

**HKEX LISTING DECISION  
HKEX-LD127-2020 (June 2020)**

**[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024]**

<b>Summary</b>	
<b>Parties</b>	Company A to Company D – Main Board listing applicants whose applications were returned by the Exchange in 2019
<b>Issue</b>	To provide guidance on why the Exchange returned certain listing applications
<b>Listing Rules</b>	Main Board Rule 9.03(3) GEM Rules 12.09 and 12.14
<b>Related Publications</b>	HKEX-LD84-2014 HKEX-LD91-2015 HKEX-LD101-2016 HKEX-LD106-2017 HKEX-LD120-2018
<b>Decision</b>	The Exchange returned the applications

## **PURPOSE**

1. This Listing Decision sets out the reasons why the Exchange returned certain listing applications from 1 January to 31 December 2019. For the reasons listing applications were returned prior to this period, please refer to the listing decisions stated in “Related Publications” above. The Exchange did not return any listing applications in 2018.

## **APPLICABLE RULES, REGULATIONS AND PRINCIPLES**

2. Main Board Rule 9.03(3) (GEM Rule 12.09(1)) requires an applicant to submit a listing application form, an Application Proof and all other relevant documents under Main Board Rule 9.10A(1) (GEM Rules 12.22 and 12.23), and the information in these documents must be substantially complete, except in relation to information that by its nature can only be finalised and incorporated at a later date.
3. If the Exchange decides the information in the application is not substantially complete, the Exchange will suspend its vetting of the application. All documents, including the Form A1 (Form 5A for GEM cases) (except for the retention of a copy of these documents for the Exchange’s record) submitted to the Exchange will be returned to the sponsor (GEM Rule 12.09(2)).
4. Details as to the individual backgrounds of the returned applications can be found at **Appendix 1**.

## FURTHER GUIDANCE

5. *Failure to include financial information required under Main Board Rule 4.04(1) (GEM Rule 7.03(1)) in the Application Proof*
- (a) Main Board Rule 4.04(1) requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years<sup>1</sup> immediately preceding the issue of the listing document (two financial years for GEM applicants under GEM Rules 7.03(1) and 11.10). As listing applicants who intend to issue listing documents shortly after the year end, usually experience practical difficulties in producing audited accounts for the latest financial year, HKEX Guidance Letter HKEX-GL25-11 provides guidance that the Exchange may grant waivers from strict compliance with these Rules if the applicant is to list on the Main Board within three months (two months for GEM) after the latest year end and complies with other conditions stated therein.
  - (b) As stated in paragraphs 2 and 3 above, an applicant must submit a listing application form, an Application Proof and all other relevant documents which must be substantially complete, or the Exchange will return its application. HKEX Guidance Letter HKEX-GL56-13 further sets out the conditions and examples when the Exchange will accept an Application Proof with an accountants' report covering a period shorter than the period required under the Rules.
  - (c) As an applicant's historical financial information forms an integral part of the Exchange's vetting, failure to include financial information as required under the principles and practices cited in paragraphs 5(a) and (b) above would result in the Application Proof being not substantially complete. This assessment is a bright line test. In assessing whether the financial information included in an Application Proof is substantially complete, the Exchange will normally use the proposed listing date as indicated by the applicant to determine the corresponding track record period for which the accountants' report should be included in the final prospectus.
  - (d) By way of example, if a Main Board applicant's most recent financial year ends on 31 December 2019 and intends to list on or after 1 April 2020<sup>2</sup>, Main Board Rule 4.04(1) requires that the accountants' report to be included in the final prospectus should at least cover the three financial years ended 31 December 2019. For the purposes of the Application Proof, under HKEX Guidance Letter HKEX-GL56-13:
    - (i) If the applicant files its application before the end of the most recent financial year (i.e., before end of December 2019), the application will be returned for not being substantially complete. In this circumstance, the Exchange has no sufficient basis/ information to assess the listing application as the applicant has yet to have completed the last full financial year of its track record period as required under the Listing Rules.

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<sup>1</sup> For listing applicants under Chapter 18A of Main Board Rules, the requirement refers to the two financial years immediately preceding the issue of the listing document.

<sup>2</sup> If the applicant in the above example intends to list on or before 31 March 2020 instead and is eligible to apply for a waiver from Main Board Rule 4.04(1), the accountants' report included in the Application Proof should at least cover the three financial years ended 31 December 2018 and six months ended 30 June 2019.

