

HKEx LISTING DECISION
HKEx-LD80-1 (October 2009)
Withdrawn, superseded by Jersey Country Guide in December 2013

Summary	
Name of Party	Company X - a company incorporated in Jersey proposing to list on the Main Board
Subject	Whether the Exchange would consider Jersey an acceptable jurisdiction under Chapter 19 of the Listing Rules.
Listing Rules and Other Reference Materials	<ol style="list-style-type: none"> 1. Chapter 19 of the Listing Rules; 2. Joint Policy Statement Regarding the Listing of Overseas Companies issued jointly by the Securities and Futures Commission and the Exchange on 7 March 2007 (the ‘JPS’); 3. Listing Decisions: HKEx-LD65-1; HKEx-LD65-2, HKEx-LD65-3 and HKEX-LD71-1; and 4. Guidance Letter: HKEx-GL12-09.
Decision	<p>Subject to Company X making certain revisions to its constitutional documents, Jersey is an acceptable jurisdiction for an issuer’s place of incorporation under Chapter 19 of the Listing Rules.</p> <p>Future applicants incorporated in Jersey may follow the streamlined process in Guidance Letter HKEx-GL12-09 and need not complete a detailed line-by-line comparison with the JPS.</p>

SUMMARY OF FACTS

1. Company X was a limited liability company incorporated in Jersey and proposed to list on the Main Board. Company X’s principal operations were located in Russia, and 18 other countries. Company X made an inquiry with the Exchange before filing a listing application, requesting that Jersey be accepted as a recognised jurisdiction under Chapter 19.
2. Company X submitted a comparison table between the Hong Kong Companies Ordinance and Companies (Jersey) Law based on the framework set out in the JPS.

3. Company X submitted that Jersey law is derived from Jersey statute, case law created by Jersey court, and Jersey customary law. In addition, English cases are often referred to for guidance and, although not binding, are generally followed by Jersey courts in the absence of local precedent.

THE ISSUES RAISED FOR CONSIDERATION

4. Whether the Exchange would consider Jersey an acceptable jurisdiction under Chapter 19 of the Listing Rules.

APPLICABLE LISTING RULES OR PRINCIPLES

5. Chapter 19 provides a general framework for all overseas companies seeking a listing on the Exchange. In particular, under Rule 19.05(1)(b), when approving primary listing of securities of an overseas issuer, the Exchange reserves the right to be satisfied that the overseas issuer is incorporated in a jurisdiction which offers at least equivalent standards of shareholder protection to those in Hong Kong.
6. Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated does not provide standards at least equivalent to those in Hong Kong, the Exchange may approve listing of the overseas issuer subject to it making variations to its constitutional documents the Exchange requires (see note to Rule 19.05(1)).
7. The JPS has formalised this process by setting out a list of shareholder protection matters that overseas companies should address.
8. Listing Decisions HKEx-LD65-1, HKEx-LD65-2, HKEx-LD65-3 and HKEx-LD71-1 memorialise the Exchange's decisions to accept Singapore, Luxembourg, Cyprus and Germany as recognised jurisdictions under Chapter 19. HKEx-LD65-1 was the first case that applied the JPS.
9. Guidance Letter HKEx-GL12-09 sets out streamlined procedures for listing overseas companies.

THE ANALYSIS

Shareholder protection in Jersey

10. Company X submitted that it would amend its constitutional document where shareholder protection was considered less stringent than in Hong Kong.
11. However, regarding item 2(a) of the JPS, Company X submitted that it was not legally possible to address the differences in shareholder protection by amending

its constitutional document. Under the Hong Kong Companies Ordinance, overseas companies are required to hold a general meeting each year ('AGM') and not more than 15 months shall elapse between the date of one AGM and the next. Under the Companies (Jersey) Law, if all members of a Jersey company agree in writing that an AGM shall be dispensed with, then so long as the agreement has effect, it is not necessary for the company to hold an AGM. Company X submitted that it was not possible under Jersey law to amend its constitutional document to exclude the dispensation. However, Company X considered that this would not be detrimental to its shareholders because of (a) the stringent nature of the dispensation; (b) the unlikelihood of all the shareholders agreeing in writing to dispense with AGMs; and (c) in the unlikely event of all shareholders agreeing to dispense with AGMs, it was difficult to see how they would be prejudiced.

Nexus with Jersey

12. Company X submitted that:
 - a. since 2002, Company X's major shareholder had been using Jersey companies as holding companies for his various business interests located both outside and within Russia. In 2007, Company X was incorporated in Jersey as the ultimate holding vehicle;
 - b. Company X had engaged a professional and regulated corporate secretary to provide administration services, including maintenance of all corporate records, to each company incorporated in Jersey. Company X had a permanent retainer with its external counsel in Jersey, providing continual legal advice and services to Company X; and
 - c. the Jersey corporate governance regime and shareholders' rights were substantially similar to those for a UK company.
 - d. Jersey is also an accepted jurisdiction for overseas companies seeking a London primary listing. As at March 2009, 80 Jersey-incorporated companies were listed on the main board and AIM market of the London Stock Exchange.

Jersey considered acceptable

13. When considering whether to accept Jersey as Company X's jurisdiction of incorporation, the Exchange considered the following:-
 - a. the shareholder protection standards for a Jersey company as set out in the comparison table together with the proposed amendments to the constitutional document should provide a shareholder protection level at least equivalent to that in Hong Kong. The Exchange would require Company X to disclose in its prospectus the major jurisdictional or

regulatory differences between the Jersey and the Hong Kong requirements, especially in those areas set out in the JPS;

- b. Jersey is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, and therefore reasonable regulatory cooperation between regulators in Jersey and Hong Kong is ensured; and
- c. regarding the nexus between Company X's place of incorporation and its operations, Company X had provided a reasonable basis for this arrangement in light of the fact that Company X's major shareholder had chosen Jersey companies as holding vehicles since 2002. Company X's situation was similar to many Hong Kong listed companies whose businesses were based principally in Hong Kong or the PRC whilst their holding listing vehicles were incorporated in the Cayman Islands or Bermuda.

THE DECISION

- 14. The Exchange determined that, subject to Company X making certain revisions to its constitutional documents, Jersey is an acceptable jurisdiction for an issuer's place of incorporation under Chapter 19.
- 15. Company X would be required to submit:
 - 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 and that it is independently satisfied with the conclusion that the shareholder protection offered in Jersey is at least equivalent to that in Hong Kong; and
 - b. a legal opinion and the sponsor's confirmation that Company X's constitutional documents do not contain provisions which will prevent it from complying with the Listing Rules and there is nothing in them that will prevent it from complying with the Securities and Futures Ordinance – Disclosure of Interest, the Hong Kong Codes on Takeovers and Mergers and Share Repurchases, to the extent they apply.
- 16. Future applicants incorporated in Jersey may follow the streamlined process set out in Guidance Letter HKEx-GL12-09 and would not be required to complete a detailed line-by-line comparison with the JPS.