

HKEx GUIDANCE LETTER

HKEx-GL38-12 (June 2012) (updated in July 2013, September 2013 and March 2014) – effective for applications submitted on or after 1 October 2013

Subject	Guidance on the Latest Practicable Date and the latest date for Liquidity Disclosure in listing documents
Listing Rules and Regulations	Main Board Rules 2.03(2); 2.13; 11.07; Paragraphs 32 and 38 of Part A of Appendix 1 GEM Rules 2.06(2); 17.56; 14.08(7); Paragraphs 32 and 38 of Part A of Appendix 1 Paragraphs 3 and 23 to 25 of the Third Schedule to the Companies Ordinance¹
Related Publications	HKEx-GL37-12 – Guidance on indebtedness, liquidity, financial resources and capital structure 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.*

I. Purpose

1. This letter provides guidance on the latest practicable date for ascertaining information in a listing document, and the latest date for liquidity disclosure in a listing document.
- 1A. This guidance letter has been updated to take into account the amended Listing Rules which require that, effective from 1 October 2013, all Application Proofs must be substantially complete. 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*).

¹ Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014.

II. Applicable Rules and Regulations

Listing Rules

2. Main Board Rule 2.03(2) (GEM Rule 2.06(2)) requires that potential investors must be given sufficient information to enable them to make a properly informed assessment of an issuer.
3. Main Board Rule 2.13 (GEM Rule 17.56) requires that the information in any issuer's announcement or corporate communication must be accurate and complete in all material respects and not be misleading or deceptive. Main Board Rule 11.07 (GEM Rule 14.08(7)) sets out an overriding general duty of disclosure for the content of a listing document.
4. Paragraph 32 of Part A of Appendix 1 to the Main Board and GEM Rules respectively requires the listing document to include a statement as at the most recent practicable date (which also must be stated) of a new applicant's indebtedness (or an appropriate negative statement), liquidity, financial resources and capital structure, if material ("**Liquidity Disclosure**").
5. Paragraph 38 of Part A of Appendix 1 to the Main Board and GEM Rules respectively requires 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 ("**Any Material Change Statement**").

Companies Ordinance¹ ("CO") (Updated in March 2014)

6. Paragraph 3 of the Third Schedule to the CO requires a prospectus to contain sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the shares and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares being offered and the nature of the company and the nature of the persons likely to be consider acquiring them.
- 6A. Paragraphs 23 to 25 of the Third Schedule to the CO require a prospectus to contain the following particulars:-
- (a) any bank overdrafts or other similar indebtedness of the company and its subsidiaries, if any, as at the latest practicable date or, if there are no bank overdrafts or other similar indebtedness, a statement to that effect;
 - (b) any hire purchase commitments, guarantees or other material contingent liabilities of the company and its subsidiaries, if any, or, if there are none such, a statement to that effect; and
 - (c) the authorized debentures of the company and its subsidiaries, if any, the amount issued and outstanding or agreed to be issued, or if no debentures are outstanding a statement to that effect (*added in July 2013*).

III. Guidance

7. An Application Proof and subsequent draft listing documents must contain sufficient information on, among other things, an applicant's indebtedness, liquidity, financial resources, capital structure and working capital sufficiency. Directors and sponsors are expected to have performed sufficient due diligence to ensure accurate, complete and up-to-date information in these documents (*updated in July 2013*).
- 7A. Under the Listing Rules, the Liquidity Disclosure must reflect an applicant's liquidity position as at the most recent practicable date and the Any Material Change Statement must cover the period since the end of the period reported on in the accountants' report. Paragraphs 8(b) and 8A(b) provide guidance on the latest date for the Liquidity Disclosure while paragraph 9 is on the period to be covered by the Any Material Change Statement (*added in September 2013*).
- 7B. To fulfil the general disclosure obligation under Main Board Rule 2.03(2) (GEM Rule 2.06(2)), an applicant may disclose in its listing document information as at the latest practicable date, such as the number of employees, details of projects/ contracts on hand and status of outstanding litigations, etc.. Paragraphs 8(a) and 8A(a) provide guidance on the latest practicable date for such information to be disclosed in a listing document (*added in September 2013*).

Application Proofs (*Added in July 2013*)

8. We expect the following for Application Proofs submitted on or after 1 October 2013:
 - (a) **the latest practicable date** in an Application Proof is a date no more than 10 calendar days before the date of the Application Proof. Financial information as at the latest practicable date can be in brackets to indicate it will be updated in the Post Hearing Information Pack (to the extent practicable) and the final listing document according to paragraph 8A(a) below; and
 - (b) **the latest date for Liquidity Disclosure** in an Application Proof is a date no more than two calendar months before the date of the Application Proof. Financial information disclosed here can be in brackets to indicate they will be updated in the Post Hearing Information Pack (to the extent practicable) and the final listing document according to paragraph 8A(b) below.

Final listing documents (*Updated in July 2013*)

- 8A. We expect the following for final listing documents:
 - (a) **the latest practicable date** in a final listing document is a date no more than 10 calendar days before the date of the document; and
 - (b) **the latest date for the Liquidity Disclosure** in a final listing document is a date no more than two calendar months before the date of the listing document. It is not sufficient to include only an indebtedness statement and other disclosure items under paragraph 32 of Part A of Appendix 1 to the Main Board and GEM Rules. Other

information including commentary on liquidity and financial resources and capital structure must also be included (refer to Guidance Letter HKEx-GL37-12 for further guidance).

9. The Any Material Change Statement is usually included in the “Summary” and “Financial Information” sections of a listing document disclosing details of any material adverse change in the financial or trading position of the group or an appropriate negative statement. The period covered by the Any Material Change Statement should be from the end of the period reported on in the accountants’ report and up to the date of the document. This timeframe is in line with “expert consents” in expert reports in a listing document which are also made up to the date of a listing document (*updated in September 2013*).
10. Repealed in July 2013.