

**HKEx GUIDANCE LETTER
HKEx-GL22-10 (October 2010)**

Subject	Pre-conditions for a waiver from the financial standards requirements for new applicant Mineral Companies under Main Board Rule 18.04
Listing Rules	Main Board Rules 8.05 and 18.04; Paragraph 41(6) of Appendix 1A and Paragraph 41(6) of Appendix 1E GEM Rules 11.12A, 18A.01(3), 18A.04 and Paragraph 41(2) of Appendix 1A
Related Publications	Archived HKEx-GL5-08 (Withdrawn in October 2010; Superseded by GL22-10); Paragraphs 6, 7 and 37 of the Consultation Conclusions on New Listing Rules for Mineral Companies published May 2010
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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.*

1. Purpose

- 1.1 This Letter provides guidance on waiver applications from the financial standard requirements of Rule 8.05, under Rule 18.04.
- 1.2 This Guidance Letter supersedes Guidance Letter HKEx-GL5-08 published in July 2008, which deals with the interaction between Rule 8.05 and the former Rule 18.03. The former Rule 18.03 was replaced by Rule 18.04 on 3 June 2010.

2. Listing Rules

Main Board Rules

Management experience requirement in Rule 18.04

- 2.1 Under Rule 18.04, a Mineral Company that is unable to satisfy either the profit test in Rule 8.05(1), the market capitalisation/ revenue/ cash flow test in Rule 8.05(2), or the market capitalisation/ revenue test in Rule 8.05(3), may still apply to be listed if it can establish to the Exchange's satisfaction that its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing. Individuals relied on must have a minimum of five years relevant industry experience. Details of the relevant experience must be disclosed in the listing document of the new applicant.
- 2.2 Paragraph 41(6) of Appendix 1A provides that where the issuer is a Mineral Company and wishes to apply for a waiver of the profit or other financial standards requirements under Rule 18.04, it must disclose the management expertise and experience of the persons described in paragraph 41(1) relevant to the exploration and/or extraction activity that the Mineral Company is pursuing.
- 2.3 The Note to Rule 18.04 states that a Mineral Company relying on this rule must demonstrate that its primary activity is exploration for and/or extraction of Natural Resources.

Corresponding GEM Rules

- 2.4 Broadly equivalent provisions to Main Board Rules 8.05, 18.01(3), 18.04 and paragraph 41(6) of Appendix 1A are GEM Rules 11.12A, 18A.01(3), 18A.04 and paragraph 41(2) of Appendix 1A.

3. Our Guidance

- 3.1 In general, waivers for new listing applicants are considered and granted by the Listing Committee after the receipt of the Company's listing application and the accompanying documents. When appropriate, preliminary guidance can be obtained from the Listing Committee.
- 3.2 Set out below are the pre-conditions that we would expect a Mineral Company to satisfy in an application under Rule 18.04 for a waiver from of Rule 8.05. However, each application will be considered on a case-by-case basis having regard to all relevant facts and circumstances and the Listing Committee may modify or add to these conditions.

Pre-conditions to a waiver in Rule 18.04

(a) *Inability to comply with financial standards requirements due to pre-production activities*

3.3 To obtain the waiver in Rule 18.04, a new applicant Mineral Company must demonstrate to the Exchange's satisfaction that its inability to comply with the profit, revenue or cash flow tests of Rule 8.05 is due to the fact that throughout the track record period, the Company has been in a pre-production, exploration and/or development phase.

3.4 Our position on this pre-requisite is set out in the Consultation Conclusions on New Listing Rules for Mineral Companies published in May 2010.

3.5 At paragraph 6 of the Consultation Conclusions, the Exchange stated: -

While we expect most applicants taking advantage of Rule 18.04 will still be at the development stage, those who are already in the production stage are not necessarily precluded. This is because Mineral Companies in production may have junior assets that are yet to be developed. Waivers from the financial standard requirements are only likely to be considered favourably where Mineral Companies demonstrate a clear path to commercial production.

3.6 Example of a waiver application likely to be considered favourably:

- a Mineral Company incurring expenditure on further exploration or development activities which have contributed to the inability to meet the profit requirements.

3.7 Examples of waiver applicants unlikely to be considered favourably:

- applicants that are already in production but unable to present a demonstrable path to profitability; or
- a Mineral Company unable to meet the profit requirements with all of its mining assets in operation and no development activity on hand.

3.8 Waivers under Rule 18.04 will not normally be available to companies whose failure to meet the profit test is attributable to economic performance over the track record period, in contrast to companies that still have assets under development, which are likely to receive favourable consideration. For companies that are fully operational, the rules provide alternative eligibility criteria under Rule 8.05(2) and Rule 8.05(3).

(b) *Management experience requirement in Rule 18.04*

- 3.9 Under Rule 18.04, a new applicant Mineral Company unable to satisfy the financial standard requirements in Rule 8.05, may still be eligible for listing, if it can demonstrate to the Exchange's satisfaction that its directors and senior managers, taken together, have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing. Individuals relied on must have a minimum of five years relevant industry experience. Details of the relevant experience must be disclosed in the listing document of the new applicant.
- 3.10 To obtain the benefit of the waiver under the former Rule 18.03 (replaced by Rule 18.04 from 3 June 2010), the applicant had to demonstrate to the Exchange that its directors and management had "sufficient and satisfactory experience of at least three years in mining and/or exploration activities." It was required that the experience of the management must be specific, "which must be to the particular line of business and industry of the listing applicant."
- 3.11 The industry experience requirement has been increased from three to five years under Rule 18.04, which became effective on 3 June 2010. The directors and senior managers will be assessed collectively for relevant industry experience, and directors and senior managers taken together must have sufficient experience relevant to the exploration and/or extraction activity that the Mineral Company is pursuing.
- 3.12 The biographical information of directors and senior management (including relevant management experience) must be disclosed in the listing document under paragraph 41 of Appendix 1A of the Rules or paragraph 41 of Appendix 1E for the issuers of depositary receipts.
- (c) *Primary Activity in Rule 18.04*
- 3.13 The Note to Rule 18.04 states that a Mineral Company relying on this rule must demonstrate that its primary activity is exploration for and/or extraction of Natural Resources (ie mineral and/or Petroleum). As stated in FAQ series 12 (No. 7) published on 26 May 2010, the purpose of this Note is to ensure that Mineral Companies relying on the exemption from the financial standard requirements in Rule 8.05 focus on Natural Resource exploration and/or extraction. This does not have to be their sole activity but should be their main business activity.
