

HKEX GUIDANCE LETTER

HKEX-GL63-13 (July 2013) (Updated in September 2013, May 2014, May 2016 and March 2019)

[\[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024\]](#)

Subject	Guidance on disclosure of non-compliance incidents in listing documents
Listing Rules	Main Board Rules 2.03(2), 2.13(2), 3.08, 3.09 and 8.04 GEM Rules 2.06(2), 5.01, 5.02, 11.06 and 17.56(2)
Related Publications	Guidance Letter HKEX-GL68-13 – Guidance on suitability for listing for new applicants (“GL68-13”) Guidance Letter HKEX-GL86-16 – Guide on Producing Simplified Listing Documents Relating to Equity Securities for New Applications (“GL86-16”)
Author	IPO Vetting Team

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.*

1. Purpose

- 1.1 This letter provides guidance on the categorisation and disclosure of non-compliance incidents in listing documents. **(Updated in March 2019)**
- 1.2 The Exchange expects new applicants to follow this letter when preparing their listing documents. A listing document that does not follow this guidance may be considered not substantially complete as required under the Listing Rules.

2. Relevant Listing Rules

- 2.1 Main Board Rule 2.03(2) (GEM Rule 2.06(2)) requires that, among other things, potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer.
- 2.2 Main Board Rule 2.13(2) (GEM Rule 17.56(2)) requires the information contained in a listing document to be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, an issuer must not, among other things, omit material facts of an unfavourable nature or fail to accord them with appropriate significance.
- 2.3 Main Board Rule 3.08 (GEM Rule 5.01) states that, among other things, the Exchange expects the directors to fulfil fiduciary duties and to have duties of skill,

care and diligence to a standard at least commensurate with the standard under Hong Kong law.

- 2.4 Main Board Rule 3.09 (GEM Rule 5.02) provides that every director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer.
- 2.5 Main Board Rule 8.04 (GEM Rule 11.06) requires both the issuer and its business, in the opinion of the Exchange, to be suitable for listing.

3. Guidance

Categorisation of non-compliances (Added in May 2014)

- 3.1 This Guidance Letter addresses three types of non-compliance incidents:
- (a) Material Non-compliances: Non-compliance incidents which, individually or in aggregate, have had or are reasonably likely to have in the future, a material financial or operational impact on the new applicant. For example, non-compliances giving rise to significant financial penalties or which may result in the closure of material operating facilities.
 - (b) Systemic Non-compliances: Non-compliance incidents which are not Material Non-compliances, but their recurring nature may reflect negatively on the new applicant's or its directors'/ senior management's ability or tendency to operate in a compliant manner.
 - (c) Immaterial Non-compliances: Non-compliance incidents which are neither Material Non-compliances nor Systemic Non-compliances. **(Updated in March 2019)**
- 3.2 New applicants should refer to GL68-13 for relevant guidance regarding (i) a Material Non-compliance that raises concern regarding a director's competency leading to issues of his/ her suitability as a director which cannot be addressed by disclosure; and (ii) certain non-compliances that may affect a new applicant's suitability for listing under Main Board Rule 8.04 (GEM Rule 11.06). **(Updated in March 2019)**

Disclosure and rectification

- 3.3 New applicant should refer to paragraphs 3.4 to 3.10 below regarding the disclosure and rectification of each type of non-compliance incidents. **(Updated in March 2019)**

Material Non-compliances

- 3.4 The Exchange expects the new applicant to have implemented enhanced internal control measures to prevent the recurrence of Material Non-compliances, and the following to be disclosed in the listing document:

