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[online version](http://www.charltonslaw.com/stock-exchange-updates-listing-decision-on-circumstances-under-which-it-will-exempt-a-new-listing-applicant-from-filing-placee-lists-with-respect-to-its-ipo-shares-sold-in-public-offers-outside-hong-k/)

# Stock Exchange Updates Listing Decision On Circumstances Under Which It Will Exempt A New Listing Applicant From Filing Placee Lists With Respect To Its IPO Shares Sold In Public Offers Outside Hong Kong

## Introduction

On 14 December 2012, the Stock Exchange of Hong Kong (the **Exchange**) updated its 2005 listing decision (HKEx – LD48-4) (the **Listing Decision**) regarding the circumstances in which the Exchange will allow a new listing applicant to dispense with the filing of placee lists with respect to its IPO shares sold in public offers outside Hong Kong.

The Listing Decision was last updated in September 2010. The December 2012 update (the **Update**) adds one additional condition which a new listing applicant has to satisfied in order to be granted a waiver from strict compliance with the placee list requirement.

The updated Listing Decision is available on the Exchange’s website at [here](http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD48-4.pdf) ([see archive](LD48-4.pdf)).

## Facts

Company A is a main board listing applicant whose international offering included a public offering without listing in Japan (**POWL**). The sponsor of Company A applied to the Exchange for a waiver from strict compliance with the requirement under Listing Rule 9.11(35)(b) (previously Listing Rule 9.16(6)(b)) to submit to the Exchange a list from each placing broker setting out details of and the amounts taken up by each placee with respect to the IPO shares sold under POWL. Its grounds were as follows:

1. agents’ disclosure of clients’ details to third parties is prohibited under Japanese regulations;
2. information given by placees under the Japanese standard market practice are not sufficient for providing the information required by the Listing Rules;
3. it would be unduly burdensome and almost impossible to supply the Exchange with the required information in relation to the POWL placees before commencement of dealings as it was expected that the POWL would have over 10,000 placees and their information would need to be translated into English; and
4. the Japanese agents would provide written confirmation confirming the independence of each placee from any director of Company A or their respective associates or any existing shareholder or nominee of Company A.

The Exchange was asked to consider, whether, and under what circumstances, it should allow a new listing applicant to dispense with the filing of placee lists with respect to IPO shares sold in public offers outside Hong Kong.

## Applicable Listing Rules

Listing Rule 9.11(35)(b) (previously Rule 9.16(6)(b)) requires that on a placing of securities by a new applicant, a list from each placing broker should be submitted to the Exchange setting out the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and business registration numbers (where companies) of all the placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken by each of its placees.

Paragraph 11 of Appendix 6 of the Listing Rules further provides that dealings in the securities cannot commence until the Exchange has been supplied with and approved a list setting out the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and business registration numbers (where companies) of all placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each placee (see Listing Rule 9.11(35)(b)). The Exchange reserves the right to require submission of such further information in any format as it may require on the placees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership.

## Decision

The Exchange explains in the Listing Decision that the rationale behind the above Listing Rules is to ensure that shares are placed to independent and genuine investors, and not connected persons of the issuer or related parties of the underwriters/brokers. In the past, the Exchange has not required the submission of placee lists in respect of public offer of shares sold under POWL in Japan and the US, where it was reasonably satisfied that the placees were independent to the extent required under applicable foreign regulations. The Exchange therefore granted a waiver to Company A from strict compliance with the placee list requirement subject to the following conditions:

1. the shares would be sold in a public offer governed by rules and regulations of the relevant jurisdiction to ensure independence of the investors;
2. the applicant and sponsor(s) made a demonstrable effort to comply with the placee list requirement in good faith and full compliance would not be practicable; and
3. the sponsor(s), underwriters or placing brokers would confirm in writing that the investors obtaining the shares sold in the public offers are independent of the sponsors/underwriters/brokers, the applicant’s connected persons or their associates or any existing shareholders of the applicant, including nominee(s) of the foregoing.

## Additional Condition Imposed By The Update

The Exchange stated in the Update that in a subsequent case where the applicant requested the same waiver, it came to the Exchange’s attention that the relevant Japanese regulations forbidding Japanese Securities Dealers’ Association members from disclosing investors’ information to any third party only applied to individual investors but not institutional investors.

Therefore, in addition to the above 3 conditions, one additional condition was imposed on the applicant for the Exchange to grant a waiver from compliance with the placee list requirement: each placing broker would be required to submit to the Exchange a list setting out details of all institutional placees and the number of shares taken up by each of them as required under Listing Rule 9.11(35)(b) and paragraph 11 of Appendix 6 to the Listing Rules.

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