

HONG KONG

CAPITAL MARKETS

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IN THIS ISSUE

Major Publications and Decisions (Page 2)

New Listing Decisions (Page 4)

New Guidance Letters (Page 12)

Enforcement News (Page 16)

Regulatory Watch (Page 16)

目录

刊发内容和决策 (Page 3)

新刊发的上市决策 (Page 5)

新刊发的指引信 (Page 13)

执法新闻 (Page 17)

监管动向 (Page 17)

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EDITOR'S NOTE

Wondering where the first quarter of 2013 went, and what happened? Welcome to the 2013 first-quarter issue of our Hong Kong Capital Markets Quarterly News.

In this issue, we highlight key developments in the Hong Kong capital markets since our last issue, including:

- the triggering of chain principle offers under the Takeovers Code;
- mineral companies: listing decisions, guidance letter and FAQs;
- convertible bonds and listings by introduction: listing decisions; and
- cornerstone investors: the Exchange's guidance on direct or indirect benefits.

We hope you find the articles interesting and helpful.

编者按

想知道2013年第一季度香港资本市场的走向? 发生哪些重大事件? 欢迎阅读香港资本市场季刊2013年第一期。

在本期中, 我们为您总结自上一期出版以来香港资本市场的最新进展, 包括:

- 触发收购守则所述的连锁关系原则要约;
- 矿业公司: 上市决策、指引信和常见问题诠释;
- 可转换债券及以介绍方式上市: 上市决策; 和
- 基础投资者: 联交所关于直接或间接利益的指引。

希望以上内容使您感兴趣, 并对您有所裨益。

MAJOR PUBLICATIONS AND DECISIONS

Chain principle offer triggered

In February 2013, the Takeovers and Mergers Panel (“Panel”) ruled that an obligation under the Takeovers Code to make a chain principle offer for Hong Kong-listed Greenheart Holdings Limited (“Greenheart”) would be triggered if Sino-Forest Corporation (“Sino-Forest”) proceeded with the transfer of substantially all its assets, including an indirect shareholding of 63.6% of Greenheart, to a new company wholly owned by Sino-Forest’s creditors. The Panel also decided that no waiver of such mandatory offer obligation would be available.

The matter arose as a result of a proposed restructuring of Sino-Forest which is in severe financial difficulty. The Panel said the chain principle does not differentiate among transactions on the basis of the circumstances that caused them to be entered into. Hence, the principle applies equally to a debt restructuring as to any other commercial arrangement which comes within its scope.

The Panel reaffirmed that the focus of the chain principle is quite narrow, namely any transaction, whether it is an element of a larger one or not, in which statutory control of one company results in the acquisition or consolidation of control (as defined in the Takeovers Code) of a second company.

The case is a good reminder that the transfer of an indirect controlling interest in a Hong Kong-listed company always falls within the provisions of the Takeovers Code, so the Takeovers Executive should always be consulted before parties finalize such an arrangement.

Please follow this link for a copy of the Panel’s decision:

http://www.sfc.hk/web/EN/files/CF/pdf/Takeovers%20and%20Mergers%20Panel%20-%20Panel%20Decision/Final%20Decision%20-%20Greenheart%20Holdings%20_31.1.2013_EN_.pdf

Exchange’s review of disclosure in annual reports

In March 2013, the Exchange published its first report on findings and recommendations from a review of all listed issuers’ annual reports. The key recommendations were for listed issuers to provide enhanced disclosure as summarized below:

Impairment of Intangible Assets arising from Material Acquisitions	Give details on the impairment of intangible assets, including the underlying circumstances and relevant information about the assets’ valuation.
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Performance Guarantees on Acquisitions	Disclose material developments such as the outcome of guarantees received on the performance of acquired businesses (including performance of the acquired business; whether the performance guarantee was met; and if not, whether and how the guarantor fulfilled its obligations).
Connected Transactions	Specify whether related party transactions disclosed were connected transactions, and whether the listed issuer complied with the relevant Listing Rules; and disclose the results of the annual review by the independent directors and auditors for continuing connected transactions.
Significant Changes in Financial Position	Explain significant changes in major items of the financial statements, such as trade receivables, effective tax rates and tax balances, and key performance indicators, in the “management discussion and analysis” section of the annual report.
Newly Listed Issuers	Disclose any changes in the intended use of IPO proceeds.
Chapter 18 Mineral Companies	Provide updates on exploration, development and mining production activities.
Chapter 21 Investment Companies	Comply with requirements of Chapter 21 on providing information about the investments held, including analyses of the individual investments and their performance.

Please follow this link for a copy of the report: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/rdiar-2012.pdf>.

Listing Committee Report 2012: upcoming issues

In March 2013, the Listing Committee published the Listing Committee Report 2012. In addition to highlighting developments that arose during 2012, the report listed matters that the Listing Committee plans to consider during 2013 and beyond, and we summarise those matters below:

重要刊发内容和上市决策

触发连锁关系原则要约

2013年2月，收购及合并委员会（“委员会”）裁定，如果嘉汉林业国际有限公司（“嘉汉”）将嘉汉的绝大部分资产（包括其持有的香港上市的绿森集团有限公司（“绿森”）的63.6%间接股权）转让予由一家嘉汉的债权人全资拥有的新公司，将会触发对绿森作出《收购守则》所指的连锁关系原则要约的责任。收购委员会还决定，不会豁免此类强制要约责任。

陷入严重财务困境的嘉汉拟进行重组，并为此向执行委员会进行咨询。委员会认为，连锁关系原则要约并不因为交 订立的原因不同而将交 进行区分，而是同等适用于债务重组及其所涵盖的任何其他商业安排。

委员会重申，连锁关系原则要约涵盖的范围颇为狭窄，纯粹着眼于任何交易（无论这宗交易是否是较大宗交易的一部分），而在该交易中，当取得某公司的法定控制权后，会因此而取得或巩固对另一公司的控制权（定义见《收购守则》）。

该案例提醒我们，转让间接持有的香港上市公司的控制权益时总会涉及《收购守则》的规定，因而在最终安排确定前应咨询收购及合并委员会。

收购及合并委员会的裁决链接如下：

http://www.sfc.hk/web/EN/files/CF/pdf/Takeovers%20and%20Mergers%20Panel%20-%20Panel%20Decision/Final%20Decision%20-%20Greenheart%20Holdings%20_31.1.2013_EN_.pdf

