



Hong Kong Law

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NEW SPONSORS REGIME TO COME INTO EFFECT FOR LISTING APPLICATIONS SUBMITTED ON OR AFTER 1 OCTOBER 2013 AND PUBLICATION OF THE HONG KONG SPONSOR DUE DILIGENCE GUIDELINES

Free download of 750+ page [Hong Kong Sponsor Due Diligence Guidelines](#), coordinated by Charltons, developed as an initiative of Hong Kong sponsors to promote standards in the conduct of due diligence for new Hong Kong listings, particularly relevant to Chinese companies, with a view to maintaining the integrity of the Hong Kong market and to assuring the quality of information disclosed in IPO prospectuses. The Hong Kong Sponsor Due Diligence Guidelines are available free to the public at www.duediligenceguidelines.com.

The Hong Kong Sponsor Due Diligence Guidelines were developed in light of the new paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, which sets out the standards and certain procedures, taken together with the Hong Kong Stock Exchange Listing Rules, expected by the SFC of sponsors in the conduct of a due diligence to support IPOs in Hong Kong, as an important reference point to guide sponsors and Hong Kong professionals as sponsors' work is ultimately to be judged "based on what a sponsor's peers would consider objectively appropriate having regard to all relevant facts and circumstances at the time of making a listing application". The Hong Kong Sponsor Due Diligence Guidelines are also an educational tool for less experienced market practitioners or those coming to Hong Kong from other jurisdictions.

The new regime on the regulation of sponsors under the Securities and Futures Commission's (SFC) new paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct) and the rule changes published by The Stock Exchange of Hong Kong Limited (the Exchange) to complement the SFC's new sponsors regulation will come into effect on 1 October 2013 and apply to listing applications submitted on or after 1 October 2013.¹

Developed as an initiative of Hong Kong sponsors in light of the new sponsors regime and in particular new paragraph 17 of the Code of Conduct, the Hong Kong Sponsor Due Diligence Guidelines have been published for the purpose of promoting standards in the conduct of due diligence in respect of Hong Kong listings of equity securities with a view of maintaining the integrity of the Hong Kong market and to assuring the quality of information disclosed in listing documents. The Hong Kong Sponsor Due Diligence Guidelines are available free to the public at www.duediligenceguidelines.com.

The following is a summary of the new sponsors regime and the Hong Kong Sponsor Due Diligence Guidelines.

¹ Implementation of certain of the Exchange's rule changes relating to publication will be suspended from 1 October 2013 to 31 March 2014.

New Sponsors Regime

Sponsor Appointment or Termination

- A sponsor (and, in the case of multiple sponsors, the last sponsor appointed) must be appointed at least two months before filing of a listing application.²
- A sponsor must notify the Exchange in writing of its appointment and provide a copy of its engagement letter to the Exchange when appointed.³ The total amount of sponsor fees paid and payable must be disclosed in the listing document.⁴
- Once appointed, a sponsor must inform the Exchange in writing of its reasons for ceasing to act, irrespective of whether a listing application has been submitted if a sponsor ceases to act for a new listing applicant at any time after its appointment.

Substantially Complete Listing Application

- Under the new sponsors regime, an Application Proof submitted with a listing application for vetting must be substantially complete except in relation to information that by its nature can only be finalised and incorporated at a later date.⁵
- The Exchange may return a listing application on the ground that the Application Proof is not substantially complete (a **Return Decision**).
- If a listing application is returned, a new application cannot be submitted until 8 weeks after the Return Decision.
- The Exchange anticipates that the submission of substantially complete Application Proofs will result in a faster, streamlined review process. The regulators' commenting process will focus on major issues such as eligibility, suitability, sustainability, compliance with the Listing Rules, Companies Ordinance and Securities and Futures Ordinance and any material disclosure deficiencies.

Initial 3-day Check during 1 year transitional period

- From 1 October 2013 to 30 September 2014, the Application Proof will be subject to an initial 3-day check by the Exchange based on a prescribed checklist (the **Initial 3-day Checklist**).⁶
- The Exchange may return a new listing applicant's listing application if the Application Proof fails to include matters listed in the Initial 3-day Checklist. The Initial 3-day Checklist involves only a limited qualitative assessment; the Exchange may accept a listing application for detailed vetting and yet subsequently return it for not being substantially complete.
- At the end of this 3-day check, the Exchange will either confirm acceptance of the listing application for detailed vetting or will return the listing application.
- If an application is returned during the initial 3-day check, there is an 8-week moratorium on filing a new application.

Publication of Application Proof

- Application Proofs submitted with listing applications on or after 1 April 2014 will be required to be published on the Exchange's website in both English and Chinese.
- An Application Proof does not require pre-vetting or clearing from the Exchange or the SFC before its publication.

