

## HKEx LISTING DECISION

**HKEx-LD108-1 (October 2010)**

**Withdrawn, superseded by Isle of Man Country Guide in December 2013**

<b>Issues</b>	Whether the Exchange would consider the Isle of Man an acceptable jurisdiction under Chapter 19 of the Main Board Listing Rules
<b>Listing Rules and Regulations</b>	<ol style="list-style-type: none"><li>1. Chapter 19 of the Main Board Listing Rules (<b>Rules</b>)</li><li>2. Joint Policy Statement Regarding the Listing of Overseas Companies of 7 March 2007 (<b>JPS</b>)</li><li>3. Listing Decisions HKEx-LD65-1; HKEx-LD65-2, HKEx-LD65-3, HKEx-LD71-1, HKEx-LD80-1 and HKEx-LD84-1</li><li>4. Guidance Letter HKEx-GL12-09</li></ol>
<b>Decision</b>	<p>The Isle of Man is an acceptable jurisdiction of an issuer's place of incorporation under Chapter 19 of the Rules if potential listing applicants incorporated in the Isle of Man make certain revisions to their constitutive document and demonstrate a reasonable nexus with the Isle of Man</p> <p>Future applicants incorporated in the Isle of Man may follow the streamlined procedures set out in Guidance Letter HKEx-GL12-09 and need not complete a detailed line-by-line comparison with the JPS</p>

### FACTS

1. The Exchange was invited to consider the Isle of Man an acceptable jurisdiction under Chapter 19.
2. It was submitted that:
  - a. the principal sources of law in the Isle of Man are the legislation passed by the local parliament and the common law, and there are considerable similarities between the law of the Isle of Man and the law of England and Wales of the United Kingdom, an accepted jurisdiction of an issuer's incorporation;
  - b. Isle of Man companies can be incorporated under either of the two co-existing sets of the company law: Companies Acts 1931 – 2004 and Companies Act 2006;
  - c. the Financial Supervision Commission of the Isle of Man is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information and has also entered into a Confidentiality Undertaking with the Securities and Futures Commission of Hong Kong.
3. The Exchange was provided with a comparison table of the Hong Kong Companies Ordinance (**HKCO**) and the Isle of Man laws and regulations, mainly, Companies Acts 1931 – 2004 and Companies Act 2006, on shareholder protection matters based on the JPS framework as supplemented by Guidance Letter HKEx-GL12-09.

## **APPLICABLE RULES, REGULATIONS AND PRINCIPLES**

4. All listing applicants must ensure that they are able to and will comply with the Rules, the Securities and Futures Ordinance and the Hong Kong Codes on Takeovers and Mergers and Share Repurchases (**Takeovers Codes**).
5. Chapter 19 provides a general framework for overseas companies seeking a listing on the Exchange. In particular, under Rule 19.05(1)(b), when considering primary listing of securities of an overseas issuer the Exchange may refuse the listing if it is not satisfied that the overseas issuer is incorporated in a jurisdiction which offers at least equivalent standards of shareholder protection to Hong Kong.
6. Where the Exchange believes that overseas issuer's jurisdiction of incorporation does not provide shareholder protection standards equivalent to those in Hong Kong, it may approve the listing of the overseas issuer if it makes the variations to its constitutive document the Exchange requires (see Note to Rule 19.05(1)).
7. The JPS formalised this process by setting out a list of shareholder protection areas the Exchange takes into account.
8. The standards in the JPS were compared against the standards of different overseas jurisdictions in Listing Decisions HKEx-LD65-1, HKEx-LD65-2, HKEx-LD65-3, HKEx-LD71-1, HKEx-LD80-1 and HKEx-LD84-1.
9. Guidance Letter HKEx-GL12-09 sets out streamlined procedures for listing overseas companies. Under it, a potential applicant can benchmark the shareholder protection standards in its home jurisdiction to any one of the recognised or accepted jurisdictions, instead of benchmarking to Hong Kong.

## **ANALYSIS**

10. Where an applicant proposes to change its corporate practices (e.g., by amending its constitutive document or administrative procedures) to achieve equivalence with the shareholder protection standards of Hong Kong, there may be more than one acceptable way to do so. The Exchange does not prescribe the method used.