联交所审查年报披露情况

2013年3月，联交所就其审查所有上市公司年报情况发表了首份观察和建议报告。主要建议在下列方面加强上市公司的披露：

重大收购所产生的无形资产减值

披露无形资产减值的详细情况，包括导致减值的相关事件和情况以及资产估值的相关信息。

收购项目业绩表现担保	披露重大变化，例如所达成的关于被收购项目的业绩表现担保结果（包括被收购项目的业绩表现；业绩表现担保是否达到；如果业绩表现担保没有达到，担保人是否以及如何履行其义务）。
关连交易	具体说明披露的关联方之间的交易是否属关连交易，以及上市公司是否遵守了相关上市规则；并披露独立董事和核数师对持续关连交易的年度审查结果。
财务状况的重大变动	解释财务报表重要项目的重大变化，例如在年报的“管理层讨论及分析”一节阐释应收货款、实际税率及税项结余以及主要表现指标。
新上市发行人	披露首次公开发行募集资金使用用途的任何变动。
第十八上市的矿业公司	提供关于勘探、开发和开采活动的最新情况。
第二十一章上市的投资公司	遵守第21章关于提供投资组合信息的要求，包括对个别投资及其投资表现的分析。

请参阅该报告的链接：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/rdiar-2012.pdf>

2012年上市委员会报告：2013年及以后的政策议程

2013年3月，上市委员会刊发了《2012年上市委员会报告》。除了着重指出2012年的进展情况，报告列出了上市委员会准备在2013及未来考虑的事项。我们为您总结如下：

Prospectuses and listing process

- Amendments to Rules and procedures to complement SFC's reform of the sponsor regime
- Prospectus simplification
- Streamlining of listing application procedures and review of associated publication requirements
- Review of settlement process and timing
- Review of content of accountants' reports
- Review of placing guidelines

Listing matters

- Review of listings by overseas companies and secondary listings
- Review of listed structured products regime
- Review of new structured products classes
- Review of the definition of "subsidiary"
- Review of listing of investment vehicles

Ongoing obligations and other related matters

- Review of connected transaction rules
- Development of XBRL taxonomy (facilitating exchange of information through an "eXtensible Business Reporting Language")
- Update on quarterly reporting
- Review of accounting provisions in the Listing Rules
- Review of disclosure of material contracts

Please follow this link for a copy of the Listing Committee Report 2012:

http://www.hkex.com.hk/eng/listing/listcomrpt/Documents/AnnualRpt_2012dec.pdf

NEW LISTING DECISIONS

Chapter 18 Mineral Company listing applicants

In February and March 2013, the Exchange published three listing decisions in relation to whether (i) a company had "the right to participate actively in exploring for and/or extracting natural resources" (required under Rule 18.03(1)), based on demonstrating adequate rights under production sharing contracts; (ii) Canadian standard NI 51-101 is an acceptable reporting standard under Rule 18.32; and (iii) an applicant's senior management had sufficient relevant experience under Rule 18.04. We summarise these decisions below.

Adequacy of rights under production sharing contracts

Company A entered into a production sharing contract ("PSC") for each of the three oilfields where it acted as the sole operator and a foreign contractor with state-owned Company B. These oilfields had entered into commercial production and the PSCs would not expire for more than 23 years.

The Exchange was satisfied that Company A had adequate rights which gave it sufficient influence in decisions over the exploration for and/or extraction of crude oil from the oilfields under Rule 18.03(1)(b), after taking account of the following factors:

- (i) decisions of the joint management committee ("JMC") had to be made unanimously, and Company A's representatives with half of the JMC's voting rights could vote down any resolution that Company B proposed which were not in Company A's interests;
- (ii) Company B's right to take over the oilfield operations would not affect Company A's rights under Rule 18.03(1)(b) as:
 - the PSCs for the oilfields would not expire for over 23 years, which was expected to be sufficiently long to extract most of the economic interests of the oilfields;
 - Company B did not have the legal right to take over two oilfields' operations because Company A had not recovered all of its development costs, and in the other oilfield Company A had not reached the limits set in the overall development plans;
 - all the PSCs that Company B entered into with other parties had the same standard takeover clause, and Company B had never exercised the right to take over the operations of any of these oilfields; and
 - Company B had confirmed that it would not exercise its rights to take over the three oilfield operations.

Please follow this link for a copy of the listing decision, LD50-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld50-2013.pdf>

Canadian Standard NI 51-101 ("Standards of Disclosure for Oil and Gas Activities")

Rule 18.32 requires mineral companies to disclose information on petroleum resources and reserves under either the Petroleum Resources Management System or other codes acceptable to the Exchange if it is satisfied that they give a comparable standard of disclosure and sufficient assessment of the underlying assets.

招股说明书及上市程序

- 修订上市规则及程序以配合证监会对保荐人制度的改革
- 简化招股说明书
- 简化上市申请程序及审查相关的刊发规定
- 审查和解程序和时间
- 审查会计师报告的内容
- 审查配售指引

上市事宜

- 审查海外公司上市和二次上市
- 审查上市结构性产品机制
- 审查新结构性产品类别
- 审查“附属公司”的定义
- 审查投资工具的上市事宜

持续责任和其他相关事宜

- 审查关联交易规则
- 制定XBRL 分类法（通过“可扩展商业报告语言”促进信息交流）
- 更新季度汇报
- 审查上市规则中的会计条文
- 审查重大合同的披露

2012年上市委员会报告链接如下：

http://www.hkex.com.hk/eng/listing/listcomrpt/Documents/AnnualRpt_2012dec.pdf

新刊发的上市决策

上市规则第18章项下的矿业公司上市申请人

2013年2月和3月，联交所刊发了三项上市决策，分别涉及(i) 矿业公司如在生产分成合同下证明有足够权利，其是否根据第18.03(1)条“有权积极参与勘探及/或开采天然资源”；(ii)加拿大标准NI 51-101 是否为《上市规则》第 18.32 条可接纳的报告准则；和(iii) 申请人高层管理人员是否拥有第18.04条要求的充足的相关经验。我们为您总结如下。

生产分成合同下的权利是否足够

A公司就三个油田分别与国有的B公司订立生产分成合同（“生产分成合同”），并担任这些油田的独家运营商及海外承包商。这些油田已投入商业生产，而生产分成合同将于超过23年后方届满。

经考虑下列因素，联交所认为A公司享有足够的权利，使其能够在第18.03(1)(b)条所指对勘探及/或从油田开采原油的决定有足够的影响力：

- (i) 联合管理委员会（“联合管理委员会”）的决定须为全体一致，而占联合管理委员会半数投票权的A公司代表可否决B公司所提议的任何不符A公司利益的决议案；
- (ii) B公司收回营运油田的权利不影响A公司在第18.03(1)(b)条中所指的权利：
 - 生产分成合同在超过23年后方会届满，预期此时间内足以开采油田的大部分经济利益；
 - A公司尚未达到其中一个油田整体发展规划的限额，而B公司对另外两个油田没有收回营运的法定权利因为A公司还没有收回其全部开发成本；
 - B公司与其他人士订立的所有生产分成合同均有相同的标准收回条款，且B公司从未行使该权利收回其中任何一个油田的营运；和
 - B公司已确认不会行使收回A公司三个油田的营运的权利。

