

COUNTRY GUIDE – Republic of Korea

(20 December 2013, last updated in January 2022)

Important notes: *This guide does not override the Rules and is not a substitute for legal, regulatory, tax, financial or any other advice from qualified professional advisers. If there is any conflict or inconsistency between this guide and the Rules, the Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Rules, or this guide.*

The information contained in this guide on foreign laws, regulations and market practices is based on that provided to us by potential listing applicants, listing applicants, listed issuers, their respective advisers or officials from the relevant jurisdiction. We have not separately verified this information nor have we updated this information since its receipt.

Subsequent Development (Updated in January 2022)

*In November 2021, the Exchange introduced a new listing regime for overseas issuers which covers, among other things, that all issuers are required to comply with the core shareholder protection standards under the revised Appendix 3 of the Main Board and GEM Listing Rules (where applicable) (the “**Core Shareholder Protection Standards**”). The amended Listing Rules are effective as from 1 January 2022. Information in this country guide may be outdated upon the introduction of such listing regime. Issuers and their advisers are advised to exercise caution when reading the guidance in this country guide.*

A new applicant that is incorporated in the jurisdiction of this country guide should refer to the revised Appendix 3 of the Main Board and GEM Listing Rules (where applicable) for the expected Core Shareholder Protection Standards required by the Exchange¹. Should there be any changes in the laws, regulations and market practices described in this country guide which might or would adversely affect a new applicant’s compliance with the expected Core Shareholder Protection Standards or any applicable Listing Rules, such new applicant should inform the Exchange of any such changes. A new applicant is also encouraged to consult the Exchange at the earliest opportunity if there is any enquiry on the guidance or requirements in this country guide.

¹ Including codification with modification of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which are superseded and no longer effective as from 1 January 2022.

Purpose of this Guide

This guide is one of a series that gives guidance on our treatment of listing applications from overseas issuers incorporated in a particular jurisdiction. The aim of this guide is to enhance applicants' understanding of our expectations, practices, procedures and the criteria we consider when applying the Rules for overseas issuers.

This guide should be read in conjunction with Listing Rules, in particular, the Core Shareholder Protection Standards, Chapter 19 of the Main Board Rules (Chapter 24 of the GEM Rules) (for primary listing applicants) and Chapter 19C of the Main Board Rules (for secondary listing applicants). All issuers incorporated in South Korea can apply for one or more “common waivers”² and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them³(*Updated in January 2022*).

Summary of our Approach

South Korea incorporated companies must demonstrate how South Korean law and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (*Updated in January 2022*).

We will consider a listing of depositary receipts on the Exchange for South Korea incorporated companies.

The statutory and securities regulators in South Korea, namely the Financial Services Commission and the Financial Supervisory Service, are full signatories to the IOSCO MMOU⁴ and South Korea meets our international regulatory co-operation requirements because it already has adequate measures in place with Hong Kong's Securities and Futures Commission (*Updated in January 2022*).

We expect a South Korean issuer to disclose prominently and fully in its listing document details of the South Korean taxation regime applicable to Hong Kong shareholders, including withholding tax on dividends.

² Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B

³ Main Board Rule 19C.11

⁴ International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

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1. Background

- 1.1 South Korea adopts a civil law system under which all legal matters and relationships are primarily governed by statutory laws rather than court judgments.
- 1.2 Under South Korean law, the corporate form that can publicly issue shares is “*chusik hoesa*”, a stock company, and the constitutional document of such a company is its articles of incorporation (“**AoI**”).
- 1.3 The Financial Services Commission (“**FSC**”) and the Financial Supervisory Service (“**FSS**”) are the statutory financial and securities regulators in South Korea.
- 1.4 A South Korean company can maintain a share register in Hong Kong in its Hong Kong branch office or engage an “eligible transfer agent” recognised by FSC to maintain a share register in Hong Kong.
- 1.5 A South Korea incorporated company has yet to be listed on the Exchange.

2. Application of this Country Guide

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants incorporated in South Korea. We do not accept applications for secondary listing on GEM.

