

COUNTRY GUIDE – INDIA

(November 2015, updated in January 2022)

Important notes: *This guide does not override the Main Board Listing Rules (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 our understanding of them as of the date of issue of this guide. This guide may not be updated to reflect changes in the law after the date of issue.

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 Information in this country guide may be outdated upon the introduction of such listing regime.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 Exchange.¹ 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of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which was superseded and no longer effective as from 1 January 2022.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 the 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 India can apply for one or more “common waivers”² and those seeking secondary listings do not need to apply for waivers of certain Rules which are automatically waived for them³ (*Updated in January 2022*).

Summary of our Approach

India incorporated companies must demonstrate how the Indian laws 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 India incorporated issuers.

The statutory securities regulator in India, namely the Securities and Exchange Board of India, is a full signatory to IOSCO MMOU⁴ and India 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*).

Tax matters are not covered in the current analysis. We expect an India incorporated issuer to prominently and fully disclose in its listing document details of the Indian taxation regime and how it is applicable to Hong Kong shareholders.

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 IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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1. Overview of the Indian regime

- 1.1 Under Indian law, an Indian company can generally only be listed outside India by way of a depositary receipt (“DR”) listing. Therefore, this guide is drafted on the assumption that an Indian applicant would apply for a DR listing rather than a listing of shares. Under Indian law, the listing entity may be a public company listed in India or an unlisted private or public company.
- 1.2 The general permission for companies to list on non-Indian stock exchanges without requiring a pre-existing or simultaneous listing in India was re-introduced in October 2013 and confirmed in the Depository Receipts Scheme, 2014 which became effective from 15 December 2014. There are currently no disclosure requirements set out in the Depository Receipts Scheme, 2014 in relation to an Indian issuer listing DRs on a non-Indian exchange without a corresponding listing in India.
- 1.3 As at 16 November 2015, there are no India incorporated companies listed on the Exchange.

2. Application of this Country Guide

- 2.1 This guide applies to primary and secondary Main Board listing applicants incorporated in India. We do not accept applications for DR listing on Growth Enterprise Market (“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 India as the Securities and Exchange Board of India (“SEBI”) is a full signatory to the IOSCO MMOU.
- 3.2 If an issuer is incorporated in India 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 India 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.

Based on submissions by a potential applicant, we have set out below details of the differences between practices in India and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (“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. India 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 Indian 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*)

Matters requiring a super majority vote

- 4.2 Voluntary winding up of an Indian issuer: Under the then JPS, a super-majority vote of members is required to approve a voluntary winding up of an Indian issuer. Under Indian law, an ordinary resolution of the shareholders of a company is required to approve the voluntary winding up of a company if the articles of association provide for dissolution of the company upon the occurrence of specified events.

Our Approach prior to 1 January 2022

- 4.3 An Indian issuer’s constitutional documents should be amended such that a special resolution of the shareholders is required to approve a voluntary winding up of the company.

Subsequent Development since 1 January 2022

- 4.4 The requirement comparable to the then JPS requirement was codified in paragraph 21 of the revised Appendix 3 of the Listing Rules as Core Shareholder Protection Standards. (*Updated in January 2022*)

Proceedings at general meetings and creditor meetings

- 4.5 Right of a recognised Hong Kong clearing house to appoint proxies or corporate representatives: Under the then JPS, a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings. These proxies/corporate representatives should enjoy statutory rights comparable to those of other shareholders, including the right to speak and vote. Under Indian law, a shareholder of an Indian company is only able to appoint one corporate representative to speak and vote at a meeting for all the shares it holds, and while it is possible to appoint multiple proxies, a proxy cannot speak at a meeting and can only vote where voting is conducted by a poll.

Our Approach prior to 1 January 2022

- 4.6 We consider the inability of a proxy to speak at general meetings and creditor meetings can be addressed taking into account the ability of a DR holder to convert his DRs into shares to exercise his right to speak and vote at general meetings, and the amount of time and costs involved in processing the conversion must be reasonable under the deposit agreement acceptable to the Exchange. Further, an Indian issuer's constitutional documents and the deposit agreement⁶ must ensure that HKSCC Nominees Limited shall be entitled to appoint holders of depositary receipts (or persons nominated by them) as proxies with the power to attend and vote on a poll at general meetings and creditor meetings of the issuer. In addition, the restriction on the ability of depositary receipt holders to speak at general meetings and creditor meetings must be set out in the listing document.

Subsequent Development since 1 January 2022

- 4.7 The requirement comparable to the then JPS requirement was codified in paragraph 19 of the revised Appendix 3 of the Listing Rules as Core Shareholder Protection Standards. (*Updated in January 2022*)

Other Core Shareholder Protection Standards

- 4.8 Compared to JPS and the previous Appendix 3⁷ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives⁸ and inspect Hong Kong Branch Register⁹ are added to require the applicants to demonstrate conformity. Applicants incorporated in India might not meet these two new Core Shareholder Protection Standards and may have to amend their constitutional documents accordingly. Issuers and their

⁶ Meaning a deposit agreement in the form prescribed under Chapter 19B of the Rules. See Rule 19B.16.

