of 2013. 1,643 companies with a total market capitalisation of HK\$24,042.8 billion were listed on the Exchange at the end of December 2013.²

The Exchange operates two listing boards, the Main Board and the Growth Enterprise Market (“**GEM**”). The Main Board is designed for larger, established companies which are able to meet its profit or other financial requirements. GEM, with lower entry criteria, targets emerging growth companies and provides a stepping-stone to Main Board listing.

1. Regulatory Background

1.1 Overview of Regulatory Background

The Exchange is operated by the Stock Exchange of Hong Kong Limited (“**SEHK**”), a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (“**HKEx**”). The SEHK receives initial public offer applications and administers the listing process. It is the primary regulator of Hong Kong listed companies.

The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the “**Main Board Rules**”) and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited (the “**GEM Rules**”, together with the Main Board Rules, the “**Listing Rules**”) prescribe the requirements for listing securities on the SEHK and set out continuing obligations which must be met by listed issuers and their directors. The Listing Rules are non-statutory in nature and, in the event of their breach, SEHK may impose sanctions.

While the SEHK is the front-line regulator of Hong Kong listed companies, the Securities and Futures Commission (“**SFC**”) is the principal regulator responsible for administering the laws governing the securities and futures markets in Hong Kong, including the Securities and Futures Ordinance (the “**SFO**”). Under the so called “dual-filing” regime established by the Securities and Futures (Stock Market) Listing Rules, copies of all listing documents and all on-going disclosure documents filed with the SEHK must also be filed with the SFC. The SFC reviews draft listing documents and may object to a company listing on the Exchange if it considers the disclosure in the listing document to be inadequate. The inclusion of false or misleading information in listing documents, or in any documents filed

¹ HKEx/LME Joint News Release of 9 January 2014.

² HKEx Fact Book - 2013

under the on-going disclosure requirements, is potentially a criminal offence under the SFO³ and the SFC may investigate and bring prosecutorial actions in appropriate cases. The SFC is also responsible for the enforcement of the statutory obligations of listed issuers and their directors to disclose price sensitive information.

1.2 Regulatory Entities

HKEx

The HKEx is a recognised exchange controller under the SFO which owns and operates the SEHK and related clearing houses.

SEHK

The SEHK is a recognised exchange under the SFO. It is the primary regulator of stock market participants in respect of trading matters and companies listed on the Main Board and the GEM.

Securities and Futures Commission

The SFC's regulatory objectives are set out in the SFO. Its Corporate Finance Division is responsible for, *inter alia*, (i) administering listing filings; (ii) overseeing the Exchange's listing-related functions and responsibilities; and (iii) administering securities and company legislation related to listed companies.

Clearing Houses

The Hong Kong Securities Clearing Company Limited (“**HKSCC**”), HKFE Clearing Corporation Limited and The SEHK Options Clearing House Limited are wholly-owned subsidiaries of the HKEx and recognised clearing houses under the SFO.

1.3 Required Approvals

Applications to list on the Exchange's Main Board require the approval of the Listing Committee of the SEHK while applications to list on GEM are approved by the Listing Division of SEHK, subject to a right of appeal to the Listing Committee. If securities are to be offered to the “public”, as is the case in an IPO, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (the “**CWUMPO**”) requires a prospectus to be issued which must be registered with the Hong Kong Registrar of Companies.

2. Listing Criteria

³ Section 384 SFO.

There are several possible routes to listing on the Exchange and the requirements of the Listing Rules differ according to the route adopted. This chapter sets out the requirements for an offer to the public by a new listing applicant (i.e. an IPO). It is however also possible for a new applicant to list on both the Main Board and GEM by means of a placing or an introduction.

The basic qualifications for listing on the Main Board and GEM are detailed in Chapter 8 and Chapter 11 of the Main Board and GEM Rules, respectively. The principal requirements are set out below.

2.1 Suitability of Listing Applicant

The applicant and its business must, in the opinion of the SEHK, be suitable for listing. The SEHK has an absolute discretion to accept or reject listing applications and the fact that a company meets all the qualifications for listing will not necessarily guarantee the applicant's suitability. The Listing Rules prescribe certain types of applicant which will not be considered suitable for listing. These include applicants (other than investment companies) whose assets consist solely or substantially of cash or short-dated securities.

Public companies

The listing applicant must not be a private company within the meaning of section 11 of the Companies Ordinance – that is, a company whose articles restrict the number of shareholders to 50 and restrict the right to transfer its shares.

Competing interests

Where an applicant has a controlling shareholder (i.e. any person(s) who controls the exercise of 30% or more of the voting power at general meetings of the applicant or any person(s) who can control the composition of a majority of the applicant's board of directors) or a director with an interest in a business that competes with that of the applicant, SEHK generally treats this as a disclosure issue. The Listing Rules require the listing document to make full disclosure of the competing interests including, *inter alia*, a statement explaining how the applicant is capable of carrying on its business independently of, and at arm's length from, the relevant competing business. In extreme cases, where SEHK considers that there are inadequate arrangements to manage conflicts of interest and achieve delineation of business between the applicant and businesses under common control, this may give rise to a concern as to the applicant's suitability for listing.

Management presence

The applicant should have sufficient management presence in Hong Kong

and this usually means having at least two executive directors who are ordinarily resident in Hong Kong.

2.2 Track Record Requirement

A Main Board listing applicant must satisfy each of the following: (a) have a trading record of not less than three financial years; (b) have management continuity (i.e. it has normally been managed by substantially the same persons) for at least the three preceding financial years; and (c) have ownership continuity and control for at least the most recent audited financial year. This trade record period is intended to enable the SEHK and investors to make an informed assessment of the management's ability to manage the applicant's business and the likely performance of that business in the future.

GEM listing applicants are required to have a trading record of at least two financial years with management continuity throughout that period and ownership continuity and control for the preceding full financial year.

