

HKEx GUIDANCE LETTER

HKEx-GL7-09 (July 2009) (updated in September 2010 and July 2013) - effective for applications submitted on or after 1 October 2013

Subject	Guidance on documents required for re-filing a listing application (a) more than six months after the date of the original listing application; or (b) where a sponsor has changed.
Listing Rules and Regulations	Main Board Rules 3A.02B, 3A.17, 3A.18 and 9.03(1) GEM Rules 6A.02B, 6A.17, 6A.18, 12.07 and 12.08
Related Publications	HKEx-GL57-13 - Guidance on logistical arrangements for publication of Application Proofs, Post Hearing Information Packs (“PHIPs”) and related materials on the Exchange’s website for listing applicants
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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.*

Background

We have received enquiries about the documents required for re-filing a listing application (i) more than six months after the date of the original listing application or (ii) where a sponsor has changed. In particular, concerns were expressed whether the following documents were required to be resubmitted/ submitted: ***(Updated in July 2013)***

- (a) a new listing application form (Form A1 under Main Board Rules or Form 5A under GEM Rules, “**Application Form**”) and the initial listing fee; ***(Updated in July 2013)***
- (b) documents required under Main Board Rules 9.11(1) to (17c)/ GEM Rules 12.22 and 12.23 and relevant guidance posted on the Exchange’s website (collectively the “**Application Documents**”); and ***(Updated in July 2013)***
- (c) any other documents (e.g. a separate submission to address the matters outstanding upon the expiry of the original application).

Relevant Listing Rules and interpretation

Main Board Rule 9.03(1) provides that “*a new applicant must apply for a listing on a Form A1 set out in Appendix 5. This form must be completed by the sponsor for the new applicant and accompanied by:-* ***(Updated in July 2013)***”

- (a) *the documents stipulated in rule 9.10A(1); and (Updated in July 2013)*
- (b) *the initial listing fee...*

Main Board Rule 9.03(1) further provides that “*if an applicant has delayed its proposed timetable and more than 6 months have elapsed since the date of its listing application form, the applicant will forfeit the initial listing fee. An applicant wishing to reactivate its listing application must submit a new listing application form accompanied by the initial listing fee. If there is a change in sponsor (including an addition or removal of a sponsor), the applicant must also submit a new listing application form accompanied by the initial listing fee.*” **(Updated in July 2013)**

GEM Rule 12.07 provides that “*if the listing of a new applicant remains outstanding for more than 6 months after the date of the application form, a new application form together with a further listing fee in the prescribed amount must be submitted to the Exchange. Any initial listing fee paid will, in such circumstances, be forfeited.*” **(Updated in July 2013)**

GEM Rule 12.08 provides that “*if there is a termination or addition of a Sponsor during the vetting process of any listing document to be issued by a new applicant, the applicant must submit a new listing application detailing a revised timetable and...a further initial listing fee in the amount specified in Appendix 9. Any initial listing fee paid will, in such circumstances, be forfeited.*” **(Updated in July 2013)**

Main Board Rule 3A.17/ GEM Rule 6A.17 provides that “*in the case of resignation by, or termination of, the sponsor during the processing of the initial listing application:*

- (1) ...
- (2) *if the departing sponsor was the sole independent sponsor, the replacement sponsor must notify the Exchange of its appointment in accordance with Main Board Rule 3A.02A(1)/GEM Rule 6A.02A(1) and re-submit, on behalf of the new applicant, a listing application not less than 2 months from the date of its formal appointment detailing a revised timetable together with a further initial listing fee...*” **(Updated in July 2013)**

Main Board Rule 3A.18/ GEM Rule 6A.18 provides that a replacement sponsor shall not be regarded as having satisfied any of the obligations of a sponsor by virtue of work performed by a predecessor sponsor. **(Added in July 2013)**

Main Board Rule 3A.02B/ GEM Rule 6A.02B requires that:-

- “(1) *a listing application must be submitted by or on behalf of a new applicant not less than 2 months from the date of the sponsor’s formal appointment.*
- (2) *where more than one sponsor is appointed in respect of a listing application, the listing application can only be submitted not less than 2 months from the date the last sponsor is formally appointed.*” **(Added in July 2013)**

Our Guidance

To streamline the procedure and eliminate redundancy of voluminous documents which may have already been submitted to the Exchange, we set out the following guidance.