3. International Regulatory Co-operation Measures

- 3.1 Main Board Rule 8.02A states that each of the statutory securities regulator of an issuer’s jurisdiction of incorporation and the statutory securities regulator of the place of central management and control must be a full signatory to the IOSCO MMOU. This is to enable the Securities and Futures Commission (the “**SFC**”) to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the SFC’s investigations and enforcement actions where an issuer has its records, business operations, assets and management outside Hong Kong. This requirement is met for issuers incorporated in South Korea as the FSC and the FSS are full signatories to the IOSCO MMOU (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in South Korea but its place of central management and control⁵ is elsewhere, the statutory securities regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU (*Updated in January 2022*).

⁵ Main Board Rule 8.02A.

4. Core Shareholder Protection Standards

- 4.1 Subject to South Korea incorporated issuers must demonstrate how the domestic laws, rules and regulations to which they are subject and their constitutional documents, in combination, provide the Core Shareholder Protection Standards. *(Updated in January 2022)*

Based on submissions by a potential applicant, we have set out below details of the differences between practices in South Korea and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (the “JPS”) (repealed as of 1 January 2022). Where we have in the past accepted a practice and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. South Korea incorporated applicants should amend their constitutional documents to address the shortfall in compliance with the Core Shareholder Protection Standards *(Updated in January 2022)*.

The information contained in this guide on South Korean laws, regulations and market practices is based on submissions by a potential applicant. We have neither separately verified this information nor have we updated this information since its receipt. Issuers and their advisers are advised to exercise caution when reading the guidance in this country guide. Should there be any changes in the laws, regulations and market practices described in this country guide which might or would adversely affect a new applicant’s compliance with the expected Core Shareholder Protection Standards or any applicable Listing Rules, such new applicant should inform the Exchange of any such changes. *(Added in January 2022)*

Proceedings at general meetings

- 4.2 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of its general meetings. South Korean law provides for a notice period of at least 14 days for any general meeting *(Updated in January 2022)*.

The Exchange has previously accepted the notice requirements in the constitutional documents of a South Korea incorporated applicant to be 21 days for all general meetings.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraph 14(2) of the revised Appendix 3 of the Listing Rules as a Core Shareholder Protection Standard. South Korea incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents *(Added in January 2022)*.

- 4.3 Right to speak and vote at general meetings: The then JPS requires that all members must have the right to speak and vote at a general meeting, except in cases where members having a material interest in a transaction or arrangement are required, by the Rules, to abstain from voting to approve the transaction or arrangement. South Korea incorporated listing applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents (*Updated in January 2022*).

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified in paragraphs 14(3) and 14(4) of the revised Appendix 3 of the Listing Rules. South Korea incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*)

Other Core Shareholder Protection Standards

- 4.4 Compared to the then JPS and the previous Appendix 3⁶ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives⁷ and inspect Hong Kong Branch Register⁸ are added to require the applicants to demonstrate conformity. Applicants incorporated in South Korea might not meet these two new Core Shareholder Protection Standards and may have to amend their constitutional documents accordingly. Issuers and their advisors should refer to the revised Appendix 3 of the Main Board and GEM Listing Rules for the complete set of Core Shareholder Protection Standards (*Added in January 2022*).

5. Practical and Operational Matters

- 5.1 Reference is made to the Guidance for Overseas Issuers (HKEX-GL111-22) which contains guidance on an overseas issuer's ability to comply with Hong Kong's rules and regulations; the eligibility of securities; cross-border clearing and settlement; Hong Kong depositary receipts; taxation and stock name identification. Applicants are encouraged to notify the Listing Department if they envisage difficulties in complying with such matters, where applicable (*Updated in January 2022*).
- 5.2 The then JPS provides that all listing applicants must make arrangement with Hong Kong Securities Clearing Company Limited ("HKSCC") to ensure their securities are accepted as eligible for deposit, clearance and settlement in

⁶ The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

⁷ Appendix 3, paragraph 18

⁸ Appendix 3, paragraph 20

Central Clearing and Settlement System (“CCASS”) in accordance with the General Rules of CCASS (*Updated in January 2022*).