Listing decisions / guidelines

In a July 2002 Consultation, the SEHK stated that it interpreted management continuity to mean that applicants must establish that there has been no change in the majority of the applicant's board of directors and senior management of its principal operating subsidiaries during the track record period.

In listing decision 45-1, management continuity was stated to be a question of fact and SEHK explained that it would focus on whether the group of individuals responsible for the track record results of a listing applicant remained in positions of responsibility with the enterprise throughout the track record period and whether they would form the core management of the listing applicant at the time of listing and post-listing.

The Exchange considers "ownership continuity and control" to be "the continuous ownership and control of the voting rights attaching to the shares by a controlling shareholder, or where there is no controlling shareholder, the single largest shareholder".⁴ For the purpose of establishing ownership continuity and control, the shareholding interests and control of a group of individual shareholders may be aggregated and regarded as a controlling group.

Exemptions from the track record requirement

In the case of Main Board listing applicants, SEHK will accept a shorter trading record period under substantially the same management, if the applicant qualifies for listing under the market capitalisation/revenue test

⁴ FAQ of the Exchange

(see below) and it is able to demonstrate that its directors and management have sufficient and satisfactory experience of at least three years in the line of business and industry of the applicant and there is management continuity for the most recent audited financial year.⁵

SEHK may also accept a shorter trading record period for a Main Board listing applicant if: (a) the applicant is a mineral company and its directors and senior management have sufficient and satisfactory experience of at least five years in relevant mining and/or exploration activities; (b) the applicant is a newly formed ‘project’ company engaged in infrastructure projects with long term concession or mandates awarded by the government and its directors and management have sufficient and satisfactory experience of at least three years in the line of business and industry; or (c) the applicant has a trading record of at least two financial years and SEHK is satisfied that the listing of the applicant is desirable in the interests of the issuer and investors and the investors have the necessary information to enable to arrive at an informed assessment concerning the applicant and the securities for which listing is sought.⁶

A trading record of less than two financial years may be acceptable for a GEM listing applicant if: (a) the applicant is a mineral company whose directors and senior management have at least five years relevant experience; (b) the applicant is a newly formed “project” company; or (c) the circumstances are exceptional and SEHK considers it desirable to accept a shorter period. However, where SEHK accepts a trading record of less than two financial years, it will still require the cash flow requirement of HK\$20 million to be met for that shorter period.

2.3 Financial Tests

Main Board

Main Board listing applicants must also meet one of the following three financial tests:⁷

2.3.1 The profit test

To meet the profit test, the listing applicant or its group must have profits generated by activities in the ordinary and usual course of business, of at least HK\$20 million for the most recent financial year and, for the two preceding financial years, aggregate profits of at least HK\$30 million. An applicant listing under the profit test must also have an expected market capitalisation at the time of listing of no less than HK\$200 million.

⁵ Main Board Rule 8.05A

⁶ Main Board Rule 8.05B, Main Board Rule Ch 18

⁷ Main Board Rule 8.05

2.3.2 The market capitalisation/revenue/cash flow test

This test requires the applicant to have: (i) market capitalisation of at least HK\$2 billion at the time of listing; (ii) revenue of at least HK\$500 million for the most recent audited financial year; and (iii) positive cash flow from the operating activities of the listing applicant or its group of at least HK\$100 million in aggregate for the three preceding financial years.

2.3.3 The market capitalisation/revenue test

This test requires an applicant to have: (i) an expected market capitalisation of at least HK\$4 billion at the time of listing; and (ii) revenue of at least HK\$500 million arising from the principal activity of the applicant for the most recent audited financial year.

GEM

A new GEM applicant or its group is required to have a positive cash flow from operating activities in the ordinary and usual course of business of at least HK\$20 million in aggregate for the two financial years immediately preceding the issue of the listing document.

2.4 Minimum Market Capitalisation

The expected market capitalisation of a Main Board listing applicant at the time of listing must be at least HK\$200 million, with at least HK\$50 million held by the public. Market capitalisation is calculated on the basis of all issued share capital including the shares to be listed and any other shares that are either unlisted or listed on other regulated market(s). The expected market capitalisation of the shares for which listing is sought must be at least HK\$50 million. In exceptional cases, the SEHK may accept a lower initial market capitalisation if it is satisfied as to the marketability of the listing applicant's shares.

The expected market capitalisation at the time of listing for applicants seeking to list on GEM is HK\$100 million. The market capitalisation of the shares to be listed and the market capitalisation of the publicly held shares must each be HK\$30 million.

2.5 Sufficiency of Working Capital

A new Main Board or GEM listing applicant is required to include in its prospectus a statement confirming that the applicant and its subsidiary undertakings, if any, have sufficient working capital to meet the group's requirements for at least twelve months following the publication of the

prospectus.⁸ The working capital requirement for new applicant mineral companies is higher: 125% of the group's requirements for the same period.

The applicant's sponsor is additionally required to confirm to the SEHK in writing that it is satisfied that the statement in the listing document as to the sufficiency of working capital has been made by the applicant's directors after due and careful enquiry, and that persons or institutions providing finance have stated in writing that such facilities exists.⁹

2.6 Eligibility for Electronic Settlement

The listing applicant's shares must be eligible for deposit, clearance and settlement through the Central Clearance and Settlement System ("CCASS") operated by the HKSCC.

3. Overseas Companies

A substantial proportion of the companies listed on the Exchange are incorporated outside Hong Kong, particularly in Bermuda, the Cayman Islands and the People's Republic of China (the "PRC"), each of which are accepted jurisdictions of incorporation for listing applicants under the Listing Rules.

Companies incorporated in other jurisdictions will also be acceptable for listing if they can establish to the satisfaction of SEHK that the standards of shareholder protection provided by the laws of the applicant's jurisdiction of incorporation are substantially equivalent to those provided under Hong Kong law. If they are not, the applicant may still be listed if its articles of association can be amended to provide standards of shareholder protection equivalent to those available in Hong Kong.

