Charltons - Hong Kong Law Newsletter - 26 April 2012

[online version](http://www.charltonslaw.com/hong-kong-stock-exchange-issues-guidance-letter-on-disclosure-of-use-of-proceeds-in-new-applicants-listing-documents/)

# Hong Kong Stock Exchange Issues Guidance Letter On Disclosure Of Use Of Proceeds In New Applicants’ Listing Documents

## Introduction

In April 2012, the Stock Exchange of Hong Kong Limited (**Exchange**) issued a guidance letter (HKEx-GL33-12) (**Guidance Letter**) on the disclosure of the intended use of proceeds by new applicants in listing documents.

The Guidance letter is available [here](gl33-12.pdf).

The Guidance Letter briefly summarises the relevant Listing Rule and Companies Ordinance requirements and provides guidance on the disclosure of the use of proceeds in listing documents in particular circumstances.

## Listing Rule Requirements

### Accurate and complete presentation of information

Main Board Rule 2.13 (GEM Rule 14.08(7)) requires that the information included in an applicant’s listing document must be clearly presented, accurate and complete in all material respects and not be misleading or deceptive.

### Details for investor to make an informed assessment of the issuer

Main Board Rule 11.07 (GEM Rule14.08(7)) sets out the overriding principle that a new applicant’s listing document (except in the case of a listing by way of introduction) must contain particulars and information which, according to the particular nature of the issuer and the securities for which listing is sought, is necessary to enable investors to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights and trading arrangements attaching to such securities.

### Statement or estimate of net proceeds and intended application

Paragraphs 17 and 48 of Part A of Appendix 1 to the Main Board Rules require the listing document to include a statement or estimate of the net proceeds of the issue and a statement of how such proceeds are intended to be applied.

Similarly, paragraph 48 of Part A of Appendix 1 to the GEM Rules requires a listing document to include a detailed explanation of the intended use of the proceeds of the issue. The explanation must, so far as practicable, be given by reference to the content of the issuer’s statement of business objectives contained in the listing document (thereby providing an indication of the timing of deployment of the proceeds).

### Certain Particulars of Property to be Acquired

Paragraphs 49 and 50 of Part A of Appendix 1 to both the Main Board and GEM Rules require the listing document to disclose certain particulars of a property acquisition which is to be paid for wholly or partly out of the proceeds of the issue or which has not been completed at the date of the issue of the listing document (subject to certain limited exceptions).

## Companies Ordinance Requirements

Paragraphs 32 and 33 of the Third Schedule of the Companies Ordinance require a prospectus to include an accountants’ report where the proceeds, or any part the proceeds, of the issue of shares are or is to be applied directly or indirectly in the purchase of any business, or in the company’s acquisition of shares in another undertaking which will result in the undertaking becoming a subsidiary of the company.

## Guidance From Exchange

### Proceeds for General Working Capital

*No current or specific plan for the proceeds*

If a new applicant has no current or specific plans for the proceeds, or a material portion of them (generally 10% or above), the Use of Proceeds section of the listing document must include a statement to that effect and discuss the principal reasons for the offering.

The Exchange considers that references to “working capital” or “general corporate purposes” do not constitute current or specific plans for the proceeds unless a reasonably detailed explanation is given of how the working capital is to be applied or what the general corporate purposes are.

In determining whether the explanation for the use of proceeds is acceptable, the Exchange will consider the facts of each case. The Exchange has illustrated this with two examples.

#### Example 1: Acceptable case

The allocation of all net proceeds as “working capital” by a Main Board applicant was considered acceptable by the Exchange as the listing document explained in detail in that the proceeds were to be used to increase the applicant’s capital base to enable it to meet certain statutory capital requirements for business expansion.

#### Example 2: Unacceptable case

The allocation of 25% of a Main Board applicant’s net proceeds as “working capital” for the expansion of its sales force and operations team was not considered acceptable. The Listing Committee requested clear explanation in the listing document as to why 25% of the proceeds needed to be allocated to working capital. The Committee also requested a more detailed explanation of other intended allocations, such as for unidentified acquisitions and increase in inventory.

### Proceeds for Acquisition of Properties

If the proceeds will be used to acquire properties from any connected persons or their associates, the basis for determining the cost of such acquisitions must be disclosed in the Use of Proceeds section of the listing document (see Paragraphs 49(1) and 50 of Annex 1A to the Main Board and GEM Rules).

### Proceeds for Acquisition of Businesses

If the proceeds will be used to finance acquisitions of businesses, the Use of Proceeds section of the listing document must disclose the identity of the businesses or, if not yet identified, the nature and brief description of the types of businesses to be sought, the acquisition strategy, and the status of any related negotiations.

Where pro forma financial information reflecting acquisitions is not required under Main Board Rule 4.28 (GEM Rule 7.27) or the Companies Ordinance or otherwise, the applicant is still required to disclose the terms of any proposed acquisition, the identification of the parties or the nature of the business of the acquisition target.

### Proceeds of Discharge of Indebtedness

If the proceeds will be used to discharge debt, the interest rate and maturity of such debt must be disclosed in the listing document. Where the debt to be discharged was incurred within one year before the date of the listing application, the document should describe how the borrowing was used (except where it was used for working capital).

### Disclosure in the Listing Document

Details of proposed capital expenditures would normally be included in different sections of the listing document. For example, if the expenditures are to be incurred for a programme of construction or equipment purchase, the Financial Information section of the listing document should discuss matters such as liquidity and proposed capital expenditures.

Where any material amounts of other funds are necessary for the specified purposes for which the issue proceeds are to be used, the amounts of such funds needed for each specified purpose and the source of funding should be disclosed in the appropriate sections of the listing document.

### Discussion of Order of Priority of the Proceeds

The intended order of priority of the use of proceeds should be discussed in the Use of Proceeds section of the listing document where the amount to be raised is variable. This would be the case where the securities are offered under a price range; where additional securities are offered upon exercise of an over-allotment option; and for a GEM applicant, where the offer is not fully underwritten and the proposed amount to be raised is more than the minimum amount for it to proceed with the offer.

### Change of the Use of Proceeds

Applicants are allowed to change the use of proceeds due to certain contingencies if these are specifically discussed and the alternatives are clearly described in the Use of Proceeds section of the listing document. Any material change of the use of the proceeds is generally considered to be price sensitive if such information was not previously disclosed in the listing document and the issuer must make an announcement to notify investors of the change of the use of proceeds after listing.

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at [unsubscribe@charltonslaw.com](mailto:unsubscribe@charltonslaw.com?subject=unsubscribe%20-Hong%20Kong%20Law-)

**Charltons - Hong Kong Law Newsletter - Issue 152 - 26 April 2012**