

HKEx GUIDANCE LETTER

HKEx-GL63-13 (July 2013) (Updated in September 2013) - effective for applications submitted on or after 1 October 2013

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| Subject | Guidance on disclosure of material non-compliance incidents in listing documents |
| Listing Rules and Regulations | Main Board Rules 2.03(2), 2.13(2), 3.08, 3.09 and 8.04 GEM Rules 2.06(2), 5.01, 5.02, 11.06 and 17.56(2) |
| Related Publications | Listing Decisions HKEx-LD96-1, HKEx-LD97-1, HKEx-LD19-2011, HKEx-LD33-2012 and HKEx-LD73-2013 |
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Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules or this letter.*

1. Purpose

- 1.1 This letter provides guidance on the disclosure of material non-compliance incidents in listing documents.
- 1.2 The Exchange expects applicants to follow this letter when preparing their listing applications. A listing document that does not follow this guidance may be considered not substantially complete as required under the Listing Rules.

2. Relevant Listing Rules

- 2.1 Main Board Rule 2.03(2) (GEM Rule 2.06(2)) requires that potential investors are given sufficient information to enable them to make a properly informed assessment of an applicant.
- 2.2 Main Board Rule 2.13(2) (GEM Rule 17.56(2)) requires the information contained in a listing document to be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, an applicant must not, among other things, omit material facts of an unfavourable nature or fail to accord them with appropriate significance.
- 2.3 Main Board Rule 3.08 (GEM Rule 5.01) states that the Exchange expects the directors to fulfill fiduciary duties and to have duties of skill, care and diligence to a standard at least commensurate with the standard under Hong Kong law.

- 2.4 Main Board Rule 3.09 (GEM Rule 5.02) provides that every director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer.
- 2.5 Main Board Rule 8.04 (GEM Rule 11.06) requires both the applicant and its business, in the opinion of the Exchange, to be suitable for listing.

3. Guidance

- 3.1 An applicant and/ or its directors/ senior management may have failed to comply with certain laws and regulations. If the material non-compliance incidents are matters of a serious nature and material (for example, involving fraud or deceit by directors or senior management, systematic failure of an applicant's internal controls and/ or matters with significant financial impact on an applicant), this can translate into an issue of suitability of the directors and/ or suitability for listing of an applicant. However, where it is determined that the material non-compliance incidents can be resolved by way of disclosure, the Exchange expects the following to be disclosed in the listing document:
- a. reasons for the non-compliance incidents, nature and extent of the breaches, corresponding risk factors, and the identity and position of the director(s)/ senior management involved in the non-compliance incidents;
 - b. whether the applicant has been or will be charged or penalised for the non-compliance incidents during the track record period and up to the latest practicable date with confirmation from the competent authorities (and legal opinions confirming the competence of the relevant authorities). If so, disclose actual or maximum penalty (including the amounts), whether the applicant has made any provision (if not, reasons for not making provision), and the potential operational and financial impact on the applicant;
 - c. how and when the rectification actions were taken/ will be taken, enhanced internal controls to prevent their recurrence (including the identity, position, qualification and experience of the personnel who are responsible for ensuring the compliances). In the event an independent internal control expert has been separately engaged to review the internal controls¹, include the identity of and the salient terms of engagement of an internal control expert and its findings and recommendations, and the applicant's timing of implementation of any of the internal control expert's recommendations (and the internal control expert's follow-up review, if any) (*Updated in September 2013*);
 - d. the Exchange normally expects all rectification actions to be completed before a listing. Where the Exchange accepts that certain non-compliance incidents can

¹ If the internal control expert is the reporting accountants or another accounting firm, the relevant guidelines and practices of the accounting profession position an internal controls review as private advice to the directors of the applicant (and if they are party to the engagement, the sponsors). Accordingly, in such circumstances the name of the reporting accountants or other accounting firm and details of their work and findings may be prevented from being quoted or referenced in the listing document. One circumstance in which internal controls work may be referenced in the listing document is where it is practicable for the applicant and the sponsor to additionally and separately engage the reporting accountants or other accounting firm to also perform an assurance engagement in relation to internal controls.

only be rectified within a short period after listing, disclose a legal adviser's view, with basis, whether there is any impediment to rectify the non-compliances, and a statement that the applicant will disclose the progress of the rectification in the interim/ annual reports and detailed explanation for any delay in the rectification; and

- e. the views of the directors and the sponsor(s), with basis, on whether the applicant's enhanced internal control measures are adequate and effective under Main Board Rule 3A.15(5) (GEM Rule 6A.15(5)), the suitability of the directors under Main Board Rules 3.08 and 3.09 (GEM Rules 5.01 and 5.02), and the applicant's suitability for listing under Main Board Rule 8.04 (GEM Rule 11.06).
- 3.2 Depending on the facts and circumstances of each applicant and the seriousness of the non-compliance incident(s), the Exchange may request a demonstration period of compliance from the cessation of the non-compliance incident(s) to demonstrate that the rectification measures and enhanced internal control measures adopted are effective, and there is no financial impact on the applicant. The demonstration period would generally require to be an audited period.
- 3.3 If the non-compliance incidents are matters of material nature, they should also be highlighted in the "Summary and Highlights" section of the applicant's listing document.
- 3.4 In addition to the general disclosure of material non-compliance incidents, please also refer to Listing Decisions HKEx-LD96-1, HKExLD-97-1, HKEx-LD19-2011, HKEx-LD33-2012 and HKEx-LD73-2013 which relate to specific cases of non-compliance incidents for further guidance.
