

**HKE<sub>x</sub> GUIDANCE LETTER**  
**HKE<sub>x</sub>-GL72-14 (January 2014)**

<b>Subject</b>	<b>Simplification Series – Disclosure in listing documents for IPO cases – the “Applicable Laws and Regulations” section</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Rules 2.13(2), 11.07, 13.90, 19.10(2) &amp; (3) and paragraph 7 of Appendix 1a</b> <b>GEM Rules 14.08(7), 17.56(2), 17.102, 24.09(2) &amp; (3) and paragraph 7 of Appendix 1a</b>
<b>Related Publication</b>	<b>Joint Policy Statement (27 September 2013) regarding the listing of overseas companies</b>
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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 in the “Applicable Laws and Regulations” section in listing documents. Specifically, it aims to ensure that the section:-

- is concise, easy to read and in plain language, and
- provides investors with a fair and balanced disclosure of the laws and regulations relevant to an applicant’s business to enable readers to form an opinion of the investment.

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.

**2. Relevant Listing Rules**

2.1 Main Board Rule 2.13(2) (GEM Rule 17.56(2)) 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 complying with this requirement, an applicant must not, among other things:-

- (a) omit material facts of an unfavourable nature or fail to accord them appropriate significance;

- (b) present favourable possibilities as certain or as more probable than is likely to be the case; or
  - (c) present projections without sufficient qualification or explanation.
- 2.2 Main Board Rule 11.07 (GEM Rule 14.08(7)) sets out an overriding general duty of disclosure in a listing document.

### **3. Guidance**

- 3.1 Applicants usually include “Applicable Laws and Regulations” section in their listing documents.
- 3.2 The “Applicable Laws and Regulations” section normally describes the rules and regulations that are material to applicant’s current and/ or future business.
- 3.3 As a guide, applicants may consider including the information in the section elsewhere in listing documents instead of a standalone section as is the current practice. This may help investors to discern the laws and regulations to an applicant’s business more easily.
- 3.4 Set out below are some guidance and principles on disclosure.

#### Avoid use of legalistic language

- 3.5 The “Applicable Laws and Regulations” section should be prepared in a manner that conveys a regulatory overview that is easy to understand by investors who are not lawyers. Legalistic language should be avoided. Long or complex descriptions should be split into short sentences or bullets and the titles of laws and regulations should be defined using a concise definition rather than repeating the full title throughout a subsection. The use of overly long sentences and legalistic language has often led to this section being excessively long, difficult to understand and hard to read.

#### Key laws and regulations of the relevant jurisdictions

- 3.6 This section should include laws and regulations that are specific and have a material impact on an applicant’s business (e.g. rules and regulations governing the applicant’s key licences for operation). An applicant should avoid a boiler plate disclosure of laws and regulations that do not materially impact its business.
- 3.7 Where an applicant has or plans to have material businesses, in terms of its operations and sales, in a number of jurisdictions, an appropriate description of the laws and regulations that have a material impact on the applicant’s businesses in each such jurisdiction should be made (e.g. protective tariffs or trade restrictions imposed on the applicant’s goods imported into the customer’s country; intellectual property protection in relation to the products sold by the applicant in the customer’s country and the applicant’s liabilities for breaches).

- 3.8 The description of laws and regulations should be proportionate to their importance to the applicant. For example, if a relatively small percentage of an applicant's revenue and profits are derived from a particular jurisdiction and there are unusual or onerous laws and regulations affecting the applicant in that jurisdiction, the disclosure should be appropriately brief, and the applicant should consider whether it is necessary to include disclosure at all on the grounds that it may not be material to investors.

#### Key changes in the laws and regulations

- 3.9 Changes in laws and regulations that are expected to have a material impact on the applicant's business should be included under this section (e.g. the impact of increase in stamp duty on a property development company; a more stringent financial requirement for obtaining a licence). There should be cross references to the "Business" and the "Risk Factor" sections to describe the impact of the laws and regulations on the applicant, and its plans and procedures implemented or to be implemented to deal with changes in laws and regulations.
- 3.10 Changes in laws and regulations during or prior to the track record period do not need to be disclosed unless (1) the applicant is subject to grandfathering provisions, in which case the relevant laws and regulations should be disclosed together with details of the new laws and regulations that will apply (including when they will apply); or (2) changes in laws and regulations have had a material impact on the applicant's business, which may generally be disclosed elsewhere (e.g. "Business" or "Financial Information") with a cross reference within the "Applicable Laws and Regulations" section where the current law or regulation is described.

#### Relevance to the applicant

- 3.11 This section should not be an abstract summary of the relevant laws and regulations. It should disclose clearly how each law and regulation is relevant to the applicant, unless it would be obvious to an average investor. Where there is a risk that the applicant's business may breach a law or regulation, the steps that the applicant has taken and plans to take to ensure compliance should be disclosed, either in the "Applicable Laws and Regulations" section or the "Business" section, and it may be appropriate to include the opinion of a legal adviser as to the likelihood of breach and the maximum liability of the applicant.

#### Highly regulated industries

- 3.12 For applicants engaged in a highly regulated industry (e.g. banking, insurance or gambling), the "Applicable Laws and Regulations" section should not only focus on local statutory laws governing the industry (e.g. banking laws, laws governing insurance companies, gambling laws), but also other internationally implemented industry specific rules and regulations (e.g. anti-money laundering).

Laws of the issuer's jurisdiction of incorporation

- 3.13 Reference is made to the Joint Policy Statement (27 September 2013) regarding the listing of overseas companies.
- 3.14 The disclosure of regulatory provisions (see Main Board Rules 19.10(2) and (3) and specific disclosure items in paragraphs 63-66 of the Joint Policy Statement) in relation to an applicant's jurisdiction of incorporation should be set out in a section of the listing document separate from the "Applicable Laws and Regulations" section.

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