Charltons - Hong Kong Law Newsletter - 28 February 2011

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# Mixed Media Offers Allow Paper Application Forms With Electronic Prospectuses

## Introduction

The Hong Kong Stock Exchange has published materials on its website in relation to the "Mixed Media Offer" ("**MMO**") framework which came into effect from 1 February 2011. A Mixed Media Offer is an offer procedure which permits an issuer to distribute paper application forms for shares and debentures, or interests in an Securities and Futures Commission ("**SFC**") authorised collective investment scheme ("**CIS**"), without the associated paper listing document, subject to the satisfaction of certain conditions. These conditions are detailed in a Class Exemption Notice, inserted into Section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap 32 sub leg L). In summary, the stipulations which issuers who wish to make a MMO must adhere to are as follows:

1. They must make available an electronic copy of the listing document on the Hong Kong Exchanges and Clearing Limited ("**HKEx**") website and the issuer's own website;
2. They must declare their intention to make a MMO (defined as a public offer of shares in or debentures of a company or interests in an SFC authorised CIS, in which the listing document is displayed on certain websites) prior to the offer opening and explain what this means for investors; and;
3. They are required to make appropriate disclosures in the prospectus and application forms of the MMO and detail where investors can obtain a copy of the paper and electronic prospectuses.

The materials which are available on the HKEx website include a powerpoint presentation which is available at [*here*](http://www.hkex.com.hk/eng/rulesreg/listrules/listpresent/Documents/mmo_201102.pdf) and FAQs series 13 at [*here*](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_13.pdf).

The following contains a summary of the principal features of the new framework.

## Who Is Permitted To Avail Of The Mmo Procedure?

Company issuers under the Companies Ordinance ("**CO**"), whether incorporated overseas, or in Hong Kong, are entitled to conduct MMO's, once they have, or will have, shares or debentures listed on the Stock Exchange of Hong Kong ("**SEHK**"). Although this applies to both new applicants for listing and listed issuers, the ability of the latter to avail of the MMO is restricted by the fact that rights issues and public offers of existing classes of shares/debentures are excluded from the scope of the new offer procedure (sections 38(5) and 342(5) of CO).

The MMO process is also available to SFC authorised CIS's and offerors, individual or corporate, conducting a public offer of shares and debentures of a company issuer. Finally the MMO applies to offers for sale by existing shareholders.

## The Conditions To Be Met When Peforming A Mmo:

The effect of the Class Exemption Notice inserted as section 9A of The Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice is to permit:

1. an offeror to issue paper application forms with electronic copies of the relevant prospectus ("**e-Prospectus**") in relation to a public offer of shares or debentures of a company that is or will be listed on the SEHK; and
2. a CIS offeror to issue paper application forms, with electronic copies of the relevant offering document, in a public offer of interests in the CIS that will be listed on the SEHK.

In order to qualify for the class exemption the issuer must comply with a wide ranging set of conditions. The issuer must:

### 1. Publish an announcement concerning the proposed MMO, during the five business day period prior to the commencement of the offer period which

1. contains information about the proposed public offer of the company's shares or debentures to be listed on the SEHK;
2. states that the offeror will rely on the class exemption to allow it to issue paper application forms together with the e-Prospectus;
3. advises where the e-Prospectus will be accessible on the company's and the HKEx websites and provide instructions on how to access and download it throughout the offer period;
4. states that printed copies of the prospectus will be made available for collection at specified locations, free of charge upon request, and that at least three copies of the paper prospectus will be available for inspection wherever paper application forms are available; and
5. contains particulars of these specified locations.

In this context "specified locations" under section (9A)(9) of the Notice means:

For share offers:

* Depository counter of Hong Kong Securities Clearing Company Limited
* Designated branches of the receiving banks;
* Place of business of the company’s share registrar in Hong Kong (for listed issuer)
* Principal place of business of the sponsor (for new applicant)

For debenture offers:

* Designated branches of the placing banks
* Principal place of business of the offer co-ordinator

### 2. **Make available copies of the paper prospectus for collection at specified locations** free of charge, upon request by any member of the public, throughout the offer period, and in addition there should be at least three copies of the paper prospectus available for inspection, wherever paper application forms are made available during the offer period.