One of the SEHK's key objectives in recent years has been to attract issuers from more overseas jurisdictions to list on the Exchange. To that end, the SEHK and the SFC published a Joint Policy Statement Regarding the Listing of Overseas Companies in March 2007 (and updated in September 2013) which sets out the application of the Main Board Rules to primary listings, dual primary listings and secondary listings of overseas issuers on the Exchange.

The SEHK has approved the following twenty-one jurisdictions of incorporation for listed issuers: Australia, Brazil, the British Virgin Islands, Canada (Alberta, British Columbia, and Ontario), Cyprus, France, Germany, Guernsey, Isle of Man, Italy, Japan, Jersey, the Republic of Korea, Labuan, Luxembourg, Singapore, the United Kingdom, and the United States of America (States of California and Delaware).

The Main Board and GEM Rules set out additional requirements, modifications and exceptions which apply to companies incorporated outside Hong Kong and these are set out in Chapters 19 and 24 of the Main Board and GEM Rules, respectively.

⁸ Main Board Rule 8.21A and paragraph 36 of Appendix 1A of GEM Rules

⁹ Main Board Rule 8.21A and GEM Rule 12.22(13).

Specific requirements applicable to PRC incorporated issuers are set out in Chapter 19A of the Main Board Rules and Chapter 25 of the GEM Rules. These chapters generally contain matters which relate to modifications to the application procedures, the content requirements for listing documents and continuing obligations. In particular, an overseas issuer must ensure that it has an authorised person to accept service of process on its behalf in Hong Kong and that it maintains a register of shareholders in Hong Kong

Secondary listings

A company that is already listed on a foreign market may apply for a secondary listing on the Exchange. For a secondary listing:

- (i) the listing on the overseas issuer's primary exchange must have been granted prior to the listing on the Exchange;
- (ii) the SEHK may require the listing document to contain a summary of the relevant regulatory provisions which apply to the listing applicant's primary stock exchange;
- (iii) the overseas public float requirement does not apply to companies with a secondary listing on the Exchange; and
- (iv) the overseas issuer is only required to appoint one authorised representative who need not be a director or secretary of the issuer and may be the same person as is authorised to accept service of process.

4. Shareholding Requirements

4.1 Public float

At least 25% of the issuer's total issued share capital must *at all times* be held by the public. Where an issuer has more than one class of shares apart from the class of shares to be listed, the total number of the issuer's shares that are held by the public at the time of the listing must be at least 25% of the total issued share capital. However, the shares for which listing is sought must not be less than 15% of the total issued share capital, and must have an expected market capitalisation at the time of listing of at least HK\$50 million. If the public float requirement is not met, the SEHK may suspend trading until appropriate steps have been taken to restore the minimum percentage of securities held in public hands.

The SEHK may accept a lower public float of between 15% to 25% in the case of issuers with an expected market capitalisation at the time of listing of HK\$10 billion, provided it is satisfied that the number of shares concerned and the extent of their distribution would enable the market to operate properly with a lower percentage and on the condition that the issuer makes proper disclosure of the lower prescribed percentage of public float

in the prospectus and confirms the sufficiency of the public float in its annual reports post-listing.

For the purposes of the public float requirement, the term “the public” comprises anyone other than:

- (i) connected persons of the issuer (including any director, chief executive or substantial shareholder (i.e. a person with 10% or more of the voting power at general meetings of the company) of the issuer or any of its subsidiaries or an associate (including, broadly, family members of individuals and fellow group members of a company, trusts and controlled companies);
- (ii) any person whose acquisition of shares has been financed directly or indirectly by a connected person; or
- (iii) any person who is accustomed to taking instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of shares of the issuer.

4.2 Restrictions on Major Shareholders

No restrictions are imposed on substantial shareholders holding specified percentages of the company’s shares except that there are requirements on spread of shareholders, post-IPO lock-up and disclosure obligations which will be discussed below.

4.3 Spread of Shareholders

There must be an adequate spread of holders of securities to be listed. The required number of shareholders will depend on the size and nature of the issue but for Main Board issuers, there must be a minimum of 300 shareholders and for GEM issuers there must be at least 100 public shareholders. There is a further restriction that not more than 50% of the shares in public hands at the time of listing can be beneficially owned by the three largest public shareholders.

4.4 Post-IPO Lock-up

Controlling shareholders (being persons who together control 30% or more of the shares of the issuer) must not dispose of, or enter into any agreement to dispose of, or otherwise create any options, rights, interests or encumbrances in respect of any interest in their shares:

- (i) in the six months after listing; and
- (ii) in the six months period commencing on the expiry of the period referred to in (i) above if this would result in that person ceasing to

be a controlling shareholder.¹⁰

There are certain exceptions to the lock-up rule set out in the Listing Rules, for example, if the issue of shares has been approved by the SEHK pursuant to a share option scheme.

In addition, pre-IPO investors are usually requested by the listing applicant to lock-up their pre-IPO shares for a period of six months or more. These shares are counted as part of the public float so long as Main Board Rule 8.24 (note 3 to GEM Rule 11.23) is fulfilled. This requires that the shares are not financed directly or indirectly by a connected person of the listing applicant.

4.5 Disclosure Obligations

Investors acquiring 5% or more of a listed company's shares are required to file a substantial shareholder's notice with the listed company and the SEHK within three business days. A holder of 5% or more is further required to file notice on any increase or decrease in their holding which crosses a percentage level, when they cease to hold the interest, on a change in nature of their interest (e.g. if the shares are charged or pledged) and when they acquire a short position of 1% or more in the shares of the listed company.

5. Listing Procedure and Timetable

Listing process and timeframe

Provided that all relevant listing criteria can be satisfied and documents required to be submitted to the Exchange are in good order, the listing process may be achieved within 3-4 months although in practice this is often longer.

The formal listing process is initiated by the submission of the application Form A1 (Listing Application Form) to SEHK together with an Application Proof of the listing document that is substantially complete (except for information that, by its nature, can only be included at a later date) and supporting documents. The following is an indicative timetable and list of documents to be filed with the SEHK.