- (ii) If the applicant files its application between 1 January 2020 and 29 February 2020, the applicant can include an accountants' report with a shorter period, i.e., the two financial years ended 31 December 2018 and nine months ended 30 September 2019 in the Application Proof, if it can meet the conditions set out in HKEX Guidance Letter HKEX-GL56-13. However, the applicant must submit a complete accountants' report covering the three financial years ended 31 December 2019 at a later stage for the Exchange's vetting.
6. *Where the profit forecast memorandum submitted by an applicant does not meet the requirements of Main Board Rule 9.11(10)(b) (GEM Rule 12.22(14b))*

Where the Application Proof does not contain a profit forecast, Main Board Rule 9.11(10)(b) (GEM Rule 12.22(14b)) requires the applicant to submit, together with the listing application, a final or an advanced draft of the board's profit forecast memorandum covering the period up to the forthcoming financial year end date after the date of listing. Potential applicants are reminded that the profit forecast memorandum to be submitted together with the listing application should use the proposed listing date as indicated by the applicant as the "date of listing". Applying the example in paragraph 5(d)(ii) above, the applicant should submit a profit forecast memorandum covering the period from 1 October 2019 to 31 December 2020, i.e. the period including the three months ended 31 December 2019 that is not covered by the financial period in the Application Proof and up to the forthcoming financial year end after listing (31 December 2020). Failure to comply with this requirement forms a potential basis that the listing application is considered not substantially complete and may be returned.

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## Applicants' Background

Company	Reasons for return
Company A (a Main Board Applicant)	<p>Company A is an IT digital solutions provider in the PRC.</p> <p>The application was returned due to the omission of material information in the Application Proof in relation to Company A and its business, namely, (i) the potential material impact on Company A as a result of license requirements on suppliers for the export, re-export and transfer of certain goods to Company A's largest customer; (ii) the legal consequences and potential material impact on Company A in relation to potential complaints and claims (including infringement and passing off) in connection with the extreme similarity between Company A's corporate name and that of another company already listed on the Exchange and operating in the same industry as Company A; and (iii) a sufficient description of Company A's business model, including the major projects undertaken during the track record period and the difference between each of Company A's business lines.</p> <p>The Exchange considered the omitted information to be material as (a) any adverse impact to the business of Company A's largest customer is likely to adversely affect the sustainability of Company A's business; (b) the similarity between Company A's corporate name and that of another company listed on the Exchange may cause confusion amongst investors of either listed company, and could give rise to complaints and/or legal claims; and (c) investors cannot assess the company if the prospectus does not provide a clear and concise description of Company A's business.</p> <p>Given the above, Company A's application proof failed to enable the Exchange and potential investors to make a fully informed assessment on Company A and its business.</p>
Company B, C and D (Main Board applicants)	<p>Company B is a manufacturing company. Company C invests and produces films and drama series' within the PRC. Company D is a pre-revenue biotech company seeking to list under Chapter 18A of the Main Board Rules.</p> <p>The listing applications were returned as each of Company B, Company C and Company D failed to include all required financial information in their respective Application Proofs.</p> <p>Each of Company B, Company C and Company D has the calendar year as its financial year. Based on the proposed listing date (i.e. after 31 March 2020) stated in their respective listing applications, the track record period of Company B and Company C should be the three years ended 31 December 2019, and the track record period of Company D should be the two years ended 31 December 2019. These applicants would also not be</p>

Company	Reasons for return
	<p>eligible for a waiver under Main Board Rule 4.04(1) which requires, among other things, the applicant lists on the Exchange within three months after the latest year end (i.e. lists on or before 31 March 2020). However, their Application Proofs only included financial information covering the three/ two years ended 31 December 2018 and the six months ended 30 June 2019.</p> <p>As stated in paragraph 5(c) above, inclusion of the required financial information is a bright line test, and failure to comply results in the Application Proof being not substantially complete and being returned. Based on their proposed listing date (i.e. after 31 March 2020), in order to qualify for the exemption provided under paragraph 3.09 of HKEX Guidance Letter HKEX-GL56-13, Company B, Company C and Company D would have had to (i) file their listing applications between 1 January 2020 and 29 February 2020; (ii) include in their Application Proof financial information covering the two years/ one year ended 31 December 2018 and the nine months ended 30 September 2019; and (iii) submit the updated financial information for the full year ended 31 December 2019 at a later stage for the Exchange's vetting.</p> <p>As Company B, Company C and Company D filed their respective listing applications <u>before</u> the end of 2019, such applications were returned for not being substantially complete under paragraph 3.14 of HKEX Guidance Letter HKEX-GL56-13. In these circumstances, the Exchange had no sufficient basis/information to assess their listing applications as the applicants had yet to have completed the last full financial year of their track record period as required under the Listing Rules.</p>

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