上市决策LD50-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld50-2013.pdf>

加拿大标准NI 51-101（“加拿大的油气活动披露准则”）

上市规则第18.32 条要求矿业公司必须根据《石油资源管理制度》或联交所接纳的其他报告准则（能够就披露要求和対标的资产的充分评估提出同等标准）汇报其油气储量。

为此，联交所基于下列事实和情况（其中包括）的考虑批准NI 51-101项下的加拿大标准为上市规则第18.32条可接纳的报告准则，可适用于上市申请人（“C公司”）：

In this respect, the Exchange approved the Canadian standard under NI 51-101 as an acceptable reporting standard for the listing applicant (“Company C”) under Rule 18.32 after taking into account, among others, the following:

- (i) the regime of NI 51-101 was comparable to the requirements of Chapter 18 of the Listing Rules;
- (ii) the prospectus would include Company C’s latest published reserves and resources information; and
- (iii) Company C’s shares had been listed on a foreign stock exchange.

Please follow this link for a copy of the listing decision, LD51-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld51-2013.pdf>

Sufficient experience of a Chapter 18 listing applicant’s management

In March 2013, the Exchange published a listing decision on whether the directors and senior management of a Main Board listing applicant, Company A, had “sufficient experience relevant to exploration and/or extraction activity” under Rule 18.04.

Facts

Company A was engaged in the exploration and mining of zinc and lead in South Africa. As Company A was not able to satisfy the profit test under Rule 8.05, it had to establish to the Exchange’s satisfaction that its directors and senior managers, taken together, had sufficient experience in order to apply for a Rule 8.05 waiver under Rule 18.04.

The Exchange’s assessment and conclusion

The Exchange considered that compliance with Rule 18.04 was a question of fact. In making the assessment, the Exchange would take various factors into consideration, including:

- the directors and senior managers’ practical responsibilities and experience in exploration and/or extraction activity that was relevant to the applicant’s mining activity. They could be experienced in other commodities or minerals which had mining processes that did not differ materially from that of the applicant, if their skills were transferable to the applicant’s mining activity;
- the directors and senior managers’ academic and professional qualifications, significant mining-related achievements or awards, and significant contribution to the mining industry and/or any mineral companies; and
- whether the majority of the applicant’s core management team involved in its daily operations had sufficient practical experience in the exploration and/or extraction activity, rather than general management and marketing experience that was ancillary to that activity.

The Exchange considered that (i) the experience of some directors and senior management of Company A in the polymetallic base metal mining industry was generally relevant, and could be transferred, to the area of lead and zinc ore mining, and (ii) five out of the nine core management members possessed sufficient experience relevant to Company A’s exploration and/or extraction activity. Accordingly, the Exchange determined that Company A’s directors and senior management, taken together, had sufficient relevant experience and were able to meet the requirements under Rule 18.04.

Please follow this link for a copy of the listing decision, LD53-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld53-2013.pdf>

Listing by way of introduction and related waivers

In March 2013, the Exchange published a listing decision in relation to whether (i) a company’s listing by way of introduction would be acceptable; and (ii) the requested waivers would be granted.

Facts

Company A, a PRC company whose A shares and B shares had been listed on a PRC stock exchange, proposed to convert all its B shares into H shares and sought a listing of the H shares on the Main Board of the Exchange by way of introduction. Its B shareholders could choose to become H shareholders or sell their B shares before the proposed listing to an independent third party (the “**Cash Offer**”).

Company A also applied for waivers from strict compliance with certain requirements under the Rules.

Factors for accepting listing by way of introduction

In determining whether Company B’s listing by way of introduction was acceptable, the Exchange considered the following:

- (i) the A and B shares of Company A had been listed on a PRC stock exchange for more than ten years;
- (ii) all the H shares (representing about 50% of Company A’s total issued shares) would be registered on the Hong Kong share register, and apart from certain H shares which were subject to voluntary lock-up by the existing substantial shareholders, all the H shares would be available for trading on the Exchange;
- (iii) to ensure adequate liquidity in the trading of H shares upon listing, Company A proposed to procure at least 300 public B shareholders to deposit the converted H shares in broker accounts opened in Hong Kong, and those converted H shares would have a minimum market capitalization of HK\$1 billion (the “**Proposed Arrangement**”);

- (i) NI 51-101与上市规则第18章的规定相符；
- (ii) 招股说明书包括C公司最新发布的储量及资源信息；及
- (iii) C公司的股份已在海外交易所上市。

上市决策LD51-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld51-2013.pdf>

第18章项下上市申请人的董事及高级管理人员的经验是否充足

2013年3月，联交所刊发了上市决策，就主板上市申请人A公司的董事及高级管理人员是否拥有第18.04条要求的“与勘探及/或开采活动相关的充足经验”做出阐述。

事实

A公司在南非从事锌和铅矿的勘探及开采。由于A公司未能符合《上市规则》第 8.05 条的盈利测试，因此，需要向联交所证明其董事及高级管理人员整体而言拥有“与勘探及/或开采活动相关的充足经验”，这样才能根据《上市规则》第 18.04 条申请豁免遵守第 8.05 条 的规定。

联交所的评估和结论

联交所认为是否满足《上市规则》第 18.04 条要求应以事实为据。在评估时联交所会考虑多项因素，包括但不限于：

- 董事及高级管理人员在与申请人采矿活动相关的勘探及/或开采活动的实际职责和经验。他们的经验不一定要与申请人营运的商品或矿物有关，可以是其他商品或矿物，但所涉及的采矿过程需与申请人所用的没有重大差异，若其技能可应用到申请人的采矿活动上；
- 他们的学术及专业资格、获得的与采矿相关重大成就/奖项，以及对采矿业及/或任何矿业公司有重大贡献；及
- 参与申请人日常营运的核心管理团队大部分成员是否拥有与该矿业公司进行的勘探及/或开采活动相关的充足经验，而非辅助勘探及/或开采活动的一般管理及市场推广经验。

联交所认为，(i)A公司某些董事及高级管理人员在多金属基本金属采矿业的经验大致相关，并可应用到开采铅及锌矿石方面；及(ii)九名核心管理人员中有五名拥有与A公司勘探及/或开采活动相关的充足经验。因此，A公司董事及高级管理人员整体而言符合《上市规则》第18.04条的规定。

