

HKEX GUIDANCE LETTER
HKEX-GL98-18 (July 2018)

Subject	Guidance on disclosure in listing documents – listing applicants' names; statistics and data quoted; listing document covers; non-disclosure of confidential information; and material changes after trading record period
Listing Rules	Main Board Rules 2.03(2), 2.13(2), 3A.05, 3A.13, 9.07, 11.12, 11.15, paragraph 4 of Practice Note 21, paragraphs 2 and 38 of Appendix 1A and Appendix 19 GEM Rules 2.06(2), 2.18, 6A.05, 6A.13, 12.15, 14.23, 14.27, 17.56(2), paragraph 4 of Practice Note 2, paragraph 38 of Appendix 1A and Appendix 7G
Related Publication	N/A
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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 Department on a confidential basis for an interpretation of the Listing Rules or this letter.*

Purpose

1. This letter provides guidance on disclosure of various matters in a listing document: (a) appropriateness of listing applicants' names; (b) statistics and data quoted; (c) listing document covers; (d) non-disclosure of confidential information; and (e) material changes in financial, operational and/ or trading positions after trading record period.

Relevant Listing Rules

2. Main Board Rule 2.03(2) (GEM Rule 2.06(2)) provides that the Listing Rules are designed to ensure that the issue and marketing of securities is conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer.
3. Main Board Rule 2.13(2) (GEM Rule 17.56(2)) requires, among other things, that the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive.
4. Main Board Rule 3A.05 (GEM Rule 6A.05) provides that a new applicant and its directors must assist the sponsor to perform its due diligence work and to enable the sponsor to gain access to all relevant records in connection with the listing application.
5. Main Board Rule 3A.13 (GEM Rule 6A.13) requires each sponsor to submit a declaration under Appendix 19 to Main Board Rules (Appendix 7G to GEM Rules).

The sponsor is required to confirm, among other things, that it has made reasonable due diligence inquiries and has reasonable grounds to believe that the applicant complies with the Listing Rules, and that the listing document is true, accurate, complete and not misleading in all material respects.

6. Main Board Rule 9.07 (GEM Rule 12.15) provides that the listing document must not be issued until the Exchange has confirmed that it has no further comments.
7. Main Board Rule 11.12 (GEM Rule 14.23) provides that the directors of an issuer are responsible for the information contained in the listing document.
8. Main Board Rule 11.15 (GEM Rule 14.27) provides that a listing document may include illustrations of a pictorial or graphic nature provided that such illustrations are not misleading or likely to mislead in the form and context in which they are included.
9. Paragraph 38 of Appendix 1A to the Main Board Rules (Paragraph 38 of Appendix 1A to the GEM Rules) requires disclosure of a statement by the directors of any material adverse change in the financial or trading position of the group since the end of the period reported on in the accountants' report, or an appropriate negative statement.
10. Paragraph 4 of Practice Note 21 to the Main Board Rules (Paragraph 4 of Practice Note 2 to GEM Rules) provides that sponsors are expected to document their due diligence planning and significant deviations from their plans.
11. Paragraph 2 of Appendix 1A to the Main Board Rules (GEM Rule 2.18) requires the directors' responsibility statement to include the accuracy and completeness of information in listing documents.

Guidance

Overall

12. The following guidance is formed based on the basic requirement that the content of listing documents must provide potential investors sufficient, true and accurate information to enable them to make a properly informed assessment of an issuer and of the securities for which listing is sought.

Listing applicants' names

13. The name of an applicant is essentially a commercial matter. However, the Exchange's experience is that a name could be misleading. For example, during a technology boom, more applicants bear names with words such as "High-Tech", "Bio-Tech"; and there has been a trend for companies to brand themselves as "green" in view of the increasing awareness of environmental concerns. If such "branding" is not reasonable, there is a risk of misleading the market.
14. The Exchange's focus is to ensure the description of the applicant's business in the listing document, including its name, appropriately reflects its present and future business engagements as required under Rule 2.13 (GEM Rule 17.56). This is

assessed based on the specific circumstances of each applicant, including its history, committed development plan and its level of involvement at different stages.