Event	Approximate period prior to listing
Business and legal due diligence	1-3 months + (ongoing)
Financial due diligence	1-3 months +

¹⁰ Main Board Rule 10.07

Event	Approximate period prior to listing
	(ongoing)
Property valuation	1-3 months + (ongoing)
Preparation of accounts, profit and cash flow forecast, financial forecast model	1-3 months + (ongoing)
Preparation of the prospectus	1-3 months + (ongoing)
<p>Submission of the substantially complete Application Proof of the listing document to the SEHK with a draft timetable and payment of full initial listing fee</p> <p>Documentary requirements include:</p> <ul style="list-style-type: none"> - copies of the Application Proof (as many as the Exchange may require) together with 2 CD-ROMs containing the same drafts and the other required documents - an advanced draft of any statement of adjustments relating to the accountants' report in the Application Proof <p>Further main documents / information to be submitted to the Exchange:</p> <ul style="list-style-type: none"> - sponsor's statement of independence and undertaking to comply with the Listing Rules, to use all reasonable endeavours to ensure all information provided to the Exchange is true and does not omit material information and to cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange (see Appendix 17 to the Main Board Rules); - written confirmation signed by each director that the information in the Application Proof is accurate and complete in all material respects and is not misleading or deceptive; - various checklists on such matters as listing qualifications, prospectus content, property valuation report etc.; - final or advanced drafts of all requests for waiver from the requirements of the Listing Rules and the provisions of the Companies Ordinance from the sponsor and the directors/proposed directors; - draft share option scheme (if any) 	Submitted together with the Form A1 (Listing Application Form)

Event	Approximate period prior to listing
<ul style="list-style-type: none"> - confirmation and undertaking from each director/supervisor in relation to the accuracy and completeness of his/her information in the Application Proof - a final or advanced draft of the board's profit forecast memorandum and cash flow memorandum - a certified copy of the applicant's certificate of incorporation (or equivalent) - a draft letter from the sponsor confirming that it is satisfied that the statement by the issuer's directors in the Application Proof as to the sufficiency of working capital has been made by the directors after due and careful enquiry - <i>for PRC issuers, PRC legal opinion covering issues on corporate matters and property interests;</i> 	
<p>The Application Proof will undergo a 3-Day Check according to the "3-Day Checklist" (Table B of guidance letter HKEx-GL56-13).</p>	<p>3-Day Check (From 1 October 2013 – 30 September 2014)</p>
<p>Submission of 4-day document</p> <p>Documentary requirements include</p> <ul style="list-style-type: none"> - as many copies of the final proof of the prospectus as the Exchange may require and 2 CD-ROMs containing the same proof - legal advisers' confirmation that the articles of association are not inconsistent with the laws of the place of incorporation and the Listing Rules - unless previously provided, all executed requests for waiver from the requirements of the Listing Rules and the provisions of the Companies Ordinance - 	<p>At least 4 clear business days before expected Listing Committee hearing (approximately 27 days from listing)</p>
<p>Prospectus verification complete</p>	<p>N/A</p>
<p>Recommendation / Rejection by the Listing Division</p>	<p>N/A</p>
<p>Hearing by the Listing Committee</p>	<p>approximately 22 days from listing</p>
<p>Further submission of documents before bulk-printing of prospectus:</p>	<p>As soon as practicable</p>

Event	Approximate period prior to listing
<ul style="list-style-type: none"> - a final proof of the formal notice (where applicable) - the final proof of any application form to subscribe for or purchase the securities - a final letter from the sponsor in relation to sufficiency of the issuer's working capital (unless previously supplied) - a final copy of all draft documents submitted to the Exchange in support of the application for listing 	after hearing
<p>Further submission of documents on or before date of issue of the prospectus:</p> <ul style="list-style-type: none"> - a copy of the listing document (English and Chinese versions), which must be dated and signed by all directors/proposed directors and the secretary - where the listing document is signed by an agent on behalf of a director, a certified copy of the authorisation for the agent's signature - relevant application form for subscription of the securities - copy of the formal notice (where applicable) - copy of the written notification issued by HKSCC stating that the securities will be Eligible Securities - every written undertaking and confirmation of the applicant, its shareholders and/or relevant parties referred to in the listing document - original signed sponsor declaration(s) in relation to, <i>inter alia</i>, the sufficiency of documents and information submitted, directors' qualifications etc. (see Appendix 19 to the Main Board Rules) 	As soon as practicable after hearing but on or before issue of prospectus
Signing of the underwriting agreement, international placing agreement etc.	approximately 15 days from listing

Event	Approximate period prior to listing
<p>Issue of the prospectus and formal notice</p> <p>Lodgement of the following documents with the Exchange:</p> <ul style="list-style-type: none"> - an application for authorisation for registration of the prospectus - two copies of the signed prospectus - a certificate from the translator certifying the accuracy of the translation (for every Chinese or English translation of the prospectus) 	<p>No later than 11 am on the intended date of authorisation of the prospectus (approximately 15 days from listing)</p>
<p>Road-show</p>	<p>approximately 14 days from listing</p>
<p><i>Public offer:</i></p>	<p>approximately 14 days from listing (run for approximately 1 week)</p>
<p>Application lists open</p>	<p><i>start of week</i></p>
<p>Latest time to lodge white and yellow forms</p>	<p><i>end of week</i></p>
<p>Latest time to give electronic instructions to the HKSCC</p>	<p><i>end of week</i></p>
<p>Application lists close</p>	<p><i>end of week</i></p>
<p>Pricing</p>	<p>approximately 3 days after close of application list (approximately 4 days from listing)</p>
<p>Despatch of share certificates</p>	<p>within 1 week from close of application list</p>
<p>Despatch of refund checks</p>	<p>within 1 week from close of application list</p>
<p>Submission of the following documents:</p> <ul style="list-style-type: none"> - certified copy of the resolution(s) in general meeting 	<p>Before listing (approximately 1-2 days from listing)</p>