上市决策LD53-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld53-2013.pdf>

以介绍方式上市及相关豁免

2013年3月，联交所就(i)应否接纳某公司以介绍方式上市；和(ii) 应否给予该公司所要求的豁免刊发了新的上市指引。

事实

A公司在中国注册成立，其A股及B股在中国一家证券交易所上市。A公司拟将全部B股转为H股，并以介绍方式将H股在联交所主板上市。其B股股东可选择成为H股股东，或于建议介绍方式上市前将所持B股售予独立第三方（“现金要约”）。

A公司并申请豁免严格遵守《上市规则》若干规定。

接受以介绍方式上市的因素

为确定A公司是否适合以介绍方式上市，联交所考虑了以下因素：

- (i) 其A股及B股均在中国的证券交易所上市超过10年；
- (ii) 所有H股（占甲公司已发行股本总额约50%）将于香港股份过户处登记，除现有主要股东所持的H股自愿遵守禁售规定外，其他H股全部可在联交所买卖；
- (iii) 为确保建议介绍方式上市进行时H股有足够的流量，A公司建议安排至少300名B股的公众股东将已转换的H股存入在香港开设的经纪户口，其市值至少达10亿港元，准备在建议介绍方式上市后在联交所买卖（“建议安排”）；

(iv) the Cash Offer would be completed in the PRC before listing, and its objective was to protect B shareholders' interests if they did not intend to convert their B shares into H shares. Accordingly, the Cash Offer was not considered as a situation involving "marketing" or a "pre-existing intention to dispose of securities" under Rule 7.15; and

(v) Company A would disclose in its listing document, and appropriate announcements, the Proposed

Arrangement (including a risk factor on its potentially limited effectiveness) and information on the share price and trading volume of its A and B shares.

Factors for granting waivers

In determining whether to grant Company A the requested waivers (set out below), the Exchange considered, amongst others, the following factors:

Waivers Requested	Exchange's Analysis
<p>Minimum public float requirements</p> <p><i>to allow a minimum H share public float of only 10% with a market capitalization of about HK\$3 billion; and the aggregate shareholding of the three largest public shareholders to be up to 65% of the total H share public float (Rules 8.08(1)(b) and/or 8.08(3))</i></p>	<ul style="list-style-type: none"> • The Proposed Arrangement (see (iii) above) indicated there would be sufficient liquidity in the H shares; • The market capitalization of the relevant H shares public float would be well above the minimum public float market capitalization of HK\$50 million under Rules 8.08(1)(b) and 8.09(1); • Company A had undertaken to increase the H share public float to 15% as required under Rule 8.08(1)(b) within one year from listing, subject to approval by the China Securities Regulatory Commission; and • Company A was a listed company with a market capitalization of about HK\$30 billion.
<p>Financial statement requirements</p> <p><i>to allow the accountants' report to be replaced by Company A's published financial statements for the latest three financial years, and the disclosure of unaudited interim financial information for the current year (Rules 4.01 and 8.06, and paragraph 38 of Appendix 1A to the Rules)</i></p>	<ul style="list-style-type: none"> • The listing would not involve any new investors, all existing shareholders had already been provided with the necessary financial information, and the same financial information would be provided to Hong Kong investors. Company A and its sponsor considered that information to be an adequate and sufficient reflection of Company A's performance and financial position during the track record period; • Company A would disclose in its listing document a directors' confirmation that all material information had been included in the listing document and the information contained was accurate and complete in all material respects and not misleading or deceptive; and • Company A's auditors and reporting accountants would provide it and its sponsor with a comfort letter with respect to the interim financial information based on certain agreed procedures performed under certain acceptable standards, and the interim financial information was for the interim period ended two months before Company A's listing document.
<p>Residency of independent non-executive director ("INED")</p> <p><i>to waive the requirement to have an INED ordinarily resident in Hong Kong until the next annual general meeting ("AGM") (Rule 19A.18(1))</i></p>	<ul style="list-style-type: none"> • The term of the then current board would expire at the forthcoming AGM to be held within five months after listing; • Company A undertook to appoint an INED ordinarily resident in Hong Kong at that AGM; and • Company A proposed to appoint professional parties familiar with business, legal and regulatory issues in Hong Kong so long as Company A was listed on the Exchange.

The Exchange determined that Company A's listing by way of introduction was acceptable, and the waivers were granted to Company A based on its particular facts and circumstances (and not as a universal precedent for other B share companies). Please follow this link for a copy of the listing decision, LD52-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld52-2013.pdf>

- (iv) 现金要约将在以介绍方式上市前在中国完成，旨在保障不拟将B股转为H股的B股股东的权益，因此不应视为牵涉第7.15条有关“销售”或“在拟以介绍方式上市之前已有意出售有关证券”的情况；和
- (v) 在上市文件和相关公告中披露建议安排（包括有关安排的成效可能受到限制的风险因素）以及其A股和B股的股价及成交量情况。

授予豁免的考虑因素

在决定是否给予A公司时，联交所考虑了（其中包括）下列因素：

豁免申请	联交所的分析
<p>最低公众持股量规定</p> <p>允许H股最低公众持股量为只有10%、市值约为30亿港元，三名最大公众股东的持股量合计可达H股公众总持股量的65%（上市规则第8.08(1)(b)和/或第8.08(3)条）</p>	<ul style="list-style-type: none"> 建议安排（请见上述第(iii)项）显示H股将有足够的流通量； H股公众持股量市值将远高于第8.08(1)(b)及8.09(1)条规定的最低公众持股市值5,000万港元； A公司承诺，若中国证券监督管理委员会批准，将于上市之日起一年内将H股公众持股量增至第8.08(1)(b)条规定的15%；和 A公司为已上市公司，市值约300亿港元。
<p>财务报表规定</p> <p>容许A公司以最近三个财政年度已发布的财务报表取代会计师报告，容许披露当前财政年度未经审计的中期财务资料（上市规则第4.01和8.06条，和附录1A第38段）</p>	<ul style="list-style-type: none"> 上市不涉及任何新投资者，公司已提供所有现有股东过往财务资料，该等财务资料亦会向香港投资者发布。A公司及其保荐人认为该等资料足以反映公司在营业纪录期内的表现及财务状况； A公司将于上市文件中披露，董事确认上市文件已载列所有重要数据，并在所有重大方面均准确完备，不含误导或欺诈成分；和 A公司的审计师及申报会计师均向A公司及其保荐人提供安慰函，确认中期财务数据乃基于若干按照可接受的标准执行的程序而得出，中期财务资料为截至A公司上市文件前两个月止的数据。
<p>独立非执行董事的居住地</p> <p>容许A公司于下届股东周年大会前毋须委任一名通常居于香港的独立非执行董事</p> <p>（上市规则第19A.18(1)条）</p>	<ul style="list-style-type: none"> 现行董事会任期即将于上市之日起五个月内举行的股东周年大会届满； A公司承诺将于股东周年大会委任一名通常居于香港的独立非执行董事；和 A公司建议在其于联交所上市期间，委任熟悉香港商业、法律及监管事宜的专业人士。

联交所认为可接纳A公司以介绍方式上市，并基于A公司的个别事实及情况给予其要求的豁免（但不能视作其他拟将B股转为H股的公司先例）。指引信LD52-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld52-2013.pdf>

Convertible Bonds

The Exchange published three listing decisions in relation to convertible bonds, which we outline below.

