

# The Stock Exchange of Hong Kong Limited

## Practice Note 5

to the Rules Governing the Listing of Securities on GEM  
of The Stock Exchange of Hong Kong Limited  
(the "GEM Listing Rules")

Issued pursuant to rule 1.07 of the GEM Listing Rules

## Publication of Application Proofs and Post Hearing Information Packs (PHIPs)

### Definitions and Interpretation

1. For the purposes of this Practice Note:

"institutional or other professional investors"	means the actual or potential investors under the placing tranche of an offer
"HKEx-ESS"	means the Exchange's electronic submission system or by whatever name the system is called for submitting Application Proofs and PHIPs for publication on the GEM website
"Returned Application"	means any application returned by the Listing Division under rule 12.09 where all related review procedures on the Return Decision have been completed or the time for invoking them has lapsed

### Language

2. Every Application Proof and PHIP for publication must be:

- (a) in English and Chinese; and
- (b) concise, easy to understand and in plain language.

### Content of Application Proofs and PHIPs

3. For the purpose of publication on the GEM website, an Application Proof and a PHIP should be prepared on the following principles:

- (a) there must not be any information about the offering, price or means to subscribe for equity securities in a new applicant until a final listing document is published;
- (b) there must not be any information regarding the proposed offering or other information that would constitute the Application Proof or PHIP a prospectus under section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance or an advertisement under section 38B(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance or an invitation to the public in breach of section 103 of the Securities and Futures Ordinance as amended from time to time;
- (c) there must be appropriate disclaimer and warning statements to advise readers of the legal status of an Application Proof and PHIP to the effect that:

- (i) it is not an offer to sell or an invitation to induce/solicit an offer to acquire, purchase or subscribe for securities;
  - (ii) it is not in a final form and is subject to change;
  - (iii) no investment decision should be based on the information contained in the Application Proof and PHIP;
  - (iv) there is no guarantee that there will be an offering; any offer of securities will require a final listing document which is the only document investors should rely on to make investment decisions; and
  - (v) there is no indication that the application to which the document relates has been approved for listing.
4. A new applicant must redact an Application Proof and a PHIP only to the extent necessary for these documents not to constitute a prospectus under section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance or an advertisement under section 38B(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance or an invitation to the public in breach of section 103 of the Securities and Futures Ordinance (unless consent is obtained for further redactions). A new applicant must also include adequate warning and disclaimer statements on the GEM website and in every Application Proof and PHIP published on the GEM website to advise viewers of the legal status of these documents.

#### **Legal Confirmation**

5. Every new applicant must ensure that the publication of any Application Proof and PHIP on the GEM website complies with paragraphs 3 and 4. Compliance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Securities and Futures Ordinance and other laws and regulations remains the primary responsibility of every new applicant.
6. To ensure compliance, a new applicant must provide the Exchange with a confirmation from its legal adviser that the new applicant has complied with the Exchange's guidance on redactions in its Application Proof and PHIP and inclusion of appropriate warning and disclaimer statements for publication of these documents.
7. Where a new applicant is concerned that the publication of any Application Proof and PHIP on the GEM website may violate securities laws in other overseas jurisdictions in which an offer of securities is intended to be marketed, it should include sufficient warning statements in the Application Proof and PHIP to make clear that these documents are intended for access by Hong Kong residents only or that the readers need to confirm prior to reading these documents that there are no laws or regulations prohibiting the readers from gaining access (for viewing and downloading) to the Application Proof and/or PHIP.

#### **Prescribed Timing for Publishing Application Proofs**

8. A new applicant must submit its Application Proof through HKEx-ESS for publication on the GEM website on the same day it files a listing application with the Exchange.

9. Where an applicant re-submits its listing application, no Application Proof is required to be submitted for publication on the GEM website if at the time of the submission of the application the following conditions are satisfied:
- (a) a PHIP or a final listing document has been published on the GEM website; and
  - (b) the Sponsor provides a written confirmation to the Exchange that the PHIP or the final listing document published on the GEM website does not need to be updated and remains valid.
10. Where a new Application Proof is submitted for publication on the GEM website, no mark-up against the previous proof is required.