Event	Approximate period prior to listing
authorising the issue of all securities to be listed - Form E of Appendix 5 to the Main Board Rules – sponsor’s signed declaration - Form F of Appendix 5 to the Main Board Rules – declaration by issuer, signed by a director and the secretary (together with any annual listing fee payable) - certified copy of the resolution(s) of the board or other governing body authorising the issue and allotment of the securities, the making of the listing application, the making of arrangements for the securities to be admitted to CCASS, the signing of the listing agreement and approving and authorising the issue of the prospectus - in the case of a securities placing, copy of the placing letter, a list of information of the placees, their accounts and the beneficial owners from each broker (e.g. names and addresses) and separate marketing statements (see Form D of Appendix 5 to the Main Board Rules) - declaration and undertaking from each director/supervisor and proposed director/supervisor (Form B/H/I of Appendix 5 to the Main Board Rules)	
Listing	N/A
Dealing of securities commences	0

The listing application procedures underwent significant changes with effect from 1 October 2013 to coincide with changes to sponsors’ obligations in respect of due diligence which took effect on the same day. One of the most significant changes to the procedural requirements was that the Application Proof of the prospectus submitted with the listing application is made publicly available on the Exchange’s website. If on review the Exchange determines that the information in the Application Proof is not substantially complete, it will return the documents to the sponsor and publish the fact that the listing application has been returned on the Exchange’s website. A new listing application can be made only eight weeks after the date of the Exchange’s decision to return the application. These changes were introduced primarily to encourage submission of a quality first draft of prospectus to facilitate a shorter listing timetable.

Due diligence

The directors of the issuer are required under the Listing Rules to collectively and individually accept full responsibility for the accuracy of the information contained in the prospectus and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would

make any statement in the prospectus misleading. Any misstatements in the prospectus may expose the directors to potential liabilities under the common law, CWUMPO, the SFO and the Misrepresentation Ordinance.

One of the defences available to directors against the liabilities pertaining to the issue of the prospectus is what is sometimes referred to as the “due diligence defence”, that is, the directors had reasonable grounds to believe that the statements made were true as adequate due diligence was carried out.

It is important as part of the listing process therefore that due diligence is carried out. This would typically involve:

- the company providing responses to a number of due diligence questions prepared by the issuer’s legal advisers in respect of various information contained in the draft prospectus;
- the preparation of verification notes for the verification of all material statements made in the draft prospectus (often this is supported by independently prepared written materials). Such verification can be undertaken by the issuer’s advisers or other persons with necessary expertise to verify the relevant statements.

The sponsor(s) to the issuer is also required by the Listing Rules to conduct reasonable due diligence to enable it to give certain required declarations, including as to the accuracy and completeness of the information contained in the prospectus, to the SEHK. In determining what is “reasonable due diligence” sponsors must have regard to paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “**Code of Conduct**”) and the SEHK’s guidance which is set out in Practice Note 21 to the Main Board Rules and Practice Note 2 to the GEM Rules.

Before submitting an application on behalf of a listing applicant to the Exchange, a sponsor is expressly required to (i) perform all reasonable due diligence on a listing applicant except in relation to matters that by their nature can only be dealt with at a later date; and (ii) ensure all material information as a result of the due diligence has been included in the Application Proof prospectus which is submitted with the listing application. These requirements are intended to ensure that due diligence is carried out at an early stage so as to ensure the quality of the draft listing document submitted with the listing application. It is proposed that legislative amendments will be made in due course so that sponsor firms are expressly criminally liable for untrue statements in (including omissions from) a prospectus which are materially adverse from an investor’s perspective if the sponsor firm knows that, or is reckless as to whether, the statement is untrue. The civil liability provisions for untrue prospectus statements will also be amended to extend to sponsors.

Comfort letters

The underwriters of the issuer will often obtain from the independent auditors of the issuer comfort letters as a due diligence defence regarding the correctness of the

financial statements and other financial information included in the offering documents. The actual scope of such comfort letters will vary and is subject to negotiation between the parties.

5.1 Marketing the Offer

Listing applicants and their advisers need to be aware of the publicity restrictions imposed by the Listing Rules. All publicity material which is to be released in Hong Kong in connection with an IPO must be reviewed by SEHK prior to release and must not be released until SEHK has confirmed that it has no further comments thereon. The circulation of marketing documents such as the invitation or offering telex and drafts of agreements to be entered into in connection with the issue is however allowed without review of the documents by the SEHK. Care must be taken to ensure that material relating to the IPO is not released without prior SEHK approval as this may result in the SEHK delaying the timetable for the Listing Committee hearing by up to one month. In particular, no press releases should be published in relation to the IPO prior to the issue of the prospectus.

5.2 Required Documentation

The documents required to be submitted for review and approval by SEHK are set out in Chapters 9 and 12 of the Main Board and GEM Rules, respectively.

5.3 Publication of the Prospectus

When securities are offered to the “public” in a listing, a prospectus must be prepared in accordance with the requirements of the Listing Rules, the CWUMPO and the SFO. The prospectus must also be vetted for compliance by the Listing Division of the Exchange, approved by the SFC and filed with the Registrar of Companies. The SFC may request further information to be disclosed in the prospectus or it may object to listing if it appears to the SFC that the prospectus contains false or misleading information. However, any comments the SFC has on a draft prospectus are communicated to the listing applicant by the SEHK, which remains the sole point of contact for the applicant and its advisers.

The listing of the new applicant will be approved by the Listing Committee in the case of a Main Board listing applicant and by the Listing Division of the SEHK in the case of a GEM listing applicant.

6. Documentary Requirements

6.1 Contents of the Main Listing Document

The content requirements for a prospectus are set out in the CWUMPO and the Listing Rules. The CWUMPO requires a prospectus to be in both English and Chinese and to contain the detailed information specified in Part I of the Third Schedule to the CWUMPO. The contents requirements of the Listing Rules are set out in Appendix 1A to the Main Board and GEM

Rules. Certain specific requirements are highlighted below.