Statistics and data quoted in listing documents

15. It is common to include in listing documents statistics, data or extracts from the following three main categories:
 - (a) public official documents or statements;
 - (b) a report of an expert; and
 - (c) commissioned/ non-commissioned research reports.
16. For information sourced from public official documents or statements, we recognise the difficulty in assessing the competence of the public sources producing the official data, which in some cases may be the only available source of information on a particular topic. We therefore allow risk factors and other language limiting directors' and sponsors' responsibilities in ensuring the accuracy, reliability and/ or completeness of the information.
17. For information sourced from expert reports, the use of cautionary language in the listing document to limit directors' and sponsors' responsibilities is not allowed as it will be inconsistent with their responsibilities under the Rules that they have to, among other things, exercise reasonable care when selecting an expert to prepare a report for inclusion in a listing documents.
18. For information sourced from commissioned/ non-commissioned research reports, given the availability of data and research reports from various sources, directors and sponsors should make reasonable enquiries to confirm the accuracy and completeness of the information, and make appropriate judgment in choosing what data to be used and how it is presented in the listing document.
19. Directors and sponsors may face practical difficulties in independently verifying the information in the commissioned/ non-commissioned research reports. It would therefore be appropriate to include cautionary language in this regard to bring to investors' attention the uncertainties involved.
20. In this respect, the Exchange:
 - (a) allows cautionary language along the following lines: *"We believe that the source[s] of this information [is an/ are] appropriate source[s] for such information and have taken reasonable care in extracting and reproducing such information. We have no reason to believe that such information is false or misleading or that any fact has been omitted that would render such information false or misleading. The information has not been independently verified by us, the Sponsor, the Underwriters or any other party involved in the Global Offering and no representation is given as to its accuracy."*; and
 - (b) expects disclosure that the directors and sponsors have exercised reasonable care in selecting and identifying the named information sources, in compiling,

extracting, and reproducing the information, and in ensuring no material omission of the information.

21. Nevertheless, directors and sponsors are responsible for taking steps to ensure that information is reasonably represented in the listing document under the relevant Rules. Any qualifying language proposed to be included in the listing document should not violate this standard.
22. Where an applicant discloses statistics, data or information published on the Exchange's website, directors and sponsors must obtain consent from the Exchange's Legal Services Department for such disclosure.

Listing document covers

23. The general rule is that information contained in or conveyed by a listing document cover should be accurate and complete in all material aspects and should not be misleading or deceptive so as to enable a reasonable investor to form a valid and justifiable opinion of an applicant.
24. When assessing whether a listing document cover is acceptable, we consider:
 - (a) the likely overall impression given by it;
 - (b) whether the use of illustrations or examples to highlight an aspect of disclosure in a listing document is appropriate;
 - (c) whether the illustrations shown on a listing document cover are properties/ employees of an applicant;
 - (d) whether the graphs and other diagrams are drawn to scale, and what is depicted is a fair representation of the position with all relevant information provided; and
 - (e) whether the logo shown has been registered, and if not, the likelihood that the logo may infringe other parties' intellectual property right.
25. Matters that we consider to be unacceptable on the front and/ or back cover of a listing document include, but not limited to:
 - (a) products, buildings, premises, trademark, logos that are not the applicant's properties;
 - (b) images of a globe or continents, unless the applicant has substantial global or international presence;
 - (c) any design that may present the offering's favourable characteristics as certain or more probable, e.g. upward arrows on graphical information;
 - (d) artistic impressions of properties which have not yet been completed; and
 - (e) any design that gives more prominence to a sponsor/ lead manager than to an

applicant, e.g. by using an exceptionally large font size for their names.

26. Before noon on the day when an applicant would like to obtain the Exchange's clearance for bulk-printing a listing document cover, it should provide a written confirmation from the applicant or the sponsor that (a) the logo shown has been registered, and if not, the legal advisers' view, with basis, on the likelihood that the logo may infringe other parties' intellectual property right; and (b) the listing document covers (both English and Chinese versions) meet the principles set out in this guidance letter.
27. As a facilitative measure, we will issue a separate letter confirming the applicant's stock code, Chinese and English stock short names and that the Exchange has no further comment on the listing document covers.

