

Major Projects

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New Rules for mineral companies

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Hong Kong Stock Exchange implements new Listing Rule to attract mining company listings in Hong Kong

The Hong Kong Stock Exchange ("HKSE") has introduced a new Listing Rule to attract mining companies to list on the HKSE. The rule is expected to encourage HKSE listings by overseas mining companies (including from Australia and Canada) and to attract further investment into HKSE listed mining companies.

The new rule - Chapter 18 of the HKSE Listing Rules applies to a mineral company whose major activities (representing 25% or more of their total assets, revenue or operating expenses) involve the exploration for and/or extraction of natural resources, that is, minerals and petroleum, as well as a listed issuer that engages in major acquisitions of mineral or petroleum assets.

It replaces the existing Chapter 18 and contains additional conditions relevant to the listing of mineral companies and new continuing obligations applicable to listed mineral companies. It also contains additional disclosure and compliance requirements for a listed issuer that acquires or disposes of natural resources. The new Chapter 18 will take effect on **3 June 2010**, and is not intended to have retrospective effect.

Additional listing conditions

- A new listing applicant that is a mineral company has to demonstrate that it has:
 - right to participate actively in the exploration for and/or extraction of resources through (i) control over a majority of the assets (an interest higher than 50% and by value) in which it has invested together with adequate rights over the exploration for and/or extraction of resources ; or (ii) adequate rights which give it sufficient influence in decisions over the exploration for and/or extraction of resources;
 - at least a portfolio of (i) indicated resources (in the case of minerals); or (ii) contingent resources (in the case of petroleum), identified under a reporting standard and substantiated in a competent person's report. This portfolio must be meaningful and of sufficient substance to justify a listing. That is to say, early stage exploration companies are not eligible; and
 - sufficient working capital for 125% of its budgeted needs for at least the next 12 months.
- If an applicant cannot meet any of the financial track record requirements under Rule 8.05, it may still apply to be listed if it can establish that the combined experience of its directors and senior managers is sufficient

and relevant to the exploration for and/or extraction activity that the applicant is pursuing. Individuals relied on must have a minimum of five years relevant industry experience. The applicant's *primary* activity must be the exploration for and/or extraction of natural resources.

Note: HKSE has indicated that it will consider an applicant's inability to meet the profit requirements according to the circumstances, and may yet provide greater clarity on the treatment of applicants for waivers from the requirements in response to market comments.

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Additional listing document disclosure requirements

- A competent person's report on resources and/or reserves in compliance with the applicable reporting standard, plus (i) a statement that no material changes have occurred since the effective date of the report; or (ii) details of any material changes. The competent person must have a minimum of five years relevant experience, be professionally qualified and independent.
- Details of prospecting, exploration, exploitation, land use and mining rights obtained or to be obtained.
- Any legal claims or proceedings that may influence the listing applicant's rights to explore or mine.
- Disclosure of specific risks and general risks, with reference to a new Guidance Note 7 for suggested risk analysis.
- Disclosure of other material issues such as environmental risks and liabilities, compliance with host country laws, regulations and permits, and tax or royalty payments made to host country governments.
- If the listing applicant has begun production it must disclose an estimate of the operating cash cost per appropriate unit for the resources produced.
- If the listing applicant has not begun production it must disclose its plans to proceed to production with indicative dates and costs, which is supported by at least a scoping study and substantiated by the opinion of a competent person.
- If the listing applicant is involved in the exploration for and/or extraction of resources, it must prominently disclose that its resources may not be extracted at a profit.
- A working capital statement that the listing applicant has sufficient working capital for 125% of its budgeted needs for at least the next 12 months.

A mineral company or a listed issuer acquiring or disposing of mineral or petroleum assets

If a mineral company acquires or disposes of assets which are solely or mainly mineral or petroleum assets or if a listed issuer acquires such assets, in each case as part of a major transaction, very substantial acquisition or disposal or reverse takeover, in addition to complying with the requirements in Chapter 14 and Chapter 14A, where relevant, the circular must contain the following information:

- a competent person's report on the resources and/or reserves being acquired or disposed of;

- in the case of an acquisition, a valuation report prepared by a competent evaluator on the mineral or petroleum assets being acquired; and the information listed in the section headed “additional listing document disclosure requirements” above (excluding the working capital statement).
- the information listed in the section headed “additional listing document disclosure requirements” above (excluding the working capital statement).

Note: The HKSE has indicated that a valuation based on discounted cash flows will not be regarded as a profit forecast requiring review by an independent accountant.

On completion of a major transaction, very substantial acquisition or disposal or reverse takeover involving the acquisition of mineral or petroleum assets, a listed issuer will be treated as a mineral company and has to comply with the continuing obligations of a mineral company.

Additional continuing obligations

- A mineral company must disclose in its half-yearly reports and annual reports details of its exploration, development and mining production activities, a summary of expenditure incurred on these activities during the period under review or a negative statement if there has been no exploration, development or production activity during that period.
- A mineral company must include an update of its resources and/or reserves in its annual report.
- A listed issuer that discloses details of resources and/or reserves must also include an update of those resources and/or reserves in its annual report.
- Annual updates need not be supported by a competent person’s report, and may take the form of a no material change statement.

Reporting standards

Competent person’s reports and valuation reports must comply with standards acceptable to the HKSE including:

- JORC Code, NI 43-101 and SAMREC Code for mineral resources and reserves;
- PRMS for petroleum resources and reserves; and
- CIMVAL, SAMVAL Code and VALMIN Code for valuations.

The HKSE has discretion to approve other standards, provided that, in the case of reports on resources and reserves, they give a comparable standard of disclosure and sufficient assessment of the underlying assets.