Strategic investment and other pre-IPO investments

Any pre-IPO and strategic investments must be fully disclosed in the prospectus. In particular, the SEHK requires disclosure of the following:

- details of the pre-IPO investments including the name of the investors, date of investment, the cost per share paid by each pre-IPO investor and the discount to the IPO price;
- the use of proceeds from the pre-IPO investments, whether they have been fully utilised and the strategic benefits they will bring to the applicant;
- the shareholding in the applicant held by each pre-IPO investor upon listing, the beneficial owner and background of each pre-IPO investor and their relationship with the applicant group;
- details of any special rights granted to the pre-IPO investors, a statement that all special rights will be discontinued on listing, or if not, how the applicant will comply with the requirement that all shareholders are treated equally;
- any agreed lock-up period on the shares issued to the investor;
- whether the shares held by pre-IPO investors are included as part of the public float; and
- the sponsor's confirmation that the pre-IPO investments are in compliance with SEHK's guidance as set out in Guidance Letters HKEx-GL29-12, HKEx-GL43-12 and HKEx-GL44-12..

Accountants' Report

The issuer must include in its prospectus an accountants' report prepared by certified public accountants qualified under the Professional Accountants Ordinance who are independent of the issuer to the same as extent as is required of an auditor under the Companies Ordinance and in accordance with the Hong Kong Institute of Certified Public Accountants' requirements on independence. Please refer to section 7 - "Financial Information" below for further information.

Competing Business

As mentioned in paragraph 2.1 above, competing interests of the issuer's directors and controlling shareholders must be fully disclosed in the prospectus.

6.2 Other Documents

Please refer to the subparagraph headed "Listing process and timeframe" under section 5 – "Listing Procedure and Timetable" above for a summary of documents to be filed with the SEHK for a listing application.

6.3 Articles/Constitutional Documents

A listing applicant's articles of association or equivalent document must comply with Appendix 3 of the Main Board Rules and, in addition (in the case of overseas issuers incorporated or established in Bermuda, the Cayman Islands or the PRC) with Appendix 13 of the Main Board Rules.¹¹

As discussed in paragraph 3 above, companies incorporated in other jurisdictions will also be acceptable for listing if they can establish to the satisfaction of SEHK that the standards of shareholder protection provided by the laws of the applicant's jurisdiction of incorporation are substantially equivalent to those provided under Hong Kong law. If they are not, the applicant may still be listed if its articles of association can be amended to provide standards of shareholder protection equivalent to those available in Hong Kong.

7. Financial Information

7.1 Audited Financial Statements

The accountants' report required to be included in the prospectus must contain the audited income statements, balance sheets and cash flow statements for the track record period for the issuer and, if the issuer is itself a holding company, the consolidated financial statements for the issuer and its subsidiaries. Comparative figures for the same period in the previous year are also required to be included in the prospectus.

Reporting accountants are required by the Listing Rules to express an opinion in their report as to whether or not the financial information gives a true and fair view of the results and cash flows for the period reported on and of the balance sheet date as at the end of each period reported on.

7.2 Applicable Accounting Standards

The accountants' report of both a Main Board listing applicant and a GEM listing applicant must have been prepared in accordance with either Hong Kong Financial Reporting Standards, the International Financial Reporting Standards or China Accounting Standards for Business Enterprises ("CASBE") in the case of a PRC incorporated listing applicant that has adopted CASBE for its annual financial statements. For a GEM listing applicant, the accountants' report can be prepared in accordance with generally accepted accounting principles in the United States of America (US GAAP) if the applicant is or will be simultaneously listed on either the

¹¹ A GEM listing applicant's articles of association must comply with Appendix 3 of the GEM Rules and, in addition (in the case of overseas issuers incorporated or established in Bermuda, Cayman Islands or PRC) with Appendix 11 of the GEM Rules.

New York Stock Exchange or the NASDAQ National Market.¹²

7.3 Period Covered by the Accounts

The accountants' report must cover the three financial years (or two financial years for GEM listing applicants) immediately preceding the listing and the latest financial period reported on must not have ended more than six months before the date of the listing document. Where the last financial year reported on ended more than six months before the prospectus date, the reporting accountants additionally need to report on the interim period, often referred to as the "stub period".

7.4 Overseas Companies

Special requirements in relation to the accountants' report apply in the case of overseas issuers and PRC issuers which are set out in Chapters 19 and 19A of the Main Board Rules and Chapter 7 of the GEM Rules.

In summary, the reporting accountant of an overseas or PRC listing applicant is required to be independent both of the applicant and of any other company concerned to the same extent as required for the reporting accountant of a Hong Kong incorporated listing applicant. An accountants' report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong for an overseas listing applicant, and to a standard comparable to that required in Hong Kong or under International Standards on Auditing or (for a PRC listing applicant) China Auditing Standards. The accountants' report will normally be required to conform with the requirements as to the accounting standard set out in paragraph 7.2 above.

7.5 Pro Forma Financial Information

Where a listing applicant has acquired or proposed to acquire any businesses or companies, which would at the date of application or such later date of acquisition before listing of the applicant be classified as a major subsidiary, since the date of the latest audited accounts have been made up, pro forma financial information must be included in the prospectus in respect of the enlarged group.¹³ The pro forma financial information must be reported on by the reporting accountants.

7.6 Interim Financial Information

A listing applicant is not required to include interim financial information in its prospectus unless the last financial year reported on in its accountants' report ended more than six months before the prospectus date as discussed in paragraph 7.3 above.

