

**HKE<sub>x</sub> GUIDANCE LETTER**  
**HKE<sub>x</sub>-GL7-09 (July 2009) (Updated in September 2010)**

<b>Summary</b>	
<b>Subject</b>	<b>Documentary requirements for refiling a listing application (a) more than six months after the date of the original listing application; or (b) where a sponsor has changed.</b>
<b>Listing Rule</b>	<b>Main Board Rules 9.03(1) and 3A.17/ GEM Rules 12.07 to 12.08 and 6A.17</b>
<b>Related Publications</b>	<b>N/A</b>
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**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from 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 recently received enquiries about the documentary requirements for refiling a listing application (i) more than six months after the date of the original listing application and (ii) where a sponsor has changed. In particular, concerns were expressed whether the following documents were required to be resubmitted/ submitted:

- (a) a new advance booking form<sup>1</sup>/ listing application form (“**Form A1**”) and the initial listing fee;
- (b) documents required under Main Board Rules 9.11(1) to (5)/ GEM Rules 12.22 and 12.23 and the Guidelines for New Listing Applications posted on the Exchange’s website (collectively the “**A1 Documents**”); and
- (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 normally apply for an advance booking<sup>1</sup> on the prescribed form set out in Form A1 in Appendix 5 to the Exchange....The advance booking form<sup>1</sup> must be completed by the sponsor(s) for the new applicant and accompanied by:-*

- (a) *the documents stipulated in rules 9.11(1) to (3)<sup>2</sup>; and*
- (b) *the initial listing fee...*

Main Board Rule 9.03(1) further provides that “...Where the applicant has delayed its proposed timetable and more than six months have elapsed since the date of its advanced booking form<sup>1</sup>, the applicant will forfeit the initial listing fee. Each such applicant wishing to reactivate its listing application must submit a new advance booking form<sup>1</sup> accompanied by the initial listing fee. In case of a change in sponsor(s) (including addition of new sponsor(s)), the Exchange also requires the submission of a new advance booking form<sup>1</sup> accompanied by the initial listing fee...”

GEM Rule 12.07 provides that “in the event that 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 non-refundable listing fee in the prescribed amount must be submitted to the Exchange. Any initial listing fee paid will, in such circumstances, be forfeited.”

GEM Rule 12.08 provides that “where there is a termination or addition of a Sponsor during the vetting process of any listing document to be issued by a new applicant or a listed issuer, the Exchange will normally require the issuer to submit a new listing application detailing a revised timetable and, in the case of the new applicant only, a further non-refundable initial listing fee in the amount specified in Appendix 9. Any initial listing fee paid will, in such circumstances, be forfeited.”

Main Board Rule 3A.17/ GEM Rule 6A.17 provide 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, then the replacement sponsor must immediately notify the Exchange of its appointment and re-submit, on behalf of the new applicant, a listing application detailing a revised timetable together with a further non-refundable initial listing fee...*

## **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 follow all the relevant documentary requirements under each applicable scenario.**

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

(A) New Form A1 and initial listing fee

At present, when six months have elapsed since the submission of a Form A1, the Exchange will issue a letter informing the sponsor that the Form A1 has lapsed and the initial listing fee is forfeited. To reactivate its application, an applicant must submit a new Form A1 with a further non-refundable initial listing fee under Appendix 8 to the Main Board Rules/ Appendix 9 to the GEM Rules.

(B) A1 Documents

(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 A1 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.

(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 A1 Documents would be outdated. Accordingly, the sponsor must resubmit a full set of updated A1 Documents to the Exchange. Fees are payable as stated in (A) above.

(C) Other documents

It is the sponsor's responsibility to ensure that all information, including the A1 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:

- (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(s)

(A) New Form A1 and the initial listing fee

Under Main Board Rule 9.03(1)/ GEM Rule 12.08, the sponsor must submit a new Form A1 together with a further non-refundable initial listing fee if there is a change in sponsor(s) (including addition of new sponsor(s)). Main Board Rule 3A.17(2)/ GEM Rule 6A.17(2) stipulate similar requirements where the sole independent sponsor of the listing applicant is replaced. The Exchange considers the role of sponsor critical in bringing a new 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.

(B) A1 Documents and other documents

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

*(i) Appointment of replacement sponsor(s) with termination of all original sponsor(s):*

Where a replacement sponsor(s) is appointed with termination of all original sponsor(s), the Exchange ordinarily treats the application as a completely new application and requires the replacement sponsor(s) to resubmit the whole set of updated A1 Documents. This is because the replacement sponsor(s) 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(s) must also provide:

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

*(ii) Addition of new sponsor*

Where an additional sponsor is appointed, and at least one of the original sponsors remains, the Exchange ordinarily will not require the sponsor(s) to resubmit the A1 Documents. However, it requires:

- (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 sponsor(s).

*(iii) Resignation or termination of sponsor*

Where one or more sponsors have resigned or been terminated and at least one of the original sponsors remains, the Exchange ordinarily will not require the sponsor(s) to resubmit the A1 Documents. However, the sponsor(s) must provide:

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

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

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*Notes:*

1. *The term "advance booking form" has been replaced by the "listing application form" after the rule amendments in November 2009. (Added in September 2010)*
2. *The relevant rules have become "9.11(1) to 9.11(5)" after the rule amendments in November 2009. (Added in September 2010)*