The particular circumstances of a listing applicant may fall within more than one of the scenarios as set out in this guidance (e.g. a renewed application after six months from the date of the original listing application which involves appointing an additional sponsor; appointing an additional sponsor in connection with resignation of an original sponsor). If so, the sponsor is required to submit all the relevant documents required under each applicable scenario. (Updated in July 2013)

For the publication of subsequent Application Proofs, please refer to our Guidance Letter HKEx-GL57-13. (Added in July 2013)

(I) Renewed application after six months from date of original application

(A) New Application Form and initial listing fee

At present, when six months have elapsed since the submission of an Application Form, the Exchange will issue a letter informing the sponsor that the Application Form has lapsed and the initial listing fee is forfeited. To reactivate its application, an applicant must submit a new Application Form with a further initial listing fee under Appendix 8 to the Main Board Rules/ Appendix 9 to the GEM Rules. (Updated in July 2013)

(B) Application Documents (Updated in July 2013)

(i) *Where renewed application submitted within three months after lapse of original application*

The Exchange considers a new application submitted within three months of lapsed application by the applicant as a renewal/continuance of its original application. Accordingly, all the Application Documents previously submitted to the Exchange will remain valid and applicable, unless there have been material changes in them. Where there have been material changes in certain documents previously submitted, the sponsor should advise the Exchange of the changes and submit revised documents. Fees are payable as stated in (A) above. (Updated in July 2013)

(ii) *Where renewed application submitted more than three months after lapse of original application*

The Exchange considers a new application filed more than three months after a lapsed application by the applicant as a completely new application as the information contained in the original submitted Application Documents would be outdated.

Accordingly, the sponsor must resubmit a full set of updated Application Documents to the Exchange. Fees are payable as stated in (A) above. ***(Updated in July 2013)***

(C) Other documents

It is the sponsor's responsibility to ensure that all information, including the Application Documents previously provided remains valid, accurate and complete in all material respects. In all circumstances where a renewed application is submitted, whether before or after three months from the lapse of the original application, the sponsor is to provide a separate submission together with supporting documents addressing: ***(Updated in July 2013)***

- (i) all outstanding matters set out in the Exchange's letter to the sponsor on expiry of the original application; and
- (ii) any material changes in the listing application, business or circumstances of the applicant.

(II) Change in sponsor

(A) New Application Form and the initial listing fee ***(Updated in July 2013)***

Under Main Board Rule 9.03(1)/ GEM Rule 12.08, the sponsor must submit a new Application Form accompanied by the initial listing fee if there is a change in sponsor (including an addition or removal of a sponsor). Main Board Rule 3A.17(2)/ GEM Rule 6A.17(2) stipulate similar requirements where the sole independent sponsor of the listing application is replaced. The Exchange considers the role of sponsor critical in bringing an applicant to listing and it forms an integral part of the IPO assessment process. Therefore, a change of sponsor is a material change of circumstances which may affect our judgment on matters relating to the applicant. ***(Updated in July 2013)***

Further, Main Board Rule 3A.02B/ GEM Rule 6A.02B requires that a listing application must be submitted by or on behalf of an applicant not less than 2 months from the date of the sponsor's formal appointment. In line with this requirement, for all new Application Form submitted due to a change in sponsor, any appointment of sponsor must be made at least two months before the date of new Application Form. ***(Added in July 2013)***

(B) Application Documents and other documents ***(Updated in July 2013)***

The Exchange's established practice is to require the sponsor to submit the following documents whenever there is a change in the sponsor under the following scenarios:

- (i) *Appointment of replacement sponsor with termination of all original sponsors or all independent sponsors: (Updated in July 2013)*

Where a replacement sponsor is appointed with termination of all original sponsors or all independent sponsors, the Exchange ordinarily treats the application as a completely new application and requires the replacement sponsor to resubmit the whole set of updated Application Documents. This is because the replacement sponsor will not be regarded as having satisfied its obligations by virtue of work performed by a predecessor sponsor under Main Board Rule 3A.18/ GEM Rule 6A.18. To ensure that the Exchange receives sufficient information before it begins the substantive review of the application, the replacement sponsor must also provide: ***(Updated in July 2013)***

- (a) the reasons and circumstances of the original sponsor ceasing to act;
- (b) a copy of the clearance letter (if any) from the original sponsor; and
- (c) any matters the replacement sponsor considers need to be brought to the Exchange's attention regarding the application and/or the termination of the original sponsor.

(ii) Addition of new sponsor

Where an additional sponsor is appointed, and at least one of the original and independent sponsors remains, the Exchange ordinarily will not require the sponsors to resubmit the Application Documents. However, it requires: ***(Updated in July 2013)***

- (a) the reasons for appointing an additional sponsor; and
- (b) confirmation from the new sponsor that it fully agrees with all submissions previously made by the original sponsors.

(iii) Resignation or termination of sponsor

Where one or more sponsors have resigned or been terminated and at least one of the original and independent sponsors remains, the Exchange ordinarily will not require the sponsor to resubmit the Application Documents. However, the sponsor must provide: ***(Updated in July 2013)***

- (a) the reasons and circumstances of the outgoing sponsor ceasing to act;
- (b) a copy of the clearance letter (if any) from the outgoing sponsor; and
- (c) any matters that the current sponsor considers need to be brought to the Exchange's attention regarding the application and/or the resignation or termination of the outgoing sponsor.

The Exchange will no longer require a confirmation of Main Board Rule 3A.18/ GEM Rule 6A.18. However, replacement, additional or new sponsor is reminded that its obligations as sponsor will not be regarded as having been satisfied by virtue of work performed by the original, existing or outgoing sponsor.