#### **Prescribed Timing for Publishing PHIPs**

11. A new applicant must at the earliest practicable time submit a PHIP through HKEx-ESS for publication on the GEM website upon the following taking place:
- (a) receipt of a post hearing letter from the Exchange together with a request to post a PHIP; and
  - (b) the directors of the new applicant concluding that the material comments of the Exchange have been addressed;

provided that where the new applicant intends to offer equity securities to the public in Hong Kong, the publication of the PHIP on the GEM website must not be later than the first occurrence of:

- (i) the time at which the new applicant first distributes any red herring document to institutional or other professional investors;
  - (ii) the time at which the book-building process commences irrespective of whether the process involves a meeting (whether held physically or by video conference or any other media) between the new applicant and institutional or other professional investors, or whether any red herring document has been distributed; and
  - (iii) if a new applicant has also scheduled a listing of its securities on an overseas exchange at or around the time as its prospective listing in Hong Kong, simultaneously with any overseas publication of similar information.
12. A new applicant does not need to publish its PHIP:
- (a) if it delays its listing plan by informing the Exchange accordingly; or
  - (b) if the listing is by way of an introduction and the final listing document is to be issued immediately after the obligation to publish a PHIP arises.
13. When a new applicant resumes its listing plan after a delay under paragraph 12(a), it must publish a PHIP as set out in paragraph 11.

#### **Publication of Subsequent PHIPs**

14. If at any time after the issue of a PHIP, a new applicant circulates to institutional or other professional investors an addendum to its red herring document that will be included in its final listing document or a replacement red herring document, the new applicant must, as soon as

practicable, re-submit through HKEx-ESS for publication on the GEM website an addendum to the PHIP or a replacement PHIP, as the case may be. The re-submitted PHIP must be marked up against the previous proof and give the same level of detail that are made available to institutional or other professional investors.

15. For any other cases, whenever a revised PHIP is submitted to replace an existing PHIP after the latter's publication on the GEM website, the replacement PHIP must be marked up against the previous proof to show all changes made.
16. Where a listing application lapsed after the publication of a PHIP and the new applicant re-submits a new Application Proof, any PHIP that immediately follows the re-submitted Application Proof is not required to be marked up against the previously published PHIP.

#### **Confidential Filings**

17. A new applicant which has been listed on a recognised overseas exchange for not less than 5 years and has a significantly large market capitalisation (as determined by the Exchange from time to time) at the time of filing its listing application is entitled to make a confidential filing of its Application Proof. The new applicant is not subject to the publication requirements for its Application Proof unless requested to comply with them by the Exchange. All other requirements under the GEM Listing Rules apply unless a waiver is granted.
18. The Exchange may waive or modify the publication requirements for an Application Proof in a spin-off from an overseas listed parent upon application by a new applicant. A new applicant is encouraged to consult the Exchange if it envisages any difficulties in complying with the publication requirements at least 2 months before the filing of its Application Proof.

#### **No pre-vetting of Application Proofs or PHIPs**

19. Application Proofs, PHIPs and statements issued under rule 12.10(2)(c) do not require pre-vetting or clearance from the Exchange before their publication on the GEM website.

#### **Status Marks and Information on the GEM Website**

20. The Exchange will publish the following status marks and information on the GEM website to indicate the status of each listing application:

<b>Status Mark</b>	<b>Status of Listing Application</b>	<b>Information on the GEM website</b>
"Active"	Any valid listing application and includes an application of which the review of a decision to return or reject the application is pending	<ul style="list-style-type: none"> <li>• The contents of the latest submitted Application Proof, and any PHIPs and statements under rule 12.10(2)(c) submitted thereafter</li> </ul>

Status Mark	Status of Listing Application	Information on the GEM website
<p>“Inactive” comprising:</p> <ul style="list-style-type: none"> <li>• “Lapsed”</li> <li>• “Withdrawn”</li> <li>• “Rejected”</li> </ul>	<p>Any lapsed application</p> <p>Any withdrawn application</p> <p>Any rejected application</p>	<ul style="list-style-type: none"> <li>• The name of the new applicant</li> <li>• A record of the date; and description of the documents previously published</li> </ul> <p>Note: The contents of all previously published documents will no longer be accessible but there will be a record of these documents</p>
<p>“Listed”</p>	<p>Any application of which the applicant is subsequently listed on the Exchange</p>	<ul style="list-style-type: none"> <li>• The contents of the latest submitted Application Proof, and any PHIPs and statements under rule 12.10(2)(c) submitted thereafter</li> </ul> <p>Note: The contents of all previously published documents which have been categorised as “Inactive” will no longer be accessible, but there will be a record of these documents</p>
<p>“Returned”</p>	<p>Any Returned Application</p>	<ul style="list-style-type: none"> <li>• The name of the new applicant</li> <li>• The name of the Sponsor or listing agent</li> <li>• The date of the Return Decision</li> </ul> <p>Note: All other information previously categorised as “Active” will be removed</p>

21. The status marks are subject to change from time to time as the Exchange considers appropriate.