Non-disclosure of confidential information

28. The Exchange only accepts non-disclosure of confidential information under very special situations. Applicants must demonstrate good cause why the information cannot be disclosed. All requests for non-disclosure of confidential information are considered on a case-by-case basis.
29. In determining whether to allow an applicant not disclosing certain confidential information in a listing document, we take into account the following:
 - (a) whether the inconvenience caused to the applicant by the disclosure outweighs the investors' information needs;
 - (b) whether the alternative information disclosed in the listing document provides investors with sufficient, true and accurate information to enable them to make a properly informed assessment of the issuer and its securities as a whole; and
 - (c) the directors' views and the sponsor's declaration under Main Board Rule 3A.13 (GEM Rule 6A.13) and Appendix 19 to the Main Board Rules (Appendix 7G to GEM Rules) on whether a listing document contains all material information to enable a reasonable investor to make a properly informed assessment of the issuer and its securities.
30. The Exchange expects sponsors to have access to all information of the applicant necessary to enable them to complete their due diligence process. If a sponsor is prevented from access to certain information by law ("**Restricted Information**"), the sponsor must demonstrate the steps it has taken to fulfill its obligations under Chapter 3A of the Main Board Rules (Chapter 6A of the GEM Rules) despite not having access to the Restricted Information. The Exchange will not accept a sponsor confirming completion of the due diligence process with a qualification solely due to the applicant's internal policy on access restriction for confidential information, even if alternative due diligence work has been performed.

Disclosure of material changes after trading record period

31. An applicant must disclose material adverse changes to its financial and/ or trading position after the trading record period in its listing document.
32. Sponsors and the applicants are best positioned to determine what information is material having regard to the specific facts and circumstances of each listing applicant. While this determination requires a degree of judgment, sponsors and the applicants should consider, as a minimum, whether there is any material adverse change which has taken place or is expected to take place in the near future, in the technological, market, economic, legal or operating environment in which the applicant operates. Non-exhaustive examples include:

Financial

- (a) adverse change in the applicant's financial performance after the trading record period;
- (b) adverse change in market interest rates, selling prices of key products sold or services provided and purchase prices of key raw materials;

Trading

- (c) loss of major customers/ suppliers or evidence of their deteriorating financial condition;
- (d) matters that affect the applicant's sales, or material product returns/ recall requests from customers;
- (e) international sanctions on countries/ companies with which the applicant conducts business;

Operational

- (f) loss of permits/ licences/ patents or other intellectual property;
 - (g) change in laws and regulations (e.g. prohibiting adoption of structured contracts) or government subsidising policies (e.g. government grants or preferential tax arrangements);
 - (h) evidence of obsolescence of or physical damage to the applicant's key production units/ assets/ inventories;
 - (i) litigation/ potential litigation from stakeholders, or any adverse developments in existing material litigation or claims; or
 - (j) loss of key personnel, significant labour disputes/ strikes.
33. Applicants should disclose in the "Summary", "Risk Factors" and "Financial Information" sections of the listing document (a) qualitative or quantitative disclosure

with commentary on the adverse changes after the trading record period; and (b) how these changes affect their financial and/ or trading position, to enable investors to have a sense of materiality of such adverse changes. In this regard, the Exchange accepts qualitative or quantitative disclosure on financial information/ operating data such as revenue, gross profit/ loss, gross profit/ loss margin, average selling price and sale volume. However, disclosure of such information must be as updated as possible and will depend on the facts and circumstances of each case.

34. If an applicant discloses its unaudited net profit/ loss figure, or financial information which allows investors assess the applicant's estimated net profit/ loss since the end of the trading record period (e.g. disclosing both revenue and net profit margin), such disclosure constitutes a profit forecast/ estimate and is subject to requirements under Main Board Rules 11.17 and 11.18 (GEM Rules 14.29 and 14.30).
35. Any quantitative information (other than those that constitutes a profit forecast/ estimate in paragraph 34 above) relating to an applicant's financial performance after the trading record period should be reviewed by the reporting accountants, and a statement must be included in the listing document that such financial information has been reviewed by the reporting accountants. The disclosure of the comparative financial information to such financial information is not required but if disclosed, should at least be reviewed by the applicant's sponsor.
