Charltons - Hong Kong Law Newsletter - 13 September 2013

[online version](http://www.charltonslaw.com/exchange-sets-out-guidance-on-logistical-arrangements-for-the-publication-of-application-proofs-post-hearing-information-packs-and-related-materials/)

# Exchange sets out Guidance on Logistical Arrangements for the Publication of Application Proofs, Post Hearing Information Packs and Related Materials

The Stock Exchange of Hong Kong Limited (the **Exchange**) has issued guidance letter [HKEx-GL57-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl57-13.pdf) ([see archive](gl57-13.pdf)) (the **Guidance Letter**) relating to logistical arrangements for the publication of the Advanced Proofs [[1]](#footnote-25), the Post Hearing Information Packs (**PHIP**) and related materials on the website of the Exchange. The Guidance Letter is issued by the Exchange in preparation for the new sponsor regulation of the Securities and Futures Commission (**SFC**) which will come into effect on 1 October 2013.

This note is a summary of contents of the Guidance Letter which will supersede the *Revised Logistical Arrangements For Posting WPIP on the HKEx Website* dated 1 December 2011 applicable to Web Proof Information Packs.

## Applicability of publication requirements

Publication requirements for Application Proofs and PHIPs can be found in Practice Note 22 to the Main Board Listing Rules (**Main Board Rules**) and Practice Note 5 to the Growth Enterprise Market (**GEM**) Listing Rules (**GEM Rules**).

These publication requirements are applicable to application for new listings of: (i) securities under chapter 9 of the Main Board Rules (chapter 12 of the GEM Rules); (ii) interests in collective investment schemes under chapter 20 of the Main Board Rules.

The Guidance Letter notes that the Exchange or SFC may waive or modify publication requirements for an Application Proof e.g. where the publication will conflict with laws of the foreign jurisdiction which the applicant is subject) and that they should consult with the Exchange or SFC (as applicable) if they envisage any difficulties in complying with publication requirements. If the listing applicant is a spin-off from an overseas listed parent company, waivers will be considered on a case by case basis provided that certain conditions prescribed in the Guidance Letter are satisfied.

## Warning and disclaimer statements

The Guidance Letter enclosed minimum warning and disclaimer statements which must be included on the dedicated section of the Exchange website and the front page of an Application Proof and PHIP respectively. These statements, *inter alia*, warns the reader that the documents are in draft form only and are subject to change, does not constitute a prospectus or offer to sell any securities and remind prospective investors that any investment decision should be based solely on the company’s prospectus registered with the Companies Registry or offering circular authorised by the SFC.

A listing applicant may adopt warning and disclaimer statements that contain elements additional to, but must not detract from, those enclosed in the Guidance Letter.

## Redactions in Application Proof for Publication and PHIP

The Guidance Letter states that, unless consent is obtained for further redactions, redactions for the publication of Application Proof on the Exchange’s website and a PHIP could be made only to the extent necessary for these documents not to constitute a prospectus or advertisement under the Companies Ordinance or an invitation to the public in breach of section 103 of the Securities and Futures Ordinance.

The Guidance Letter enclosed recommended redactions of information for publication of Application Proofs and PHIPs. Further guidance on what information may be bracketed, omitted and redacted is provided in guidance letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)).

## Confidential filings

The Guidance Letter notes that the Listing Rules provide for confidential filing of an Application Proof for a listing applicant which: (i) has been fully listed on a “recognised overseas exchange” that complies with the highest standards of the rules of that market for at least five years; and (ii) has a market capitalisation of at least US$200,000,000 at the time of the application. A recognised overseas exchange is any of the following:

* the Amsterdam Stock Exchange (NYSE Euronext – Amsterdam);
* the Australian Securities Exchange (ASX);
* the Brazilian Securities, Commodities and Futures Exchange (BM&FBOVESPA);
* the Frankfurt Stock Exchange (Deutsche Börse);
* the Italian Stock Exchange (Borsa Italiana);
* the London Stock Exchange (premium segment, LSE);
* the Madrid Stock Exchange (Bolsa de Madrid);
* NASDAQ OMX (US)
* the New York Stock Exchange (NYSE Euronext(US));
* the Paris Stock Exchange (NYSE Euronext – Paris);
* the Singapore Exchange (SGX);
* the Stockholm Stock Exchange (NASDAQ OMX –Stockholm);
* the Swiss Exchange (SIX Swiss Exchange);
* the Tokyo Stock Exchange (TSE); and
* the Toronto Stock Exchange (TMX).