- 5.3 Under HKSCC’s existing model, HKSCC, in its capacity as central securities depository, holds the legal title to shares of companies on the Exchange as the shareholder on record in a branch register held in Hong Kong. HKSCC’s clearing participants hold the beneficial interest in such shares in their CCASS stock accounts opened with HKSCC in its capacity as central securities depository. When a sale/purchase transaction in respect of such shares is made on the Exchange, a transfer of title in such shares amongst HKSCC’s clearing participants is effected by way of book entry transfer amongst CCASS stock accounts.
- 5.4 South Korean law recognises only accountholders at Korea Securities Depository⁹ as beneficial owners of shares in South Korea incorporated companies. Based on HKSCC’s existing model, HKSCC clearing participants would not acquire proprietary rights as shareholders of South Korea incorporated companies if the shares of such companies were to be listed on the Exchange.

Our Approach

- 5.5 The Exchange expects a South Korea incorporated company seeking a listing in Hong Kong will list by way of depository receipts (“DRs”). As GEM does not currently accept listings of DRs, South Korea incorporated companies seeking listings in Hong Kong can only seek listings of DRs on the Main Board. (*Added in August 2015*)

Subsequent Development since 1 January 2022

- 5.6 Such requirement is now relocated to paragraph 17 of Guidance for Overseas Issuers (HKEX-GL111-22)(*Added in January 2022*).

6. Constitutional Documents

- 6.1 South Korean laws and regulations do not have equivalent provisions to comply with all Listing Rules relating to the relevant shareholder protection. We set out in the Appendix our approach on each of the items required to be included in a South Korea incorporated issuer’s constitutional documents in order for it to meet the Listing Rule requirements (*Updated in January 2022*).

⁹ Under paragraph 1 of Article 315 of Financial Investment Services and Capital Markets Act.

7. Accounting and Auditing Related Requirements

- 7.1 We normally require the accountants' reports and financial statements of overseas issuers seeking a primary or a secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards or the International Financial Reporting Standards¹⁰ (*Updated in January 2022*).

8. Closure of Books and Record Date

- 8.1 Where an issuer proposes to grant entitlements (e.g. rights to acquire further shares) that requires the approval of shareholders in a general meeting or is contingent on a transaction that is subject to the approval of shareholders in a general meeting, our Rules¹¹ require that an issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting. Further, our Rules require that the record date (when there is no book closure) or the last registration date (where there is a book closure) must be at least three business days after the general meeting¹².
- 8.2 Under South Korean law, a South Korean company may (i) fix in its constitutional documents a specific date, or a date to be determined by its board of directors, as the record date for general meetings (which shall be no earlier than three months before any general meeting), and (ii) close the register of shareholders with the last registration date being not earlier than three months before a general meeting. This is to enable a South Korean company to determine the list of members who will be entitled to attend a general meeting for approving any matters (whether or not it relates to entitlements of shareholders).
- 8.3 In a previous case where the constitutional documents of a South Korean company stated that the record date for all general meetings was to be determined by the board of directors, the board agreed to cause the record date to fall no earlier than three months before the general meeting according to South Korean law between the publication of the full year financial results and the relevant annual general meeting.

Our Approach

- 8.4 We have in the past been prepared to grant waivers from complying with the Rules on the closure of books and the record date. However, to ensure that the applicant's members or potential investors will be fully aware of the relevant South Korean requirements, apart from the disclosure in the listing document,

¹⁰ Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D and, 19C.23 and Note 2.1 to paragraph 2 of Appendix 16 (GEM Rules 7.12, 18.04 and 24.18A),

¹¹ Main Board Rule 13.66(2).

¹² Note 3 to Main Board Rule 13.66(2).

we expect the applicant to make an announcement in accordance with the Rules¹³, and remind its members that the record date will fall on a date before the relevant general meeting which is different from most listed companies in Hong Kong.

9. Taxation

- 9.1 A South Korea incorporated issuer's shareholders are subject to withholding tax on dividends paid by the issuer. South Korea has entered into a number of income tax treaties with other countries, which reduce South Korean withholding tax on dividend income. However, South Korea has not entered into any income tax treaty with Hong Kong that would benefit shareholders who are Hong Kong tax residents.

Our Approach

- 9.2 We expect appropriate disclosure of taxation in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and any sections summarising South Korean laws and regulations.

¹³ See Exchange's Guide on Disclosure of Record Date, Book Closure and Latest Time for Lodging Transfers of Shares.

