

HKEx GUIDANCE LETTER

HKEx-GL33-12 (April 2012) (Updated in July 2013) – effective for applications submitted on or after 1 October 2013

Subject	Disclosure in listing documents for IPO cases – Use of Proceeds
Listing Rules and Regulations	Main Board Rules 2.13 and Paragraphs 17 and 48 to 50 of Part A of Appendix 1 GEM Listing Rules 17.56, Paragraphs 15(2) and 48 to 50 of and note 8 to Part A of Appendix 1 Paragraphs 32 and 33 of the Third Schedule of the Companies Ordinance
Related Publications	N/A
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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 the disclosure of applicants' intended use of proceeds in listing documents.
- 1.2 The Exchange expects applicants to follow this letter when preparing their listing applications. A listing document that does not follow this guidance may be considered not substantially complete as required under the Listing Rules (*Updated in July 2013*).

2. Relevant Requirements

Listing Rules

- 2.1 Main Board Rule 2.13 (GEM Rule 17.56) requires that the information contained in the listing document must be accurate and complete in all material respects and not be misleading or deceptive. In addition, Main Board Rule 11.07 (GEM Rule 14.08(7)) sets out an overriding general duty of disclosure in a listing document.
- 2.2 Paragraphs 17 and 48 of Part A of Appendix 1 to the Main Board Rules require the listing document to disclose an estimate of the net proceeds of the issue and how they are intended to be applied. Paragraph 48 of Part A of Appendix 1 to the GEM Rules requires disclosure of a detailed explanation of the intended use of the proceeds with reference to an applicant's business objectives and a timetable for their deployment.
- 2.3 Paragraphs 49 and 50 of Part A of Appendix 1 to both the Main Board Rules and GEM Rules require the listing document to disclose certain particulars of a property

acquisition (names and addresses of the vendor, etc.) where the consideration is intended to be paid, in whole or part, out of the proceeds of the issue.

Companies Ordinance

- 2.4 Paragraphs 32 and 33 of the Third Schedule of the Companies Ordinance require the preparation of an accountants' report in certain circumstances where offering proceeds are used for the acquisition of a business or shares of a body corporate.

3. Guidance

Meaningful Breakdown of the Use of Proceeds

- 3.1 The listing document should include detailed breakdown of the use of proceeds. For example, how the net proceeds will be allocated to each of an applicant's proposed expansion plans, and detailed breakdown of the use of proceeds for each expansion plan (e.g. land acquisition, purchase of plant and equipment, increase in head-count, etc.). *(Updated in July 2013)*

Proceeds for General Working Capital

- 3.2 Where an applicant has no current or specific plans for all or a material portion (generally 10% or more) of the proceeds, the "Use of Proceeds" section in a listing document must include a statement to that effect and discuss the principal reasons for the offering.
- 3.3 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.
- 3.4 The Exchange will consider the facts of individual cases to determine whether the explanation for use of proceeds is acceptable. For example, the Exchange has previously decided as follows:

Case 1

The Exchange considered the allocation of all net proceeds as "working capital" by an applicant acceptable as it explained in detail in the listing document that the proceeds were to be used to increase its capital base to enable it to meet certain statutory capital requirements for business expansion.

Case 2

An applicant allocated 25% of its net proceeds as "working capital" including the expansion of sales force and operations team. The Committee requested for clear explanation in the listing document why it was necessary to allocate 25% of the proceeds to working capital. The Committee also requested for more detailed explanation on other intended allocations, e.g. for unidentified acquisitions and increase in inventory.

Proceeds for Acquisition of Properties

- 3.5 Where the proceeds will be used to acquire properties from any connected persons or their associates, the “Use of Proceeds” section in a listing document must disclose the basis for determining the acquisition costs¹.

Proceeds for Acquisition of Businesses

- 3.6 Where the proceeds will be used to finance acquisitions of businesses, the “Use of Proceeds” section in a listing document must disclose the identities of the businesses acquired or to be acquired or, if not yet identified, the nature and a brief description of the types of businesses to be sought, the acquisition strategy, and the status of any related negotiations.
- 3.7 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, an applicant is still required to disclose the terms of any proposed acquisition, the identities of the parties and the business nature of the acquisition target.

Proceeds for Discharge of Indebtedness

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

Other Related Disclosure in Listing Document

- 3.9 Details of proposed capital expenditures would normally be included in different sections of a listing document. For example, if the expenditures are for a programme of construction or equipment purchase, the “Financial Information” section in the listing document should discuss matters such as liquidity and proposed capital expenditures.
- 3.10 If any material amounts of other funds are necessary for the specified purposes for which the proceeds are to be used, the amounts of those other funds needed for each specified purpose and the source of funding should be disclosed in the listing document.

Discussion of the Amount and Allocation of the Proceeds

- 3.11 The “Use of Proceeds” section in a listing document should discuss the amount of net proceeds to be received by an applicant if the offer price is fixed at low-end, mid-point and high-end of the offer price range with and without exercising the over-allotment option (where applicable), and the breakdown of the use of proceeds under different circumstances where the amount to be raised is variable (*Updated in July 2013*).

¹ See Paragraphs 49(1) and 50 of the respective Appendix 1A to the Main Board Rules and GEM Rules.

3.12 With respect to GEM applicants:

- (i) paragraph 15(2) of Part A of Appendix 1 to the GEM Rules requires the listing document to disclose whether or not, and if so to what extent, the issue has been underwritten and, if not fully underwritten, the minimum amount of capital, if any, which an applicant must raise for the issue to proceed;
- (ii) note 8 to Part A of Appendix 1 to the GEM Rules states that where listing document refers to an amount proposed to be raised in excess of the minimum amount indicated under paragraph 15(2) of Part A of Appendix 1 to the GEM Rules, the listing document must explain the impact to an applicant and its statement of business objectives of raising such excess amount. In this regard, a statement that the excess will represent working capital shall not be adequate, unless a reasonably detailed explanation is given as to how such working capital is to be applied; and
- (iii) paragraph 48 of Part A of Appendix 1 to the GEM Rules states that otherwise than on an introduction, the listing document should disclose 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 an applicant's statement of business objectives contained in the listing document (thereby providing an indication of the timing of the deployment of the proceeds) (*Updated in July 2013*).

Change of Use of Proceeds

3.13 An applicant may change the use of proceeds due to certain contingencies if these are discussed specifically and the alternatives are clearly described in the "Use of Proceeds" section in the listing document. Any material change of use of proceeds may constitute inside information if such information was not previously disclosed in the listing document, and an applicant must make an announcement to notify investors of the change after listing.

Sale Shares (if applicable)

3.14 The listing document should disclose the number of sale shares in the offer, the amount of net proceeds received by selling shareholder from the sale shares and that the sale proceeds do not belong to an applicant. (*Updated in July 2013*)