Changes to the terms of convertible bonds issued under a general mandate

Company A issued certain convertible bonds to an independent third party under a general mandate. The general mandate allowed Company A to issue new shares representing not more than 20% of its existing issued shares until the next annual general meeting. Assuming full conversion of the bonds at the initial conversion price, the conversion shares would represent 10% of the then issued shares of Company A.

Company A then proposed to revise the terms of the bond to (i) reduce the initial conversion price but cap the number of conversion shares at the number of new shares issuable under the original general mandate, or (ii) extend the conversion period and the maturity date of the bonds for one year without changing the conversion price or the maximum number of conversion shares.

The Exchange considered that each of the proposals would constitute a material change to the terms of the convertible bonds. The proposed revisions would be regarded as new arrangements for Company A to issue convertible securities and the original general mandate could not be used. As a result, Company A was required to comply with Rule 13.36.

Please follow this link for a copy of the listing decision, LD54-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld54-2013.pdf>

Preserving 25% public float on conversion of convertible notes

Company A, a Main Board issuer, proposed to issue certain new shares and convertible notes to Company B under a subscription agreement. Upon completion of the subscription agreement, Company B would become a substantial shareholder of Company A, and the public float of Company A's shares would still meet the 25% requirement. However, based on the shareholding structure of Company A at that time, the public float would fall below 25% if Company B exercised its right to convert some or all of the convertible notes.

Company A proposed to undertake to the Exchange that it would take appropriate measures to ensure compliance with the public float requirement at all times. Alternatively, Company A proposed to limit the maximum number of shares it might issue to Company B under the notes so as to maintain a 25% public float based on Company A's issued share capital at the time of completion of the subscription agreement.

Without any concrete arrangements to ensure a minimum 25% public float, the Exchange did not consider that Company A's undertaking to use reasonable endeavours to meet the requirement would adequately address its concern. The Exchange also did not consider the alternative proposal acceptable as it only took into account the shareholding structure of Company A at the time of the completion of the subscription agreement and not the conversion of the notes.

To address the Exchange's concern, Company A agreed to revise the terms of the notes so that a conversion of the notes could not take place if it would result in Company A failing to meet the minimum public float requirement.

Please follow this link for a copy of the listing decision, LD56-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld56-2013.pdf>

Classification of subscription for convertible notes

Company A proposed to subscribe for certain convertible notes to be issued by Company B (the "**Subscription**"). Company A and Company B were both Main Board issuers and independent of each other. Under the terms of the notes, Company A had the right to convert the notes into new shares of Company B at any time during the conversion period. The Subscription was a transaction for Company A under Chapter 14 as it involved providing financial assistance to Company B. The question was whether the transaction would be classified as if the notes were fully converted when the subscription agreement was signed.

The Exchange determined that, since the conversion of the notes was at Company A's discretion, Company A would classify the transaction on the basis of the percentage ratio calculations for providing financial assistance to Company B. If Company A subsequently proposed to exercise the conversion rights, Company A would need to classify the conversion as a transaction at that time taking into account the conversion price and Company B's total assets, revenue and profits. This was in line with the treatment of option transactions under Chapter 14 of the Listing Rules.

Please follow this link for a copy of the listing decision, LD55-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld55-2013.pdf>

可转换债券

联交所刊发了三项关于可转换债券的上市决策。现为您总结如下：

修改根据一般性授权发行的可换股债券的条款

A公司根据一般性授权向一名独立第三方投资者发行若干可换股债券。该一般性授权准许A公司在下届股东周年大会前发行不超过占其已发行股份 20%的新股份。假设该等债券按初始换股价格悉数转换，换股股份将占A公司当时已发行股份的 10%。

A公司拟修订有关债券的条款：(i) 调低债券的初始换股价，但发行根据原有的一般性授权可发行的最高数目新股份，或(ii) 不变更换股价或可发行的换股股份数目，但将债券的换股期及到期日延长一年。

联交所认为所述的各项建议均会构成对相关可换股债券的条款作出重大修改，应视为A公司向投资者发行可换股债券的新安排，A公司不得使用原有的一般性授权。因此，A公司须就该等建议遵守《上市规则》第13.36条的规定。

上市决策 LD54-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld54-2013.pdf>

在可换股票据转换后维持25%公众持股量

A公司是主板上市公司，建议根据一项认购协议向B公司发行若干新股份及可换股票据。认购协议完成后，B公司将成为A公司的主要股东，而A公司的公众持股量将仍能够符合25%规定。但是，然而，根据A公司当时的股权结构，若B公司行使其权利转换部分或全部可换股票据，A公司的公众持股量将会跌至低于25%。

A公司拟向联交所承诺将会采取适当措施，以确保在任何时候均符合公众持股量规定。另一建议是：A公司拟限制换股股份的数目，最多只向B公司发行相当于A公司在认购协议完成时已发行股本的 25%的票据从而维持25%公众持股量。

A公司如没有任何确切的安排以确保可换股票据转换后仍符合25%最低公众持股量，联交所不认为A公司将合理尽力符合此项规定的承诺足以免除其担心。联交所

亦不认为A公司提出的另一建议可以接受，因为有关建议只考虑到A公司完成认购协议时（而非票据转换后）的股权结构。

针对联交所提出的问题，A公司同意修订可换股票据的条款，若票据转换会导致A公司未能符合《上市规则》的最低公众持股量规定，便不能进行转换。

上市决策LD56-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld56-2013.pdf>

认购可换股票据时的分类

A公司拟认购B公司发行的若干可换股票据（“认购事项”）。A、B公司均为主板上市公司，且彼此独立。根据票据条款，A公司有权于换股期内随时将票据转换为B公司的新股份。由于认购事项涉及向B公司提供财务资助，故属于A公司根据《上市规则》第十四章的一项交易。问题是：A公司是否同时须将认购事项分类，如同认购协议签署时相关票据已悉数转换一样处理。

联交所认为，由于换股乃由A公司全权决定，故A公司须将换股界定为一项交易，按照其向B公司提供财务资助计算所得的百分比率将交易分类。如果A公司其后拟行使换股权，到时候须将换股界定为一项交易，并计及换股价及B公司的总资产、收入及溢利。此与《上市规则》第十四章处理涉及选择权的交易的做法一致。

上市决策LD55-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld55-2013.pdf>

NEW GUIDANCE LETTERS

Side benefits for cornerstone investors

In February 2013, the Exchange published a guidance letter to remind applicants that it does not allow any direct or indirect benefits (by side letter or otherwise) to be given to cornerstone investors to participate in the placing tranche of an IPO, other than a guaranteed allocation of shares at the IPO price.