### ***Matters under the JPS***

11. It was submitted that, for the purpose of the JPS, where Hong Kong law appears to provide a higher level of shareholder protection than the Isle of Man law, the constitutive document of the potential applicant would be amended to address the differences (see **Annex I** and **Annex II**).
12. It was submitted that, subject to the amendments to their constitutive documents, potential Isle of Man applicants should be able to demonstrate a shareholder protection level at least equivalent to or broadly commensurate with that in Hong Kong, and that nothing in the laws of the Isle of Man would prevent potential applicants from adopting such amendments.

*Nexus to be established*

13. A potential Isle of Man incorporated applicant needs to demonstrate to the Exchange that there is a reasonable nexus between its operations and the Isle of Man.

**CONCLUSION**

14. Based on the submission, the Exchange considered that the Isle of Man is an acceptable overseas jurisdiction subject to the potential listing applicant making certain revisions to its constitutive document and demonstrating a reasonable nexus with the Isle of Man.
15. It would be required to submit at the time of filing its listing application:
  - a. a confirmation from the sponsor that it has considered and reviewed all material shareholder protection areas in its due diligence review under Practice Notice 21 of the Rules and that it is independently satisfied that the shareholder protection offered in the Isle of Man is at least equivalent to that in Hong Kong or any one of the recognised or accepted jurisdictions; and
  - b. a legal opinion and the sponsor's confirmation that the applicant's constitutive document does not contain provisions which will prevent it from complying with the Rules, the Securities and Futures Ordinance – Part XV and the Takeovers Codes, to the extent they apply.
16. Future applicants incorporated in the Isle of Man may follow the streamlined procedures set out in Guidance Letter HKEx-GL12-09 and need not complete a detailed line-by-line comparison with the JPS.

**NOTES TO ISSUERS AND MARKET PRACTITIONERS**

**For any questions relating to this Listing Decision please feel free to contact the Listing Division.**

## Companies Acts 1931 – 2004

	<b>Proposed amendments to the constitutive document</b>
<b>1</b>	<b><i>Corporate structure that clearly protects principal shareholder rights</i></b>
<b>1 (b)</b>	The articles of the potential Isle of Man applicant incorporated under the Companies Acts 1931 – 2004 ( <b>Company</b> ) will be amended to provide equivalent or broadly commensurate provisions as compared to the HKCO (i.e., three-quarter majority voting threshold and rights of members holding not less than 10% of the nominal value of the issued shares of that class to make a petition to the court to have the variation cancelled).
<b>1 (e)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>1 (f)</b>	The articles of the Company will be drafted to provide that: <ul style="list-style-type: none"> <li>• its branch register of members in Hong Kong shall be open to inspection by members free of charge and by any other person upon payment of a fee determined by the Board;</li> <li>• closure of the register will be on terms comparable to the current provisions of the Hong Kong law; and</li> <li>• notice of closure of the register of members will be in accordance with Rule 13.66.</li> </ul>
<b>1 (g)</b>	Such circumstances are clearly stated in the law. In addition, the articles of the Company will be drafted to provide that Sections 168 and 168B of the HKCO will apply to all takeover offers for the Company, and that the Company shall comply with the Takeovers Codes where they apply.
<b>2</b>	<b><i>Fair proceedings for general meetings to enable shareholders to utilise their rights in full</i></b>
<b>2 (b)</b>	The articles of the Company will be drafted to provide a lower threshold of 5%, and that where the members requisitioned an extraordinary general meeting the Company must comply with Sections 113 and 115A of the HKCO, as if they applied to the Company.
<b>2 (c)</b>	The articles of the Company will be drafted to additionally provide for a 21-day written notice period for any annual general meeting and any extraordinary general meeting convened for passing a special resolution (i.e., where the approval of 75% of its members is required), or a resolution appointing a director, or a resolution of which special notice has been given to the Company.
<b>2 (e)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO, include the wording suggested in Paragraph 6 of Section 1 of Appendices 13A and 13B to the Rules and explicitly state the right of the nominees of a recognised clearing house to appoint representatives.
<b>2 (f)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.