¹² GEM Rule 7.13

¹³ Main Board Rule 4.28 and GEM Rule 7.30

8. Parties Involved

8.1 Sponsor

An issuer seeking a listing of shares on the Exchange must appoint one or more sponsors to assist with its listing application. To be eligible to act as the sponsor of a new applicant, a firm must be licensed by the SFC as a corporate finance adviser and permitted 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 in Rules 3A.07 and 6A.07 of the Main Board and GEM Rules, respectively. If there are two 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 independence test. In addition, one sponsor must be designated as the primary channel for communication with the Exchange.

The role of sponsor carries a number of obligations and each sponsor is responsible for ensuring that the sponsor's obligations are discharged. These obligations are set out in paragraph 17 of the Code of Conduct and the Listing Rules. They include performing due diligence including in relation to the other professional advisers involved and their reports, submitting all relevant documentation in relation to the listing application, assisting the company in appointing and coordinating work of other professional advisers and liaising with the SEHK.

Each sponsor is required to give an undertaking to SEHK to: (i) comply with the Listing Rules; (ii) use reasonable endeavours to ensure the accuracy of information provided to the SEHK and (iii) cooperate in any listing division investigation.

Between the date of the hearing of the listing application and the date of issue of the listing document, sponsors must submit to SEHK a Sponsor's Declaration giving specific confirmations as to the accuracy of information in the directors' declarations, 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.

Sponsors are required to conduct reasonable due diligence inquiries in order to put themselves in a position to give the Sponsor's Declaration. In determining what is "reasonable due diligence" sponsors must have regard to paragraph 17 of the Code of Conduct and the Exchange's guidance on the typical due diligence steps expected of sponsors of initial listing applications which is set out at Practice Note 21 of the Main Board Rules and Practice Note 2 to the GEM Rules. The actual due diligence steps may

need to be more extensive than those set out in the Practice Note depending on the circumstances. The Exchange expects sponsors to document their due diligence planning and any significant deviations from their plans.

8.2 Other persons, advisers and professionals appointed for the listing process

Compliance adviser

A listed issuer is required to retain a compliance adviser acceptable to the SEHK for the period commencing on the date of listing and ending on the publication of its financial results for the first full financial year after listing if it is listed on the Main Board, or for the second full financial year after listing if it is listed on GEM. A compliance adviser must be licensed by the SFC to conduct sponsor work and while it is required to act impartially, it is not required to be independent of the issuer. An issuer may, but is not obliged to, appoint as its compliance adviser the same firm that acted as the sponsor of its listing.

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 listing 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 in relation to any unusual movements in the price or trading volume of its shares.

The SEHK may also require an issuer to appoint a compliance adviser at any other time after the specified period, for example if the issuer has breached the Listing Rules. In this case the Exchange will specify the period of appointment and the circumstances in which the compliance adviser must be consulted.

Where the authorised representatives of a PRC issuer are expected to be frequently outside Hong Kong, the compliance adviser must also act as the principal channel of communication between the issuer and the Exchange.¹⁴

Underwriters

For Main Board listing, all offers for subscription must be underwritten. Although underwriting is not compulsory for GEM listing, if new capital is

¹⁴ Main Board Rule 19A.06(4)

to be raised by the issuer in an amount not fully underwritten, a listing may only proceed if the minimum subscription amount set out in prospectus has been raised. Underwriters may underwrite part of the offering.

Legal advisers

Legal advisers commonly involved in the listing on the Exchange include Hong Kong legal adviser and legal advisers of other jurisdiction(s) to the issuer, sponsor(s) and underwriter(s). Their duties include but are not limited to:

- (a) providing legal advice to the issuer in relation to Hong Kong or overseas legal and regulatory requirements of the listing;
- (b) preparation of relevant documentation;
- (c) assisting in the local due diligence and preparing verification notes; and
- (d) issuing legal opinions which may be required.

Share registrar and transfer office

The share registrar will be responsible for the following functions over the listing process:

- (i) processing and balloting public offer applications;
- (ii) liaising with the sponsors, Hong Kong Securities Clearing Co. Ltd., and the issuer for preparation and dispatch of share certificates to successful applicants; and
- (iii) processing of share transfers of the issuer after listing

Reporting accountants

Reporting accountants to the issuer for the listing would be required to prepare, *inter alia*:

- (i) an accountants' report;
- (ii) a report on unaudited pro forma financial information;
- (iii) an opinion on profit forecast; and
- (iv) appropriate comfort letters

Receiving Banks

Receiving banks are appointed for receiving and processing applications under the public offering tranche.

Independent property valuer

An independent property valuer will be responsible for preparing an

independent valuation of certain property interests of the issuer's group for inclusion in the prospectus.

Public relations consultant

A public relations consultant may be engaged for the provision of strategic advice on communications, media relations and events in support of the listing.

8.3 Other persons and committees which must be appointed

Independent Non-Executive Directors

The Listing Rules require all listed companies to appoint a minimum of three independent non-executive directors and they must represent at least one-third of the board, at least one of whom must have appropriate professional qualifications or accounting or related financial management expertise.

Company secretary

The secretary of the issuer must be an individual who, by virtue of his academic or professional qualification or relevant experience, is in the opinion of the Exchange, capable of discharging the functions of the secretary of the issuer. The Exchange considers that the following academic or professional qualifications to be acceptable:

- (i) a member of the Hong Kong Institute of Company Secretaries;
- (ii) a solicitor or barrister as defined by the Legal Practitioners Ordinance; or
- (iii) a certified public accountant as defined by the Professional Accountants Ordinance.

Authorised representatives

Every issuer must appoint two authorised representatives who may be either two directors or a director and the company secretary unless the SEHK, in exceptional circumstances, agrees otherwise. The responsibilities of an authorised representative include:

- (i) at all times (particularly prior to commencement of trading in the morning) being the principal channel of communication between the SEHK and the listed issuer and supplying the SEHK with his contact details (including home and office telephone and facsimile

numbers); and

- (ii) to ensure that whenever he is outside Hong Kong, suitable alternates are appointed, available and known to the SEHK and to give the SEHK their contact details in writing.