Placings to cornerstone investors are generally permitted based on the following principles:

IPO price	The transaction must be at the IPO price
Lock-up	The shares subscribed must be locked up, generally for at least six months following the listing date
Independence	No representation on the board of the listing applicant is allowed, and the investor must be independent of the listing applicant, its connected persons and their respective associates
Disclosure	Details of the placing arrangement, including the identity and background of the investors, must be disclosed in the prospectus
Public float	The shares will form part of the public float under Rule 8.08 (provided the investor is a member of the public for the purpose of Rule 8.24)

The Exchange considers it misleading to the public if any investors are being considered as cornerstone investors in an IPO and yet they receive direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation of the shares. Where any such benefits are given, these investors should be reclassified as pre-IPO investors and comply with the Interim Guidance on Pre-IPO Investments (*Guidance Letter GL29-12*).

Summary section	<ul style="list-style-type: none"> overview of the Mineral or Petroleum Assets salient terms of the mining and exploration licenses in tabular format access to major transportation networks from the mines/oilfields financial information of each major product mining rights pledged to secure banking facilities (if any) risks associated with capital expenditure projects
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The Exchange is also of the view that non-disclosure of such side benefits given to cornerstone investors violates the principles under Rule 2.13 (relating to accuracy and presentation of information).

Examples of side benefits may include:

- waiver of brokerage commission
- put option to sell shares to a controlling shareholder (or another person) after IPO
- sharing of underwriting commissions
- agreement to invest IPO proceeds in funds managed by cornerstone investor
- agreement to allow allocation of shares in another IPO
- any other transaction or arrangement entered into on non-arm's length terms in connection with the cornerstone investment.

This guidance does not prevent the making of arm's length commercial arrangements between applicants and investors (e.g. where the investors are major customers and suppliers, or formation of joint ventures for business development with such investors), which are considered strategic dealings and/or arrangements with strategic investors. Details of any such commercial arrangements should be fully disclosed in the prospectus.

Please follow this link for a copy of Guidance Letter, GL51-13:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl51-13.pdf>

Chapter 18 Mineral Company applicants: disclosure in listing documents

In March 2013, the Exchange published a guidance letter to assist mineral companies by giving guidance for better preparation of listing documents under Chapter 18 (Chapter 18A of the GEM Rules):

(i) Disclosure

The Exchange suggests that the following disclosures be made in the listing document:

新刊发的指引信

基础投资者的间接利益

2013年2月，联交所刊发了新的指引信，提醒上市申请人除保证按首次公开招股价分配股份外，不得（通过附函或其他方式）向基础投资者提供直接或间接利益使其参与股份发售的配售部分。

联交所一般按以下原则准许申请人向基础投资者进行配售：

招股价	配售必须按首次公开招股价进行
禁售期	一般为上市日期起计至少六个月
独立性	在上市申请人的董事会内没有代表，同时独立于上市申请人、其关连人士及其各自的关联人
披露	须在上市文件内披露配售安排的详情，包括投资者身份及背景
公众持股量	配售股份属主板规则第8.08条所指的公众持股量的一部分（假设投资者属于主板规则第8.24条所述公众人士）

联交所认为，若投资者被视为首次公开招股的基础投资者，但除保证获分配首次公开招股股份外，还通过附函或其他方式获得其他直接或间接利益，则属误导公众。如果存在该等利益，这些投资者就应重新分类为首次公开招股前投资者，并须遵从有关首次公开招股前投资的临时指引(指引信GL29-12)中的规定。

联交所同时认为，不披露给予基础投资者的该等附函利益违反了主板规则第2.13条（关于信息的准确和陈述）的要求。

指引信中列出的附函利益包括：

- 豁免经纪佣金
- 控股股东或其他人士提供认沽期权在上市后购回股份
- 分享部分包销佣金
- 保证将首次公开招股所得款项再投资于基础投资者所管理的基金
- 协议在另一宗首次公开招股中获得分配股份
- 任何其他与基础投资有关但不符合公平商业原则的交易或安排

指引信并不是要禁止申请人与投资者订立符合公平原则的商业安排，比如投资者是主要客户及供货商时，又或与该等投资者成立合资公司发展业务等，这些均视为与策略投资者之间的策略交易及/或安排。任何商业安排的详情应在上市文件中全面披露。

指引信GL51-13链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl51-13.pdf>

上市规则第18章矿业公司申请人：上市文件披露

2013年3月，联交所刊发了一项指引信，旨在帮助矿业公司更好地准备第18章(创业板上市规则第18A章)规定的上市文件：

(i) 披露

联交所建议在上市文件中作下列披露：

“概要”一节

- 矿产或石油资产概览
- 以列表形式罗列采矿及勘探许可证的主要条款
- 矿场 / 油田与主要交通网络的接合
- 各主要产品的财务信息
- 已抵押作银行融资担保的采矿权（如有）
- 资本开支项目所涉及的风险

Competent Person's Report and related disclosure	<ul style="list-style-type: none"> • data related to mining valuation • any differences in views between the Competent Person and the applicant on assumptions adopted • detailed analysis of any harmful elements identified in deposits at mines • scale diagrams of the location of the Mineral or Petroleum Assets • data related to reserves • net present value rates and bases • onsite investigation and verification work conducted, or reasons why none are needed • disclosure in the Risk Factors section of all material risks mentioned in the Competent Person's Report
Business section	<p><i>Project development</i></p> <ul style="list-style-type: none"> • construction details by key stages • options available to the applicant <p><i>Workflow/Production</i></p> <ul style="list-style-type: none"> • workflow diagram for the major steps/processes • production data in tabular format and commentary on material fluctuations • major accidents and relevant internal controls <p><i>Outsourcing arrangements</i></p> <ul style="list-style-type: none"> • identity of the contractors and details of the agreements with contractors <p><i>Utilities</i></p> <ul style="list-style-type: none"> • measures to secure utility supplies • utility fees charged compared with market rates • material disruptions as a result of shortage of utilities, and the associated risks <p><i>Sales/Product delivery</i></p> <ul style="list-style-type: none"> • details of sales agreements • whether any product transportation shortage has occurred, and associated risks and remedies in the context of the expansion plan <p><i>Regulatory, environmental and social matters</i></p> <ul style="list-style-type: none"> • summary of all outstanding approvals and the current status of the relevant applications • details of applicable regulations • environmental impact, weakness of applicant's environmental management policies, local community concerns and operational and financial impact of new environmental regulations/programs, and the associated risks <p><i>Financial information</i></p> <ul style="list-style-type: none"> • analysis on changes in price/fees/expenses/costs of Mineral or Petroleum Assets • breakdown of production costs and total cash operating costs • amounts of exploration expenses • major assumptions adopted for the forecast operating costs

(ii) Drafting

The Exchange requires applicants to:

- Avoid using the word “mine” to describe projects at an early stage of development or exploration work, and giving unrealistic indications of accuracy where estimates are disclosed;

- explain qualitative descriptions; and
- ensure the consistency of terminology.