- (a) reasons for, nature and extent of the non-compliance incidents, corresponding risk factors, and the identity and position of the director(s)/ senior management involved in the non-compliance incidents (if any);
- (b) whether the new applicant has been penalised for the non-compliance incidents during the trading record period and up to the latest practicable date or is likely to be penalised in the future, with confirmation from the competent authorities (and a legal opinion confirming the competence of the relevant authorities). If applicable, disclose the actual or maximum penalty (including the amounts), any provisions made (if not, reasons therefor), and the potential operational and financial impact on the new applicant (if material);
- (c) details of the enhanced internal control measures implemented to prevent their recurrence, including when they were implemented and the identity, position, qualification and experience of the personnel who are responsible for ensuring compliance, the directors' and the sponsor(s)' view on the adequacy and effectiveness of the enhanced internal control measures and basis thereof. If an independent internal control expert has been separately engaged to review the internal controls¹, disclose the identity and the scope of review of the internal control expert, its major findings and recommendations, and the new applicant's timing of implementation of such recommendations (and the internal control expert's follow-up review, if any);
- (d) the Exchange normally expects the Material Non-compliances to be fully rectified before listing unless the rectification is not applicable or possible. Where applicable, the new applicant should disclose (1) detailed explanations on why rectification is not applicable or possible; (2) where the new applicant is able to demonstrate that Material Non-compliance incidents can only be rectified shortly after listing, a legal adviser's confirmation that there is no impediment to the rectification of the Material Non-compliances and a statement that the new applicant will disclose the progress of the rectification in the interim/ annual reports and detailed explanation for any delay in the rectification; or (3) what and when the rectification actions were taken/ will be taken;
- (e) why the directors and the sponsor(s) believe the directors are suitable to act as the new applicant's director under Main Board Rules 3.08 and 3.09 (GEM Rules 5.01 and 5.02), and why the new applicant's is suitable for listing under Main Board Rule 8.04 (GEM Rule 11.06); and

¹ If the internal control expert is the reporting accountants or another accounting firm, the relevant guidelines and practices of the accounting profession position an internal controls review as private advice to the directors of the new applicant (and if they are party to the engagement, the sponsors). Accordingly, in such circumstances the name of the reporting accountants or other accounting firm and details of their work and findings may be prevented from being quoted or referenced in the listing document. One circumstance in which internal controls work may be referenced in the listing document is where it is practicable for the new applicant and the sponsor to additionally and separately engage the reporting accountants or other accounting firm to also perform an assurance engagement in relation to internal controls.

- (f) a brief summary of the non-compliance incidents in the “Summary and Highlights” section of the new applicant’s listing document with appropriate cross reference. **(Updated in March 2019)**

3.5 **(Deleted in March 2019)**

3.6 **(Deleted in March 2019)**

3.7 Material Non-compliances that involve bill financing from banks² and interest rate/loan arbitrage³ that are not criminal in nature may be addressable by disclosure. The new applicant will be required to:

- (a) cease all non-compliant bill financing and for a period of at least 12 months demonstrate that its business is sustainable when it is in compliance; and
- (b) disclose in its listing document (i) the information required in paragraph 3.4 above; (ii) the amount of gains from the non-compliant bill financing; (iii) an unqualified audited financial results covering at least one complete 12-month period after the cessation of the non-compliant bill financing; and (iv) the independent internal control expert’s review and conclusions at the end of a 12-month audited period on the new applicant’s enhanced internal control measures indicating that there are no major negative findings on the new applicant’s internal control system during such 12-month audited period.

(Updated in March 2019)

Systemic Non-compliances

3.8 The Exchange expects the new applicant to disclose information set out in paragraph 3.4 above, except that no rectification (i.e. paragraph 3.4(d)) is required. **(Updated in March 2019)**

3.9 **(Deleted in March 2019)**

Immaterial Non-compliances

3.10 The Exchange does not require the disclosure or rectification of Immaterial Non-compliances. **(Updated in March 2019)**

3.10A To be clear, the decision to rectify any Systemic or Immaterial Non-compliance rests with the new applicant’s directors and its sponsor(s). **(Added in March 2019)**

² If the interest rate for trade financing is lower than the market interest for commercial loans, a borrower may obtain trade financing even if it is not supported by actual underlying transactions.

³ For example, if the interest rate in Hong Kong is lower than that in the PRC, a borrower with an RMB deposit in a PRC bank may obtain an RMB-denominated letter of credit guaranteed by its deposit, and then use such letter of credit to pay its subsidiary in Hong Kong for fictitious purchases. The Hong Kong subsidiary then obtains this letter of credit and uses it as collateral to obtain a foreign currency loan from a Hong Kong bank.

Guidance on suitability and disclosure requirements

- 3.11 In addition to the guidance on general disclosure of non-compliance incidents in this Guidance Letter and GL86-16, please also refer to GL68-13 for further guidance on suitability. ***(Updated in March 2019)***
