New IPO Sponsor Regulatory Regime – effective on 1 October 2013:
The new IPO sponsor regulatory regime (New Sponsor Regime) will be implemented on 1 October 2013. The new requirements under the New Sponsor Regime will apply to all listing applications submitted on or after 1 October 2013 (subject to certain exceptions).

For details of the major Listing Rules changes (including practical tips) under the New Sponsor Regime, please refer our previous legal update entitled “Seven Changes to Be Aware Of in Relation to the New IPO Sponsor Regulatory Regime”.

Reasons for returning listing applications – listing decision:
HKEx explains why it returned certain listing applications from December 2012 to April 2013 in a listing decision “HKEx-LD75-2013”. The reasons given are briefly summarised below:

- Unclear and/or insufficient disclosures on the following areas (not an exhaustive list):
  - Business models
  - Major agreements, structured contracts and business arrangements
- Future plans, use of proceeds and change in business focus
- Non-compliances, civil claims, criminal prosecutions, disputes and legal proceedings
- Production facilities and inventory risks
- Customers, suppliers, raw materials, products/services and pricing matters
- Intellectual property matters
- Risks exposure and management
- Disposal of subsidiaries to controlling shareholders
- Liquidity and working capital position and management
- Suitability of directors
- Industry outlook and competitive landscape
- Sustainability of business
- Tax matters
- Investment strategies
- Discussion and analysis on financial position and sensitivity
- Termination or change of experts or advisors
- Internal control policies and procedures
» Independence from the retained group
» Failure to make disclosures in accordance with the relevant published guidance letters: “Summary” section (HKEx-GL27-12); “Industry Overview” section (HKEx-GL48-13); “History and Development” section (HKEx-GL49-13); “Business” section (HKEx-GL50-13); accountants’ report (HKEx-

It should be noted that under the New Sponsor Regime, the draft prospectus and all other relevant documents to be submitted with a listing application should be substantially complete (except for information which by its nature can only be finalised and included at a later date), otherwise the listing application may be returned. HKEx has issued/published various guidance letters to explain the extent of disclosure required for a prospectus to be considered “substantially complete”. The working parties should assist the listing applicant to review the prospectus and the application accompanying documents carefully and check against the guidance letters to avoid return of the listing application. For details, please refer to our legal update entitled “Seven Changes to Be Aware Of in Relation to the New IPO Sponsor Regulatory Regime”.

Pre-conditions for waiver – minerals companies – unable to satisfy the profit test, market capitalisation/revenue/cash flow test or market capitalisation/revenue test:
On 23 August 2013, HKEx published an updated guidance letter “HKEx-GL22-10” to revise the pre-conditions required for granting a waiver under Main Board LR 18.04 to listing applicants (being mineral companies) which are not able to satisfy the profit test, market capitalisation/revenue/cash flow test or market capitalisation/revenue test pursuant to Main Board LR 8.05 (collectively referred to as “Tests”). The major pre-conditions are:

• The applicant must show that its inability to comply with the Tests is because during the track record period, it has been in a pre-production, exploration and/or development stage. A clear path to commercial production must be demonstrated if such stage has not commenced yet.

• Directors and senior managers, taken together, must have sufficient experience relevant to the exploration and/or extraction activity that the applicant is pursuing. Individuals relied on must have a minimum of five years relevant industry experience.

• The primary activity of the applicant should be exploration for and/or extraction of natural resources. This does not have to be its sole activity but should be its major business activity.

The guidance letter also sets out favourable and unfavourable conditions, by way of examples, of waiver applications. Such examples may be useful for mining companies which cannot satisfy the Tests but intend to submit a listing application.
DISCLOSURE REQUIREMENTS AND GUIDANCE

Pre-IPO investments – additional guidance – disclosure requirements – consequences of not complying with the relevant guidance: On 23 July 2013, HKEx published an updated guidance letter “HKEx-GL43-12” to provide additional guidance on pre-IPO investments. Please refer to our legal update “Pre-IPO Investments: The Dos and Don’ts” on details of the previous version of the guidance letter.