Please follow this link for a copy of the Guidance Letter, GL52-2013:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl52-13.pdf>

<p>合格人士报告 及相关披露</p>	<ul style="list-style-type: none"> • 与采矿评估有关的数据 • 合格人士与申请人之间就采纳的若干假设所持的任何不同意见 • 关于矿场中已识别的有害元素的详细分析 • 以图画及图表按比例显示矿业或石油资产的位置 • 储量数据 • 净现值率及其依据 • 所进行的实地视察及核证，或无需进行实地视察及核证的原因 • 在“风险因素”一节披露合格人士报告中所述的全部重大风险
<p>“业务”一节</p>	<p>项目开发</p> <ul style="list-style-type: none"> • 按主要阶段排列的建设详情 • 申请人可作的选择 <p>工作流程/生产</p> <ul style="list-style-type: none"> • 主要步骤 / 程序的工作流程图 • 以列表形式列明生产数据并解释重大变化 • 主要意外事故及内控措施 <p>外包安排</p> <ul style="list-style-type: none"> • 承包商身份及与承包商所签协议的主要条款 <p>公用设施</p> <ul style="list-style-type: none"> • 确保公用设施供应而采取的任何措施 • 公用设施费用与市价的比照 • 任何公用设施短缺导致的营运严重中断，以及与之相关的风险 <p>销售/产品交付</p> <ul style="list-style-type: none"> • 销售协议的主要条款 • 是否经历产品运输能力不足的问题，扩张计划及其相关风险和补救措施 <p>监管、环境及社会事宜</p> <ul style="list-style-type: none"> • 所有尚未获准的批文及相关申请的现状概要 • 适用法律法规的详请 • 环境影响，申请人环境管理政策上的任何弱点及不足，当地社群的关注，新的环境规例定/计划对营运及财务的任何影响，以及相关风险 <p>财务资料</p> <ul style="list-style-type: none"> • 矿业或石油资产的价格/费用/成本变动的分析 • 生产成本及总现金营运成本的明细 • 勘探开支总额 • 预测营运成本时所采纳的主要假设

(ii) 上市文件草拟

联交所要求申请人：

- 描述仍处于开发或勘探工作初期的项目时，避免使用“矿场”(mine)一词。另外，在披露预测或估计避免就其准确性进行不符实际的表述。

- 解释量化描述；和
- 确保文件中的词汇的一致性

指引信GL52-2013链接如下：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl52-13.pdf>

ENFORCEMENT NEWS

Licence applicant banned for giving false information to SFC

In February 2013, the SFC banned a former licensed representative of SinoPac Asset Management Asia Limited from re-entering the financial industry for nine months as he failed to disclose disciplinary action taken against him by the Securities and Futures Bureau of Taiwan in his license application to the SFC.

This disciplinary action serves as a reminder to license applicants on the importance of reading and completing application forms carefully. It is a criminal offence to provide false or misleading information to the SFC, and the SFC will verify information provided on each application through its connections with other regulatory bodies within and outside Hong Kong.

The principal to which the license applicant will be accredited must also review and verify the accuracy of information provided in the application. The principal should be convinced that the license applicant is fit and proper to carry on the proposed regulated activity(ies) before endorsing the application.

SFC bans former managing director of Morgan Stanley for life for insider dealing

In March 2013, the SFC banned Mr. Du Jun (“Mr. Du”), former managing director of Morgan Stanley Asia Limited (“Morgan Stanley”), from re-entering the financial industry for life.

The disciplinary action followed the completion of criminal proceedings commenced by the SFC in September 2012, in which the Court of Appeal upheld the conviction of Mr. Du for insider dealing in shares of CITIC Resources Holdings Ltd. worth HK\$86 million.

Unsurprisingly, the SFC concluded that Mr. Du is not a fit and proper person to be licensed. In deciding the sanction, the SFC took into account considerations including his breach of trust and confidence from his clients and employer, his criminal convictions, and that insider dealing is very serious misconduct which damages market integrity.

REGULATORY WATCH

Exchange publishes FAQs on Listing Rule requirements for Mineral Companies

In February and March 2013, the Exchange published various frequently asked questions and responses (“FAQs”) relating to Chapter 18 mineral companies, highlights of which we set out below:

- (i) *Competent Person’s submission on relevant experience.* During the vetting of a notifiable transaction involving a Competent Person under Rule 18.21(1), the Competent Person must submit to the Exchange sufficient details of his previous experience to demonstrate its relevance to the mineral or petroleum assets being acquired or disposed of. A list of previous engagements is required, including: (i) the period of each engagement; (ii) a description of each project undertaken with the location and type of resources involved, and the relevance to the resources being acquired or disposed of; (iii) details of any technical reports on the resources of the project, including the reporting standards and the use of the reports; and (iv) details of his role and responsibilities in the project and the preparation of any technical report.
- (ii) *Rule 18.04 waiver requirements.* In considering whether to grant a waiver under Rule 18.04 to a mineral company that is unable to satisfy the Rule 8.05 profit tests, the Exchange expects its board members and senior management to have a spread of experience across various aspects relevant to the company’s mining business, including exploration, construction, mining, processing and marketing.
- (iii) *Rule 18.04 waiver availability.* A mineral company can still apply for a Rule 18.04 waiver even though it is unable to satisfy the management and ownership continuity requirements.
- (iv) *Valuation Reports in Competent Person’s Reports.* The Exchange has confirmed that a Valuation Report or an economic analysis may form part of a Competent Person’s Report, given that in such a case the Competent Person issuing them must also meet the requirements to qualify as a Competent Evaluator under Rule 18.23.
- (v) *“Effective date” of Valuation Reports and Competent Person’s Reports.* The “effective date” of these Reports (which Rule 18.24 requires to be less than six months before publication of the listing document or circular) is the date of the appraisal (i.e., when Resources and Reserves are estimated or valued), not the date when the Report is issued.
- (vi) *Basis of 125% working capital analysis.* In preparing this analysis under Rule 18.03(4), the proposed exploration and development costs to be included relate to ‘daily operation’ working capital items such as loan repayments, contracting fees for excavating minerals and costs of transporting them, whereas the capital expenditures that do not need to be included (as stated in the note to the Rule) relate to development of infrastructure, processing facilities etc.