⁷ The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

⁸ Appendix 3, paragraph 18

⁹ Appendix 3, paragraph 20

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 identifications. Issuers are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable *(Updated in January 2022).*

Listing of Indian Companies outside India

- 5.2 Indian companies are not permitted to list their shares on stock exchanges outside India without the approval of the Government of India, which has not historically been granted. However, this restriction does not apply to DRs and Indian companies are allowed to list DRs on stock exchanges outside India. Indian companies seeking listings in Hong Kong can only seek listings of DRs on the Main Board as GEM does not currently accept listings of DRs.
- 5.3 We have been advised that there are no restrictions on non-Indians holding shares in an Indian company upon conversion of the DRs into shares. DR holders can acquire ownership of the shares upon conversion of the DRs according to the terms of the deposit agreement, subject to obtaining tax registration, opening a securities account in India and complying with procedural requirements.

Registers of Securities

- 5.4 Under Indian law, shares issued in relation to DRs (“**Depository Shares**”) must be in dematerialised form. The register of members of the Indian company will reflect the name of the domestic depositary¹⁰ as the owner of the Depository Shares. This register has to be maintained at the Indian issuer’s registered office unless otherwise approved by the shareholders by a special resolution.
- 5.5 The domestic depositary will maintain a register and index of beneficial owners which will reflect the name of the overseas depositary as the beneficial owner of the shares held on its behalf by the domestic custodian. This register and index of beneficial owners is maintained by the domestic custodian onshore in India.

¹⁰ A domestic depositary is a public company incorporated under the Indian Companies Act 1956 and which has been granted a certificate of registration as a depositary by SEBI to act as a domestic depositary. Currently there are two domestic depositaries operating in India, namely National Securities Depository Limited and Central Depository Service Limited.

- 5.6 Indian law allows the overseas depository to maintain a separate register of the holders of DRs. This register may be maintained outside India. An Indian issuer listing DRs would recognise the overseas depository as its member but would not recognise a DR holder or HKSCC Nominees Limited as its member.

Our Approach

- 5.7 Indian issuers are reminded that the Hong Kong depository must be a suitably authorised and regulated financial institution acceptable to the Exchange¹¹. In assessing suitability, the Exchange will also have regard to the jurisdiction of incorporation of the Hong Kong depository. Similarly, the governing law of the deposit agreement should be that of Hong Kong or, if another jurisdiction is chosen, one that is generally used in accordance with international practice¹².
- 5.8 The listing document should include full details of (i) the rights and obligations of DR holders including how the rights of DR holders may be enforced against the Indian issuer and/or the Hong Kong depository in Hong Kong and India; (ii) the associated risks to the Indian issuer and its DR holders; and (iii) full details of the clearing and settlement arrangements including the mechanism through which Hong Kong investors (through HKSCC Nominees) will hold the DRs and the roles and responsibilities of any domestic depository, the Hong Kong depository and CCASS, including with reference to any applicable Indian rules and regulations.
- 5.9 The deposit agreement must be in a form acceptable to the Exchange¹³. As such, an Indian issuer should early consult the Exchange on the terms of the deposit agreement.

Constitutional Documents

- 5.10 Paragraph 12 of Appendix 3 to the Rules (repealed as of 1 January 2022) requires a listed issuer's constitutional documents to provide that no powers shall be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person or persons who are interested directly or indirectly therein have failed to disclose their interests to the issuer.
- 5.11 This requirement is inconsistent with Indian law, under which the beneficial owners of shares held in the names of the other persons as nominees are required to make a declaration to the company specifying the nature of their interest, particulars of the person in whose names the shares stand registered in the books of the company and such other particulars as may be prescribed, failing which they are subject to a monetary penalty. We would expect to be prepared to grant

¹¹ Rule 19B.15.

¹² Rule 19B.16(t).

¹³ Rule 19B.16.

a waiver from strict compliance with paragraph 12 of Appendix 3 to the Rules to the extent it would contravene Indian law.

6. Accounting and Auditing Related Requirements

- 6.1 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 Standards ¹⁴ (*Updated in January 2022*).

7. Taxation

- 7.1 No analysis on tax matters is included in this guide.

Our Approach

- 7.2 We expect an Indian issuer to disclose the following prominently in its listing document:
- (a) details of any Indian withholding tax on distributable entitlements or any other tax, including the applicable rates, which is payable by investors in its securities;
 - (b) details of any treaty between India and Hong Kong that may affect any taxes payable;
 - (c) the effect of holding DRs through Central Clearing and Automated Settlement System ("CCASS") or outside CCASS on any tax payable (where applicable); and
 - (d) the procedures for claiming any tax relief or exemptions.
- 7.3 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 Indian laws and regulations.

¹⁴ Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D, 19C.23 and Note 2.1 to paragraph 2 of Appendix 16 (GEM Rules 7.12, 18.04 and 24.18A).