APPENDIX

Please note the important notes on the front page of this country guide regarding South Korean laws, regulations and practices.

Our Approach to Differences between Our Constitutional Document Requirements^(note) and South Korean Laws, Rules and Practices

Note: Some of the Constitutional Document Requirements stated herein were either (i) repealed on 1 January 2022 because they were not considered to be fundamental to shareholder protection or they overlapped with the requirements in the Listing Rules; or (ii) codified with modification as Core Shareholder Protection Standards in the Listing Rules. For details, please see the column headed “Subsequent Development since 1 January 2022”. New applicants shall assess whether it can comply with the relevant Listing Rules or seek waiver from compliance. *(Added in January 2022)*

Rule Paragraph	Rule Requirement	South Korean Laws, Regulations and Practices	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
Appendix 3, 2(1)	All certificates for capital shall be under seal, which shall only be affixed with the authority of the directors.	The name and the seal of a representative director of a South Korean company shall be affixed to each share certificate.	<p>We have previously granted a waiver of this item based on the reason set out in paragraph 6.2.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>This articles provision was repealed on 1 January 2022. Paragraphs 4, 11 and 28 of Appendix 2B of the Listing Rules contain the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

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Rule Paragraph	Rule Requirement	South Korean Laws, Regulations and Practices	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
Appendix 3, 2(2)	Where power is taken to issue share warrants to bearer, no new share warrant shall be issued to replace one that has been lost unless the issuer is satisfied beyond reasonable doubt that the original has been destroyed.	A bearer holder of share warrants who has lost his share warrants may not request the company re-issue them unless the person has obtained a judgment of nullification of such share warrants from the South Korean court.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.	This articles provision was repealed on 1 January 2022.
Appendix 3, 3(2)	Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend.	A claim for payment of dividend will be legally extinguished if it is not exercised for five years, and such mandatory period may not be extended by the company’s AoI.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022.

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(not effective after 31 December 2021)				
Appendix 3, 4(2)	Any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.	The board of directors does not have the authority to appoint a director to fill a casual vacancy on or as an addition to the board of directors of the company as the power to appoint directors only rests with the company’s members.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This item has remained effective in the revised Appendix 3. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3, 4(3)	Where not otherwise provided by law, the issuer in general meeting shall have power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office.	A director can only be removed through a member resolution passed with affirmative votes of no less than two-thirds of the voting shares present or represented at a general meeting provided that the affirmative votes also represent at least one-third of the total voting shares then issued and outstanding at the general meeting.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.	This item has remained effective in the revised Appendix 3.

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(not effective after 31 December 2021)				
Appendix 3, 8	<p>Where the issuer has the power to purchase for redemption a redeemable share:</p> <p>(a) purchases not made through the market or by tender shall be limited to a maximum price; and</p> <p>(b) if purchases are by tender, tenders shall be available to all shareholders alike.</p>	The right to redeem shares must be set forth in the company’s AoI.	<p>In a previous case, the applicant did not issue redeemable shares and hence its AoI did not contain any redemption right. We accepted the applicants’ undertakings that it would comply with this requirement when it decided to amend its AoI to allow the issuance of redeemable shares. We granted a waiver of this item based on the reason set out in paragraph 6.2.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	This articles provision was repealed on 1 January 2022. Please refer to the Code on Share Buy-backs for protection for redeemable shareholders.

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(not effective after 31 December 2021)				
Appendix 3, 13(2)	<p>Where power is taken to sell the shares of a member who is untraceable, it will not be exercised unless:</p> <p>(a) during a period of 12 years at least three dividends in respect of the shares in question have become payable and no dividend during that period has been claimed by such member; and</p> <p>(b) on expiry of such 12 years, the issuer gives notice of its intention to sell the shares by way of an advertisement published in the newspapers and notifies the Exchange of such intention.</p>	<p>Even when a member is untraceable for a substantial period of time, a company is not permitted to sell the shares owned by such member. It was submitted that the South Korean requirements are more stringent than those in Hong Kong.</p>	<p>We granted a waiver of this item based on the reason set out in paragraph 6.2.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>	<p>This articles provision was repealed on 1 January 2022.</p>