<b>3</b>	<b><i>Corporate governance measures that ensure the powers of directors are reasonably contained and subject to reasonable scrutiny</i></b>
<b>3 (a)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>3 (c)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>3 (d)</b>	The articles of the Company will be drafted to provide that the Company shall be subject to the prohibitions contained in Section 157H of the HKCO and to the exceptions referred to therein, as if the same applied to the Company.
<b>3 (e)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>4</b>	<b><i>The notion of capital maintenance is enshrined in the Company's corporate structure and with respect to all its corporate actions</i></b>
<b>4 (d)</b>	The articles of the Company will be drafted to provide that the dividends payment must be subject to Sections 79B and 79C of the HKCO, as if they applied to the Company.
<b>4 (e)</b>	Such circumstances are clearly stated in the law.

## Companies Act 2006

	<b>Proposed amendments to the constitutive document</b>
<b>1</b>	<b><i>Corporate structure that clearly protects principal shareholder rights</i></b>
<b>1(a)</b>	The articles of an Isle of Man company incorporated under the Companies Acts 2006 ( <b>Company</b> ) that is publicly listed are typically drafted to require a shareholder approval threshold of 75% for amendments of the constitutional documents.
<b>1(e)</b>	The articles of a publicly listed Company are typically drafted to require a shareholder approval threshold of 75% before any variation of class rights may be carried out. The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO (i.e., three-quarter majority voting threshold and rights of members holding not less than 10% of the nominal value of the issued shares of that class to make a petition to the court to have the variation cancelled).
<b>1(c)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>1(e)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>1(f)</b>	The articles of the Company will be drafted to provide that: <ul style="list-style-type: none"> <li>• its branch register of members in Hong Kong shall be open to inspection by members free of charge and by any other person upon payment of a fee determined by the Board;</li> <li>• closure of the register will be on terms comparable to the current provisions of the Hong Kong law; and</li> <li>• notice of closure of the register of members will be in accordance with Rule 13.66.</li> </ul>
<b>1(g)</b>	Such circumstances are clearly stated in the law. In addition, the articles of the Company will be drafted to provide that Sections 168 and 168B of the HKCO will apply to all takeover offers for the Company, and that the Company shall comply with the Takeovers Codes where they apply.
<b>2</b>	<b><i>Fair proceedings for general meetings to enable shareholders to utilise their rights in full</i></b>
<b>2(a)</b>	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
<b>2 (b)</b>	The articles of the Company will be drafted to provide a lower threshold of 5%, and that where the members requisitioned an extraordinary general meeting the Company must comply with Sections 113 and 115A of the HKCO, as if they applied to the Company.

2(c)	The articles of the Company will be drafted to additionally provide for a 21-day written notice period for any annual general meeting and any extraordinary general meeting convened for passing a special resolution (i.e., where the approval of 75% of its members is required) or a resolution appointing a director.
2(d)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
2(e)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO, include the wording suggested in Paragraph 6 of Section 1 of Appendices 13A and 13B to the Rules and explicitly state the right of the nominees of a recognised clearing house to appoint representatives.
2(f)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
3	<b><i>Corporate governance measures that ensure the powers of directors are reasonably contained and subject to reasonable scrutiny</i></b>
3 (a)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
3(b)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
3 (c)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
3 (d)	The articles of the Company will be drafted to provide that the Company shall be subject to the prohibitions contained in Section 157H of the HKCO and to the exceptions referred to therein, as if the same applied to the Company.
3 (e)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
4	<b><i>The notion of capital maintenance is enshrined in the Company's corporate structure and with respect to all its corporate actions</i></b>
4(a)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
4(b)	The articles of the Company will be drafted to provide equivalent or broadly commensurate provisions as compared to the HKCO.
4 (c)	The articles of the Company will be drafted to provide that any redemption of shares shall only be out of "distributable profits" as that term is defined in the HKCO, and the process of redemption of shares shall be in accordance with that set out in Section 49A of the HKCO, as if it applied to the Company.
4(d)	The articles of the Company will be drafted to provide that the dividends payment must be subject to Sections 79B and 79C of the HKCO, as if they applied to the Company.
4 (e)	The Companies Act 2006 is silent in this regard. The articles of the Company will be drafted to provide for the circumstances under which an overseas company may give financial assistance for the acquisition of its own shares.