The updated guidance letter mainly adds the following matters:

- Disclosure requirements – Particulars of the following should be included in the listing document:
  - Pre-IPO investments – including the dates of investments, use of proceeds from such investments and whether they have been fully utilised, strategic benefits and shareholding of each pre-IPO investor upon listing
  - Pre-IPO investors – including the names, beneficial owners and background, relationships with the listing applicant group and/or connected persons of the applicant
- Consideration paid – including the basis for determining the consideration, amounts paid, payment dates and respective cost per share and discount to the IPO price
- Special rights granted
- Lock-up arrangement (if any)
- Share-based payments (if any) – including the accounting treatment, the reporting accountants’ view and a risk factor on the future impact on profit and loss (if applicable)
- Sponsor’s confirmation that the pre-IPO investments are in compliance with the relevant guidance

- Consequences for not complying with the relevant guidance – the possible consequences are:
  - Deferral of the listing date
  - Unwinding of the pre-IPO investment
  - Amendment of the pre-IPO investment terms

PRC/Hong Kong land and properties – Title Certificates and disclosure requirements: On 23 July 2013, HKEx published a guidance letter “HKEx-GL19-10” to update its guidelines on disclosure and other requirements in relation to PRC land and properties matters. Guidelines are provided on the following five major areas:

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<th>MAJOR AREAS</th>
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<td>Title Certificates for PRC properties</td>
<td>• Property companies – Applicants need to obtain Title Certificates for all completed properties and properties under development</td>
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<td></td>
<td>• Infrastructure project companies – Applicants need to obtain long-term Title Certificates</td>
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<td></td>
<td>• Other companies – Applicants are not required to obtain Title Certificates but disclosure of the relevant risks in the listing documents is required</td>
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<tr>
<td>Properties with defective titles in the PRC and Hong Kong</td>
<td>Disclosure of the following is required in the listing document: reasons, usage, potential liabilities, directors’ view on significance, safety conditions, remedial actions, any legal impediments to obtain outstanding certificates/permits, estimated time and cost for relocation etc.</td>
</tr>
<tr>
<td>PRC idle land – if an applicant’s business involves property investment and development business in the PRC</td>
<td>Disclosure of the following is required in the listing document: whether it has failed to comply with the relevant PRC laws and regulations, remedial actions, material risk factors and any other matters requiring HKEx’s attention etc.</td>
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</table>
**MAJOR AREAS** | **REQUIREMENTS TO BE COMPLIED WITH BY LISTING APPLICANTS**
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PRC civil defense projects – if an applicant’s business involves civil defense property projects in the PRC | Disclosure of the following is required in the listing document: area and carrying amount, usage/intended usage, conditions for use and risk factor etc.

PRC land resettlement operations – if an applicant engages in land resettlement operations | Disclosure of the following is required in the listing document: details of land resettlement agreements entered into, operational model, legal opinion on compliance of relevant laws and regulations and risk factor etc.

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**Simplification series – White and Yellow Application Forms (AFs) – the “How to Apply for Hong Kong Offer Shares” section in a prospectus (HTA):** On 23 July, 2013, HKEx published a guidance letter “HKEx-GL64-13” to provide guidelines on the disclosure requirements in AFs and HTA. The major principles include:

- Including all relevant information under the Listing Rules, CO and CCASS Guide
- Reducing duplicate information
- Using plain language
- For AFs
  - Applying a font size at least equivalent to 12 Times New Roman
- Printing on A3 paper
- Providing clear instructions on how to apply for HK offer shares and the procedures to follow after submission of applications
- Providing a reminder to investors to read the AFs in conjunction with the prospectus
- For HTA
  - Providing more details on the application for HK offer shares procedures to facilitate the applications by investors through different channels

HKEx expects listing applicants to follow this guidance letter unless there are compelling reasons for not doing so. Also, there are sample AFs and HTA (which provide guidance on disclosures) attached to the guidance letter for reference.
**Glossary**

**IN THIS UPDATE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS**

<table>
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<th><strong>CO</strong></th>
<th>Companies Ordinance (Cap 32 of the Laws of Hong Kong)</th>
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<td><strong>GEM</strong></td>
<td>Growth Enterprise Market operated by SEHK</td>
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<td><strong>GEM LR</strong></td>
<td>Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited</td>
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<tr>
<td><strong>HK</strong></td>
<td>Hong Kong Special Administrative Region of the PRC</td>
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<td><strong>HKEx</strong></td>
<td>Hong Kong Exchanges and Clearing Limited (also referring to its subsidiaries, including SEHK, as appropriate)</td>
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<td><strong>INEDs</strong></td>
<td>Independent non-executive directors</td>
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<td><strong>IPOs</strong></td>
<td>Initial public offerings</td>
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<td><strong>Listing Rules</strong></td>
<td>Main Board LR and/or GEM LR, as the case may be</td>
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<td>People's Republic of China</td>
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<td>The Stock Exchange of Hong Kong Limited</td>
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<td><strong>SFC</strong></td>
<td>Securities and Futures Commission</td>
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<td><strong>Title Certificates</strong></td>
<td>Land use right certificates and/or building ownership certificates</td>
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