Audit committee

The committee must be made up of non-executive directors only and the majority of the committee and the chairman must be independent non-executive directors of the listed issuer. The committee must have a minimum of three members, at least one of whom must be an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise.

Remuneration committee

The issuer must set up a remuneration committee chaired by an independent non-executive director and comprising of mainly independent non-executive directors. This remuneration committee shall, *inter alia*, advise and make recommendations in respect of the issuer's policy and structure for remuneration of directors and senior management. An issuer which does not have a remuneration committee in accordance with the prescribed requirements must immediately publish an announcement containing the relevant details and reasons.

8.4 Committees required by the Corporate Governance Code¹⁵

Nomination committee

The Corporate Governance Code requires that issuers establish a nomination committee which is chaired by the chairman of the board or an independent non-executive director and comprises mainly independent non-executive directors. The Corporate Governance Code also sets out the required written terms of reference for a nomination committee. The establishment of a nomination committee is not however mandatory. The requirement is set out in a Code provision which means that if an issuer fails to comply, it must disclose and explain the non-compliance in the corporate governance report which is required to be included in its annual reports.

9. Listing Costs

The cost of listing may differ according to factors such as the issuer's size, the amount of funds to be raised, the listing board, the kind of listing (primary, secondary or backdoor listing), and the issuer's jurisdiction of incorporation. A listing would involve both implicit and explicit costs.

¹⁵ Appendix 14 of the Main Board Rules and Appendix 15 of the GEM Rules

Implicit costs may include:

- (i) absorption of management and staff time by the listing process;
- (ii) the efforts of any necessary restructuring; and
- (iii) discount on the sale of shares at the listing.

Explicit costs may include:

- (i) underwriting commissions (usually this is the biggest component of the total listing costs);
- (ii) professional service fees (e.g. fees of sponsor, legal advisers, reporting accountants, property valuers, translators etc.) – these depend on the amount of work required to comply with the regulations and properly communicate the issuer's value;
- (iii) share certificates;
- (iv) fees of registrar and receiving banks;
- (v) publicity costs (road-show, announcements, public relations materials and printing etc.); and
- (vi) fees charged by the SEHK (initial listing fee and trading fee) (see below).

9.1 Fees charged by the Exchange

Initial listing fees

The fees charged by the SEHK in relation to a listing are set out in Appendix 8 of the Main Board Rules. The initial listing fee payable on the application for listing (usually on submission of the listing application form) of equity securities ranges from HK\$150,000 where the value of the shares to be listed does not exceed HK\$100 million to HK\$650,000 where the value of the shares to be listed exceeds HK\$5 billion.

On a transfer of listing from GEM to the Main Board, the new applicant pays an initial listing fee at a 50% discount to the fee that would otherwise be payable. For secondary listings, the new applicant pays an initial listing fee at a 75% discount to the applicable fee, with a minimum payment of HK\$150,000.

Annual listing fee

An annual listing fee (payable in advance in one instalment) is required to be paid by the issuer with reference to the nominal value of the shares listed or to be listed on the Exchange. The annual fee ranges from HK\$145,000 for shares with a nominal value not exceeding HK\$200 million to HK\$1,188,000 for shares with a nominal value exceeding HK\$5 billion.

Other fees

In addition to the above, subsequent issue fees, transaction levies on new issues, trading fees on new issues, brokerage fees and other trading fees and levies may be payable in respect of the listing or subsequent events.

9.2 Sponsor's Fees and Lawyers' and Accountants' Fees

Fees charged by the professional advisers to the issuer will vary according to the size and complexity of the issue.

10. Corporate Governance Requirements

The Corporate Governance Code (the “**Code**”) in Appendix 14 of the Main Board Rules and Appendix 15 of the GEM Rules sets out the SEHK’s view on principles of good corporate governance. The Code comprises two levels of recommendation, namely code provisions and recommended best practices.

Issuers must state in their interim reports and annual reports whether they have complied with the code provisions. Issuers may choose to deviate from the code provisions but must disclose the reasons for such deviation in their annual reports.

Recommended best practices are provided for guidance only and issuers are encouraged to, but are not required to state whether they have complied with them or provide reasons for non-compliance.

The Code covers six areas of corporate governance: (A) directors, (B) remuneration of directors and senior management; (C) accountability and audit; (D) delegation by the board; (E) communication with shareholders; and (F) company secretary.

Issuers are required to include a corporate governance report prepared by the board of directors in their summary financial reports (if any) and annual reports. The corporate governance report is required to disclose information in 10 areas including directors’ securities transactions, attendance of each director at the board and general meetings and the term of appointment of non-executive directors.

11. Continuing Obligations

The Listing Rules impose a number of continuing obligations on listed issuers, including *inter alia* the following:

- ***Public Float***

The requirement to maintain the public float is a continuing obligation and issuers must inform SEHK immediately on becoming aware that the percentage of shares in public hands has fallen below the requirement minimum.

- ***General Disclosure Obligation***

The SFO imposes a statutory obligation on listed issuers to disclose price sensitive information (called inside information in the SFO) as soon as reasonably practicable after the information has, or ought reasonably to have, come to the knowledge of an officer of the listed issuer. Inside information means any specific information that is: (a) about the listed issuer; a shareholder or officer of the listed issuer; or the listed securities of the listed issuer or their derivatives; and (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the listed issuer but would if generally known to them be likely to materially affect the price of the listed securities.¹⁶

- ***Disclosure of Financial Information***

Main Board listed issuers must publish audited annual financial statements within 4 months of the financial year end and audited half-year financial statements within 3 months of the end of the half-year. Publication of quarterly financial reports is not a Listing Rule requirement for Main Board issuers but is a recommended best practice under the Corporate Governance Code.

GEM listed issuers must publish audited annual financial statements within 3 months of the financial year end and audited half-year and quarterly financial statements within 45 days of the end of the relevant financial period.

12. Our Office

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¹⁶ Sections 307A(1) and 307B(1) of the SFO