### 3. Display the e-Prospectus on the issuer's and the HKEx websites throughout the offer period in a form that is reasonably tamper resistant and not password protected.

The e-Prospectus should be easily accessible from the company's home page or from a subsequent page directly accessible from the company's homepage. Notice must also be given upon access to the e-Prospectus on the company's website that the offer is made solely on the basis of the information in the prospectus. The e-Prospectus should be viewable, downloadable, printable and capable of being saved in its entirety, whether in one or several files, by the public free of charge, from both the company's and HKEx's website.

### 4. Ensure that the e-Prospectus and Paper Prospectus are identical, as required by Rule 2.07C(2) of the Main Board Listing Rules and Rule 16.18(3)(a) of the GEM Listing Rules.

### 5. Ensure that the e-Prospectus contains, in a prominent place on the face of it, a statement in a clear and legible form:

1. that its contents are identical to those of the paper prospectus;
2. that copies of the paper prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public throughout the offer period and that at least three copies of the paper prospectus will be available for inspection wherever paper application forms are made available during the offer period; and
3. the particulars of the specified locations.

### 6. Ensure that the paper application form states in a prominent place:

1. that the e-Prospectus is displayed on the company's and the HKEx websites and is accessible and downloadable from those sites;
2. the addresses of the company's and the HKEx websites and the place on the site where the e-Prospectus is located and instructions on how to access it;
3. that copies of the paper prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public throughout the Offer Period and that at least three copies of the paper prospectus will be available for inspection wherever paper application forms are made available during the offer period;
4. the particulars of the specified locations; and
5. that prospective investors should read the prospectus prior to submitting an application.

For CIS Offerors who intend to adopt a MMO, the SFC will impose conditions similar to those in the Class Exemption Notice for CO Offerors adopting a MMO (with necessary changes), in its letter of authorisation.

## Inaccessibility Of Electronic Listing Document

Under the terms of the Class Exemption Notice, should the electronic listing document be inaccessible on the websites of the issuer and HKEx, the following procedures must be adhered to:

1. If the electronic listing documents are available on either the HKEx website or the company website the MMO need not be suspended. However should the documents be unavailable from both websites for four consecutive hours or more during the offer period, the MMO must be suspended until access is restored to the e-Prospectus on one of the websites.
2. Issuers must promptly publish a statement informing investors of the suspension.
3. Should the MMO be suspended, the public offer may continue as long as paper application forms and paper prospectuses are available.
4. The MMO may only resume when the issuer can re-comply with the conditions in the class exemption notice and when a resumption announcement has been made.

## Sponsors' Responsibilities In Relation To A MMO

Sponsors have wide responsibilities in relation to the public offer process under the Corporate Finance Adviser Code of Conduct. These include:

* ensuring that a public offer is conducted in a "fair, timely and orderly manner"
* making available sufficient prospectuses or offering documents and application forms *(5.4(a) of Code)*
* devising appropriate contingency plans to counter any disorder or failure which may occur during the public offer period *(5.4(d) of Code)*

In light of the above, the SFC has advised that sponsors should do the following in relation to MMOs:

* assess whether the issuer's website has the capacity to handle the likely volume of interest in the offer and appropriate backup facilities,
* check the company's website during the offer period to ensure that the e-Prospectus is available and,
* should the e-Prospectus become unavailable on both the HKEx and company websites, ensure that appropriate steps are taken to suspend the MMO.

 The SFC and SEHK consider it appropriate to give Sponsors the flexibility to determine how best to fulfil their duties under the Code of Conduct in light of the new proposal. Therefore additional measures for sponsors to implement will not be expressly imposed with regard to MMOs.

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**Charltons - Hong Kong Law Newsletter - Issue 114 - 28 February 2011**