

HKEx GUIDANCE LETTER

HKEx-GL37-12 (June 2012) (updated in July 2013, September 2013 and January 2014)

- effective for applications submitted on or after 1 October 2013

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| Subject | Guidance on indebtedness, liquidity, financial resources and capital structure disclosure in listing documents and sponsor's confirmation on working capital sufficiency statement |
| Listing Rules and Regulations | Main Board Rules 8.21A, 9.11(17b), 9.11(28) and Paragraphs 32 and 36 of Part A of Appendix 1 GEM Rules 12.22(13), 12.23A(1) and Paragraphs 32 and 36 of Part A of Appendix 1 |
| Related Publications | HKEx-GL38-12 - Guidance on the Latest Practicable Date and the latest date for Liquidity Disclosure in listing documents |
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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 guidance letter is largely a reproduction of the letters issued to market practitioners on 21 July 2008 and 5 October 2009 on the same subject and updated based on the Exchange's current practices. It supersedes the two letters mentioned.
- 1.2 The Exchange expects applicants to follow this guidance letter when preparing their listing applications. An Application Proof that does not follow this guidance may be considered not substantially complete as required under the Listing Rules. (added in July 2013)

2. Introduction

- 2.1 The Main Board and the GEM Rules (the "**Listing Rules**") require that sufficient information should be given to potential investors to enable them to make a properly informed assessment of an issuer. Applicants are required to include in their listing documents a working capital sufficiency statement and certain information, including a commentary regarding the applicants' indebtedness, liquidity, financial resources and capital structure (the "**Liquidity Disclosure**"). The Exchange considers that the Liquidity Disclosure should offer the management's qualitative assessment of the various items being discussed. This Guidance is published to assist applicants and their advisers to prepare the Liquidity Disclosure and the sponsor's confirmation on the working capital sufficiency statement.

3. Relevant Listing Rules

- 3.1 Main Board Rule 8.21A requires a new applicant to include a working capital statement in its listing document. In making this statement, the applicant must be satisfied after due and careful enquiry that it and its subsidiary undertakings, if any, have available sufficient working capital for the group's present requirements, that is for at least the next 12 months from the date of the listing document.
- 3.2 Main Board Rule 9.11(17b) (GEM Rule 12.22(13)) requires that where the Application Proof is required to contain a statement by the directors as to the sufficiency of working capital, an advanced draft of a letter from its sponsor confirming that it is satisfied that the working capital sufficiency statement in the Application Proof has been made by the directors after due and careful enquiry. (added in July 2013)
- 3.3 Main Board Rule 9.11(28) (GEM Rule 12.23A(1)) requires that before a listing document is bulk-printed, an applicant should submit a final letter from its sponsors confirming that it is satisfied that the directors' statement on working capital sufficiency has been made by the directors after due and careful enquiry and that the persons or institutions providing finance have stated in writing that such facilities exist. (added in July 2013)
- 3.4 Paragraph 32 of Part A of Appendix 1 to the Listing Rules ("**Paragraph 32**") requires a listing document to include a statement as at the most recent practicable date (which must also be stated) of the total amount of any debt securities, borrowings, indebtedness, mortgages, charges, contingent liabilities and guarantees, of the new applicant on a consolidated basis (the "**Indebtedness Statement**"). Paragraph 32(5) of Part A of Appendix 1 to the Listing Rules ("**Paragraph 32(5)**") also requires a listing document to include a commentary on the new applicant's (i) liquidity and financial resources; and (ii) capital structure.
- 3.5 Paragraph 36 of Part A of Appendix 1 to the Listing Rules ("**Paragraph 36**") requires the listing document to include a statement by the directors that in their opinion the working capital available to the group is sufficient for the group's requirements for at least 12 months from the date of the listing document or, if not, how it is proposed to provide the additional working capital considered by the directors to be necessary.

4. Guidance

Liquidity Disclosure

- 4.1 For the purpose of Paragraph 32, the Exchange ordinarily requires the Indebtedness Statement to be as at the most recent practicable date (see Guidance Letter HKEx-GL38-12). (updated in July 2013)
- 4.2 An applicant is ordinarily expected to disclose in its Indebtedness Statement details of its banking and other facilities as at the most recent practicable date (see Guidance Letter HKEx-GL38-12) including, among others, the respective amounts of total available facilities (including whether they are committed and unrestricted) and indebtedness, maturity profile, interest rates, security and guarantees. (updated in July 2013)

4.3 The Exchange also considers that information required under Paragraph 32(5) is critical to an assessment of an applicant's future prospects, its ability to generate cash and to meet its existing and known or reasonably likely future cash requirements. It should not merely be a restatement of financial statement information in a narrative form, or simply a tabulation of financial data without any commentary or analysis. An applicant is ordinarily expected to disclose the following in its listing document: -

