



Hong Kong Law

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## New Guidance On The "Applicable Laws And Regulations" Section

### Table Of Contents

- [Introduction](#)
- [Relevant Listing Rules](#)
- [Guidance](#)

### Introduction

The Hong Kong Stock Exchange (the **Exchange**) has published Guidance Letter [GL72-14](#) (see [archive](#)) providing guidance on disclosure in the "Applicable Laws and Regulations" section of IPO listing documents. This Guidance Letter seeks to ensure that the section is concise, easy to read and in plain language. The section should also provide 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. This newsletter provides a summary of Guidance Letter GL72-14.

### Relevant Listing Rules

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. To comply with this requirement, an applicant must not, among other things: -

- omit material facts of an unfavourable nature or fail to accord them appropriate significance;□
- present favourable possibilities as certain or more probably than is likely to be the case; or
- present projections without sufficient qualification or explanation.□

In addition, Main Board Rule 11.07 (GEM Rule 14.08(7)) sets out an overriding general duty of disclosure in a listing document.

### Guidance

Currently, the usual practice is for applicants to include a separate "Applicable Laws and Regulations" section in listing documents, which typically describes the rules and regulations that are material to the applicant's current and/ or future business. To facilitate investors' understanding of relevant laws and regulations, the Guidance Letter suggests that applicants might consider including this information elsewhere in the listing document rather than in a standalone section.

The Guidance Letter provides the following guidance and principles in relation to the disclosure in the "Applicable Laws and Regulations" section:

#### (A) Avoid Use Of Legalistic Language

Legalistic language should be **avoided** when preparing the "Applicable Laws and Regulations" section in order to present a regulatory overview that is easy to understand by investors who are

not lawyers. 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.

## **(B) Key Laws And Regulations Of The Relevant Jurisdictions**

- 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) should be **included** in this section. On the other hand, a boiler plate disclosure of laws and regulations that do not materially impact the applicant's business should be **avoided**.
- 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. Examples of relevant laws and regulations include 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.
- The description of laws and regulations should be proportionate to their importance to the applicant. For example, disclosure of unusual or onerous laws and regulations should be appropriately brief if they affect the applicant only in a particular jurisdiction, from which only a relatively small percentage of the applicant's revenue and profits are derived. The applicant should consider whether it is necessary to include disclosure at all on the grounds that it may not be material to investors.

## **(C) Key Changes In The Laws And Regulations**

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 an increase in stamp duty on a property development company; a more stringent financial requirement for obtaining a licence). Cross references should be made 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.

Changes in laws and regulations during or prior to the track record period **do not need to be disclosed unless**:

- i. 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
- ii. 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.

## **(D) Relevance To The Applicant**

As opposed to abstract summaries, this section 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. It may also be appropriate to include the opinion of a legal adviser as to the likelihood of breach and the maximum liability of the applicant.

## **(E) Highly Regulated Industries**

Applicants engaged in highly regulated industries (including but not limited to banking, insurance and gambling) should ensure that the "Applicable Laws and Regulations" section focuses not only on local statutory laws governing the industries (e.g. banking laws, laws governing insurance companies and gambling laws), but **also** other internationally implemented industry specific rules and regulations (e.g. anti-money laundering).□

## **(F) Laws Of The Issuer's Jurisdiction Of Incorporation**

The Guidance Letter refers to the [Joint Policy Statement \(see archive\)](#) (27 September 2013) regarding the listing of overseas companies. 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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[unsubscribe@charltonslaw.com](mailto:unsubscribe@charltonslaw.com)

**Charltons**  
Dominion Centre, 12th Floor  
43-59 Queen's Road East, Hong Kong

**Tel:** + (852) 2905 7888  
**Fax:** + (852) 2854 9596  
[www.charltonslaw.com](http://www.charltonslaw.com)