## Arrangements for the publication of the Application Proof over the Transitional Period (1 October 2013 to 30 September 2014)

Over the period from 1 October 2013 to 31 March 2014, neither the Application Proofs nor the name of the applicant and sponsor in the case of Returned Applications (as defined in the Listing Rules) will be published on the Exchange’s website. However, such information will be disclosed on the Exchange’s website in respect of listing applications submitted over the period from 1 April 2014 to 30 September 2014 (both dates inclusive) if the Exchange accepts the listing application for detailed vetting after completion of an initial 3-day check (**3-Day Check**) of the Application Proof (in the case of applicants for equity securities) and after the applicant notifies the Exchange that the SFC has accepted its authorisation application (in the case of applicants for collective investment schemes).

All Application Proofs received during the Transitional Period will be subject to the 3-Day Check according to prescribed checklist provided in Table B of guidance letter [HKEx-GL56-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl56-13.pdf) ([see archive](gl56-13.pdf)). Failing to include matters under the checklist may lead to a listing application being returned.

## Status marks and information on the Exchange’s website

The Guidance Letter notes that the following status marks will be used by the Exchange on its website to display the status of each listing application, with the following meanings:

“Active” – means a valid listing or authorisation application, the review of which is pending.

“Inactive (lapsed, withdrawn or rejected)” – means a lapsed, withdrawn or rejected application.

“Listed” – means a successful application for listing on the Exchange.

“Returned” – means an application returned by the Exchange or the SFC where all the related review procedures on their decision to do so have been completed (or the time for invoking them has lapsed).

## File specifications and submission

The Guidance Letter states that all Application Proofs must be submitted through the Exchange’s e-submission system known as HKEx-ESS (**ESS**). The Application Proof must be submitted at the same time as the listing application, and in the case of collective investment schemes, at the same time that an authorisation application is filed with the SFC. Listing applicants should refer to the e-Submission System User Manual For Listing Related Matters (**ESS Manual**) which has been updated to include procedures on Application Proofs and PHIPs.

The sponsor is responsible for the publication of the applicant’s Application Proof, PHIP and statement under Main Board Rule 9.08 (GEM Rule 12.10) (**MB Rule 9.08 Statement**). Therefore, the sponsor must register with the Exchange’s Primary Market Information Team to use the ESS at least three business days before the first submission is made and obtain a company case number from the Listing Division – IPO Team. The company case number must be used for all submissions.

Every Application Proof, PHIP and MB Rule 9.08 Statement must be in a ready-to-publish electronic form in both English and Chinese and accompanied by a written confirmation from each sponsor confirming that the submission is authorised by the listing applicant. Paragraph B.5 of the Guidance Letter provides the publication times of Application Proofs, PHIPs and MB Rule 9.08 Statements.

Every electronic file that contains an Application Proof, PHIP or MB Rule 9.08 Statements must be in read-only PDF format, with the copying and editing functions disabled. A warning statement (described above) in English and Chinese must be submitted at the same time. Every English and Chinese version of an Application Proof and PHIP submitted through the ESS must contain a single file containing the Application Proof or PHIP with bookmarks, a multi-file containing the Application Proof or PHIP with bookmarks and a multi-file of the Application Proof or PHIP divided into its constituent chapters (in an Excel file as an index for each individual file). Each file must not be larger than 20 megabytes and must not be in a compressed format (e.g. zip files). Files that are larger than 20 megabytes must be submitted by CD-ROM (with the aforementioned sponsor’s confirmation) rather than through the ESS.

Step-by-step instructions for making submissions through the ESS are provided under paragraph B.11 of the Guidance Letter.

Step-by-step instructions for viewing and searching for Application Proofs, PHIPs and MB Rule 9.08 Statements on the Exchange’s website are provided under paragraphs C and D of the Guidance Letter respectively.

The ESS Manual is available at [https://www.esubmission.hkex.com.hk.](https://www.esubmission.hkex.com.hk/)

## Further enclosures to the Guidance Letter

Enclosure 4 of the Guidance Letter provides the request form that a sponsor must file at least one business day before the filing of a listing or authorisation application in order to obtain a company case number from the Listing Division – IPO Team.

Enclosure 5 of the Guidance Letter contains a recommended template for the sponsor’s confirmation to the Exchange that the submission of the Application Proof, PHIP and MB Rule 9.08 Statement is authorised by the listing applicant.

The recommended content layout of the Application Proof and PHIP is set out in Enclosure 6 of the Guidance Letter.

**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 202 - 13 September 2013**

1. Substantially complete draft listing document submitted to the Exchange together with a listing application form for listing of equity securities [↑](#footnote-ref-25)