Confidential filings

- A confidential filing of an Application Proof is permitted for applicants which have been listed on a recognised overseas exchange for not less than five years and which have a significantly large market capitalisation (e.g. US\$200 million).
- The Exchange or the SFC may waive or modify the publication requirements for an Application Proof in the case of an Application Proof of a spin-off from an overseas listed parent upon application by the applicant at least two months before the filing of its Application Proof.

Review Procedure

- Where a listing application is returned, the listing application may request a review of the decision.

² Main Board Listing Rule 3A.02B and GEM Listing Rule 6A.02B.

³ Main Board Listing Rule 3A.02A and GEM Listing Rule 6A.02A.

⁴ FAQ No. 30 of Exchange FAQ Series 24 Listing Rule changes to complement the Securities and Futures Commission's New Sponsor Regulation effective on 1 October 2013.

⁵ Main Board Listing Rule 9.03 and GEM Listing Rule 12.09.

⁶ The checklist is set out in Table B of Guidance Letter HKEx-GL56-13.

- On the date of completion of all review procedures or when the time for invoking them has lapsed, the sponsor and listing applicant's names will be displayed on a designated Exchange webpage.
- For applications which were previously returned by the Exchange, there is an eight week moratorium on the submission of a new listing application.

Information on the Exchange's Website

- The Exchange will publish status marks and information on the Exchange's website to indicate the status of each listing application.

Replacement of WPIP regime with PHIP regime

- Effective 1 October 2013, the requirement to post a Web Proof Information Pack (WPIP) will be replaced in its entirety with the requirement to publish a Post Hearing Information Pack (PHIP).
- A new applicant must submit a PHIP for publication on the Exchange's website following the receipt of a post hearing letter from the Exchange together with a request to post a PHIP and when the new applicant's directors conclude that the material comments of the Exchange and the SFC have been addressed.
- No pre-vetting or clearance from the Exchange or the SFC is required before publication of the PHIP. PHIPs must be published in both English and Chinese.
- New Practice Note 22 of the Listing Rules sets out the requirements for the content and publication of PHIPs.

Hong Kong Sponsor Due Diligence Guidelines

- The Hong Kong Sponsor Due Diligence Guidelines (the **Guidelines**) are intended to address the question of how sponsors and their advisers can in practice achieve the quality of sponsor work expected by the SFC, with the objective of compiling know-how from across the industry in respect of the conduct of due diligence in respect of Hong Kong listings of equity securities.
- It is hoped that the Guidelines will be one of the important reference points to guide sponsors bearing in mind that sponsors' work is ultimately to be judged "based on what

a sponsor's peers would consider objectively appropriate having regard to all relevant facts and circumstances at the time of making a listing application".⁷

- The Guidelines should have an additional benefit of serving as an educational tool for less experienced market practitioners or those who come to Hong Kong from other jurisdictions.
- The underlying intention is that, as far as possible, the Guidelines should set out practical steps that could be considered at each stage of a due diligence.
- The Guidelines cover the following areas of due diligence and the listing application process: (a) submission readiness; (b) disclosure to the market; (c) verification practice; (d) knowing the listing applicant and its management; (e) business model; (f) interviews of major business stakeholders; (g) controlling shareholders' relationship with the listing applicant; (h) connected persons and connected transactions; (i) financial; (j) internal controls; (k) distributors, franchisees and consignees; (l) anti-corruption, anti-money laundering and sanctions; (m) material contracts; (n) legal and regulatory compliance and legal proceedings and disputes; (o) interaction with third parties including expert advisers; (p) foreign lawyers; (q) accountants; (r) inspection of assets and property valuers' reports; (s) environmental; (t) mineral companies; (u) biological assets; (v) record keeping; (w) sponsor appointment, fees, staffing and controls; (x) expectations of the listing applicant and its directors during the listing application process; (y) overall management of a public offer; (z) communications with regulators; (aa) provision of information to analysts; (bb) dealing with "material deficiencies" of the listing applicant; and (cc) escalation of critical matters.
- The Guidelines are structured in three interrelated sections:

- Standards – these are statements of sponsors' due diligence obligations under the new sponsors regime;
- Guidance – this section sets out guidance as to the market's interpretation of the Standards which elaborates on, but does not in any way extend, the obligations of sponsors under the Standards; and

⁷ Paragraph 106 of the Consultation Conclusions on the regulation of IPO sponsors.

- Recommended Steps – these set out practical steps which would generally be expected to meet the Standards in a typical case.
- The Guidelines are available free to the public at www.duediligenceguidelines.com.

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