执法新闻

牌照申请人因向证监会提供虚假资料被禁止重投业界

2013年2月，证监会禁止永丰金资产管理（亚洲）有限公司某位前持牌代表重投金融行业，为期九个月，因为他没有向证监会披露曾遭受台湾证券期货局（证期局）的纪律处分。

该纪律处分再次提醒牌照申请人需要仔细阅读和完成申请表格。向证监会提供虚假或误导性信息属于刑事犯罪，证监会将联系香港境内外的其他监管机构核实每一份申请的信息。

牌照申请人服务的机构也必须审查和核实申请人提供的信息的准确性。该机构在支持牌照申请人的申请之前能够相信该申请人有适当的资格从事受规管的活动。

摩根士丹利前董事总经理因内幕交易被证监会终身禁止重投业界

2013年3月，证监会终身禁止摩根士丹利亚洲有限公司（摩根士丹利）前董事总经理杜军重投业界。

证监会2012年9月对杜军就内幕交易展开的刑事法律程序已结束，上诉法庭维持了对杜军就中信资源控股有限公司的股票进行涉及价值8,600万港元内幕交易的裁定，并采取上述纪律处分行动。

毫无悬念，证监会认为杜军并非获发牌的适当人选。证监会作出上述处分时，已考虑以下所有相关情况：他违背了客户及雇主对他的信任和信心，他的刑事定罪判决以及内幕交易损害市场的廉洁稳健，是非常严重的失当行为。

监管动向

联交所刊发矿业公司上市规则要求的常见问题诠释

2013年2月和3月期间，联交所刊发了有关上市规则第十八章项下矿业公司的常见问题诠释。我们为您总结其中要点如下：

(i) *有关合格人士的资格规定*。在审批一项须予公布的交易时，如其中涉及上市规则第18.21(1)条所述的合格人士，该合格人士应向联交所提交充分

的资料证明其过往经验与本次收购或出售的矿业或石油资产相关。该人士需要提供一份其过往参与项目的列表，并列明以下数据：(i) 每个项目的参与期间；(ii) 详述每个项目的数据，包括地点、天然资源种类，以及是否与本次项目所涉及的矿业或石油资产相关；(iii) 项目所涉及资源的任何专业报告之详情，包括报告准则及报告用途；和 (iv) 有关该名人士于项目及编备任何相关专业报告的职责之详细资料。

- (ii) *上市规则第18.04条的豁免要求*。矿业公司如果不能通过上市规则第8.05条的盈利测试，为了获得豁免遵守上市规则第18.04条，联交所希望矿业公司应证明其董事会成员及高级管理人员拥有与该矿业相关的各种经验，包括勘探、建设、开采、处理及营销。
- (iii) *上市规则第18.04条的豁免*。矿业公司如不能满足管理和所有权持续性要求，也可以申请豁免遵守上市规则第18.04条。
- (iv) *合格人士报告中载入估值报告*。联交所已确认估值报告或经济分析报告可以成为合格人士报告的一部分，但发布该等报告的合格人士必须同时满足上市规则第18.23条关于合格估算师的资格要求。
- (v) *合格人士报告/估值报告的“生效日”*。这些报告的“生效日”（上市规则第18.24条规定须为刊发上市文件或通函日期之前不超过六个月）应当自评估当日（即资源量及储量被估算或估值的当日）起计，而非合格人士报告/估值报告签署当日。
- (vi) *125%营运资金分析依据*。在根据上市规则第18.03(4)条进行此项分析时，计入运营资金的所拟勘探及开发成本计与日常运作运营资金项目有关，例如贷款偿还、开采矿山的合约费用以及运送矿山的运输费，而不需包括在内的资本支出项目（见该条上市规则的附注部分）与矿场基础设施及扩充加工设施的开发有关。

采纳香港财务报告准则 / 国际财务报告准则第 10 号：对执行上市规则的影响

香港财务报告准则 / 国际财务报告准则第 10 号（标题为“综合财务报表”）对 2013 年 1 月 1 日及其后开始的年度期间生效。该等准则对控制的原则提出新的规定及指引，以界定哪些实体须合并于发行人的综合财务报表内。因此，一家过往并未被界定为发行

Adoption of HKFRS 10 / IFRS10: Compliance Implications

Hong Kong Financial Reporting Standard (“HKFRS”) 10 / International Financial Reporting Standard (“IFRS”) 10, entitled “*Consolidated Financial Statements*”, are in effect for annual periods beginning on or after 1 January 2013.

HKFRS/IFRS 10 set out new requirements on the principle of control for the purpose of determining which entities are to be consolidated in an issuer’s consolidated financial statements.

An investee which was not previously classified as a subsidiary of the issuer may be classified as such, and so be consolidated, under the new requirements.

The implementation of HKFRS/IFRS 10 may have the following practical implications for issuers’ compliance with the accounting standards and the Rules:

- financial statement disclosures, including an assessment in accounts for the year ended December 31, 2012 of the financial impact of HKFRS/IFRS 10 on subsequent accounts, and restating comparative data for 2012 in the 2013 accounts with a reconciliation;
- disclosure of inside information arising from the consolidation or deconsolidation of entities (such as the impact on the issuer’s financial position);
- compliance requirements in relation to transactions and activities of the new subsidiaries, including inside information, notifiable transactions and connected transactions, spin-offs and share option schemes; and
- other areas of concern resulting from an expanded group of connected persons (such as public float of the issuer, voting rights on corporate actions and transactions, and dealing restrictions under the Model Code).

Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. The views expressed herein shall not be attributed to Morrison & Foerster, its attorneys or its clients. If you wish to obtain a free subscription to our Hong Kong Capital Markets Quarterly News, please send an email to info@mof.com.

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人附属公司的投资实体有可能须按照该等准则被视为附属公司（新附属公司）而需要合并到综合财务报表内。

香港财务报告准则 / 国际财务报告准则第 10 号的实施可能对发行人遵守上市规则会计准则方面的要求产生如下影响：

- 财务报表披露，在上市公司2012年度财务报表中披露报告准则第 10 号对其后期财务报表财务影响的评估资料，在编制其2013年账目时重列2012年的同期数字；

- 披露任何因合并实体或取消合并实体（如对发行人财务状况的影响）所产生的任何内幕消息；
- 新附属公司的交易和活动遵守上市规则的要求，例如内幕消息、须予公布的交易及关联交易、分拆上市和购股权计划；和
- 因关连人士范围扩大而产生的其他问题（例如发行人公众持股量、对企业行为和交易的表决权以及行为守则项下的交易限制）。

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