



Hong Kong Law

November 2014

## HK EXCHANGE UPDATES LISTING RULE GUIDANCE

### **HK Exchange Updates Guidance on IPO Share Allocations to Distributors' Connected Clients and Requirements for Inclusion of Profit Forecasts in Application Proofs**

Hong Kong Exchanges and Clearing limited (**HKEx**) has updated Guidance Letter GL58-13<sup>1</sup> and Frequently Asked Question Series 23<sup>2</sup> (**FAQ 23**) to refer to Hong Kong Standard on Investment Circular Reporting Engagements 500<sup>3</sup> (**HKSIR 500**), titled "Reporting on Profit Forecasts, Statements of Sufficiency of Working Capital and Statements of Indebtedness" and published by the Hong Kong Institute of Certified Public Accountants (**HKICPA**).

HKEx has also amended Guidance Letter GL75-14<sup>4</sup> to clarify that its prior written consent is not required for share allocations to connected clients of the lead broker or distributors who distribute all such shares to independent third parties.

- 1 <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl58-13.pdf>
- 2 [http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ\\_23.pdf](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_23.pdf)
- 3 [http://app1.hkicpa.org.hk/ebook/HKSA\\_Members\\_Handbook\\_Master/volumell/hksir500.pdf](http://app1.hkicpa.org.hk/ebook/HKSA_Members_Handbook_Master/volumell/hksir500.pdf)
- 4 <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl75-14.pdf>

### **Update from Auditing Guideline 3.341 to HKSIR 500**

HKSIR 500 was published by the HKICPA in April 2014 to replace Auditing Guidelines 3.340 and 3.341 by establishing standards and providing guidance for reporting accountants in relation to providing certain information in investment circulars. This includes information in connection with directors' profit forecasts (defined under Main Board Listing Rules 11.17 and 14.61 and Growth Enterprise Market (**GEM**) Listing Rules 14.29 and 19.61), directors' statements of sufficiency of working capital (required by Paragraph 36 of Appendix 1A to the Main Board and GEM Listing Rules) and directors' statements of issuers' indebtedness (required by Paragraph 32 of Appendix 1A to the Main Board and GEM Listing Rules).

Consequently, Guidance Letter GL58-13 has been updated so that the suggested template for the reporting accountants' confirmation makes reference to HKSIR 500 as the standard for reporting accountants' review of issuers' profit forecasts. Similarly, FAQ 23 has been updated to refer to HKSIR 500 where it states that a review by reporting accountants is one of the conditions which HKEx may impose for the grant of a waiver to allow disclosure of a listing applicant's unaudited net profits or losses after the track record period for a period other than a six or 12-month period (or quarter period for GEM applicants) as is required under Main Board Listing Rule 11.18 (GEM Listing Rule 14.30).

## Specific Exemption from Prior Written Consent Requirement

Guidance Letter GL75-14 refers to the requirement for the Exchange to give its prior written consent to an allocation of IPO shares to connected clients of the lead broker or any distributor, even where such shares are held by the connected client on behalf of independent third parties (as set out in paragraph 5(1) of the Placing Guidelines for Equity Securities at Appendix 6 to the Main Board Listing Rules). A “connected client” in relation to an exchange participant includes any client of such member who is a company within the same group as the exchange participant.

The HKEx has inserted an additional paragraph 3.3A in the Guidance Letter to clarify that its prior written consent is not required if:

1. the connected client acts as a distributor; and
2. all shares allocated to that connected client are fully distributed to independent placees such that:
  - a) the connected client will not hold any shares upon completion of the offer; and
  - b) all relevant provisions of Appendix 6 to the Main Board Listing Rules are followed, including the submission to the HKEx of a list of all placees and a confirmation of the independence of such placees.

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