- (a) in the Financial Information section, its net current asset (liabilities) position stating the composite assets and liabilities as at the most recent practicable date (see Guidance Letter HKEx-GL38-12) and the management discussion on this position (updated in July 2013);
- (b) an analysis and explanation of the sources and uses of cash and an analysis of the material changes in the underlying drivers (e.g. cash receipts from sales of goods and cash payments to acquire inventories). As different applicants have different business models, the presentation of their sources and uses of cash may vary. Accordingly, some specific disclosures relating to an applicant's principal businesses may provide more relevant and useful information to investors. An explicit identification of its sources and uses of cash at the outset would also help an applicant provide a precise and concise analysis of material changes in the underlying drivers of its performance;
- (c) an analysis and information of factors that would have a material impact on an applicant's liquidity. This may include:-
 - (i) funds necessary to meet contractual obligations, maintain current operations, complete projects underway and achieve stated objectives or plans;
 - (ii) commitments for capital or other major expenditures. An applicant which will incur significant capital expenditures in the near future should include enhanced disclosures in its listing document such as (1) amounts for the capital expenditure on major projects; (2) sources and amounts of funds earmarked for major projects; and (3) estimated cash payments and receipts of the applicant for the next two years, etc.;
 - (iii) the likelihood of future cash requirements associated with known trends and uncertainties, and an indication of the time periods in which resolution of the uncertainties is anticipated; and
 - (iv) relevant legal/ regulatory requirements and/or restrictions;
- (d) where an applicant has decided to raise material external debt financing, or if it is reasonably likely to do so in the future, a discussion and analysis of the amounts or range involved, the likelihood of obtaining the financing on terms acceptable to the applicant, the nature and the terms of the financing, other features of the financing and plans, and the impact on the applicant's cash position and liquidity. A listing document should include a negative statement if there are no external financing plans;

- (e) a discussion and analysis of material covenants related to outstanding debts (or covenants applicable to the companies or third parties in respect of guarantees or other contingent obligations) and the impact of debt covenants (or other covenants/ undertakings) on an applicant's ability to undertake additional debt or equity financing, etc.. A listing document should include a negative statement if there are no material covenants relating to an applicant's outstanding debts; and
- (f) any other information on an applicant's indebtedness, liquidity, financial resources and capital structure that would be material to an investor to make an informed assessment of the applicant's financial position and prospects. For example, the impact of any deterioration of the credit markets and/ or tightened monetary policies on the applicant's liquidity positions and business prospects including whether the availability of existing banking facilities is affected, or the applicant has suffered from any cancellation of orders or default in payments by its customers.

4.4 In addition to the above, for applicants with net current liabilities; negative operating cash flows for most of the track record period; significant capital commitments; high gearing ratios; and/or significant reclassification of long-term debt to short-term debts, they are expected to disclose the following in their listing documents:

- (a) the basis, with specific reference to the applicant's facts and circumstances, upon which the directors form the view that the listing applicant can meet the working capital requirements for at least the next 12 months from the date of the listing document under Paragraph 36 and, with basis, whether the sponsor concurs with the directors' view. This should include, where material, relevant stress tests on the key assumptions underlying the directors' view; and (updated in January 2014)
- (b) directors' confirmation on whether the applicant had material defaults in payment of trade and non-trade payables and bank borrowings, and/or breaches of finance covenants during the track record period. (added in July 2013)

Sponsor's confirmation on working capital sufficiency statement

4.5A At the time of submission of a listing application and an Application Proof, a sponsor is required to provide a final or an advanced draft confirmation confirming that the working capital sufficiency statement in the Application Proof has been made by the directors after due and careful enquiry (Main Board Rule 9.11(17b)/ GEM Rule 12.22(13)). The sponsor is expected to have reviewed the working capital forecast memorandum and must be satisfied with the bases and assumptions used in the preparation of the working capital forecast. However, the sponsor is **not required** to confirm upon submission of an Application Proof that the persons or institutions providing finance have stated in writing such facilities exist (added in September 2013 and updated in January 2014).

4.5 Before a listing document is bulk-printed, a sponsor is required to provide a final confirmation letter on the working capital sufficiency statement in the listing document under Main Board Rule 9.11(28) (GEM Rule 12.23A(1)). This final confirmation letter should be based on the sponsor's own due diligence work, the applicant's confirmation referred to in Paragraph 36 and the reporting accountants'

confirmation to the applicant (which should be copied to the sponsor, the Exchange and the Securities and Futures Commission). Both the sponsor and the reporting accountants' confirmation should be made on the same date. As required under the Listing Rules (see paragraph 3.3), a sponsor is required to confirm in the final confirmation letter that it is satisfied that the directors' statement on working capital sufficiency has been made by the directors after due and careful enquiry and that the persons or institutions providing finance have stated in writing that such facilities exist (added in July 2013 and updated in September 2013).
