

# COUNTRY GUIDE – Italy

(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 a 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 Information in this country guide may be outdated upon the introduction of such listing regime.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<sup>1</sup>. 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 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.*

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<sup>1</sup> 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of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which was superseded and no longer effective as from 1 January 2022.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 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 Italy can apply for one or more “common waivers”<sup>2</sup> and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them<sup>3</sup>. (Updated in January 2022)**

### Summary of our Approach

Italy incorporated companies must demonstrate how the Italian laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (Updated in January 2022).

The statutory securities regulator in Italy, namely Commissione Nazionale per le Società e la Borsa, is a full signatory to the IOSCO MMOU<sup>4</sup> and Italy 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 are prepared to accept financial statements that conform to International Financial Reporting Standards as endorsed by the European Union for use by European Union companies. These must contain a reconciliation statement setting out the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards. (Updated in January 2022)

We expect an Italian issuer to disclose prominently and fully in its listing document details of the Italian taxation regime applicable to Hong Kong shareholders, including tax on gain from sales of securities, withholding tax on dividends and financial transactions tax, and the risk that an Italian issuer may be required to dematerialise its shares.

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

<sup>3</sup> Main Board Rule 19C.11.

<sup>4</sup> IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

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## **1. Background**

- 1.1 The standard type of Italy incorporated company used for listing shares is the joint stock company (“**JSC**”).
- 1.2 An Italy incorporated company will generally have one of the three different management and control structures: a default structure, a one-tier structure, or a two-tier structure.
- 1.3 The majority of JSCs adopt the default structure, under which a company is managed by a sole director or a board of directors, with a board of statutory auditors supervising compliance with the relevant laws and the constitutional documents and an external auditor carrying out the accounting control of the JSC.
- 1.4 Italian law generally provides greater shareholder protection over companies “admitted to trading on Italian regulated markets” or with “shares widely distributed among the public”. Apart from minor exceptions<sup>5</sup>, provisions applicable to companies listed on a regulated market in Italy also apply to JSCs with shares widely distributed among the public. Currently, an Italy incorporated issuer listed on the Exchange would be considered neither “admitted to trading on a regulated market” nor having “shares widely distributed among the public”<sup>6</sup> under Italian law.
- 1.5 The principal Italian laws and regulations applicable to companies with a default structure are the Italian Civil Code, the Italian Consolidated Financial Act and the Commissione Nazionale per le Società e la Borsa (“**Consob**”) Regulation.
- 1.6 This Country Guide analyses Italian law applicable to a JSC with a default structure.

## **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 Italy. We do not accept applications for secondary listing on GEM.

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<sup>5</sup> JSCs with shares widely distributed among the public are subject to the provisions applicable to companies not listed on a regulated market in Italy for the following matters: (i) takeover bids; (ii) issue of special categories of shares; (iii) regime applicable to proxies; (iv) election of at least one director by minority shareholders; (v) procedure for purchase of treasury shares and redemption of redeemable shares.

<sup>6</sup> The Italian Securities and Exchange Commission has not yet issued any decision on whether an Italian issuer listed on a foreign exchange either inside or outside the European Union has to be treated as a company with shares widely distributed among the public

### **3. International Regulatory Co-operation Measure**

- 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 also 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 Italy as the Consob, the Italian Securities and Exchange Commission, is a full signatory to the IOSCO MMOU. In addition, Consob has entered into a Memorandum of Understanding with the SFC for the purposes of exchange of information and investigatory assistance (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in Italy but its place of central management and control<sup>7</sup> is elsewhere, the statutory securities regulator of that jurisdiction must be a full signatory to the IOSCO MMOU (*Updated in January 2022*).

### **4. Core Shareholder Protection Standards**

- 4.1 Italy 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 Italy 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. Italy 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 Italian 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

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<sup>7</sup> Main Board Rule 8.02A

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 general meetings. Under Italian law, a general meeting of a company not admitted to trading on a regulated market is required to be called at least 15 days prior to the date of the meeting (*Updated in January 2022*).

The Exchange has previously accepted the following notice requirement in the constitutional documents of an Italy incorporated issuer not listed on a regulated market:

- (a) the notice of call of a general meeting to be given at least 30 days prior to the date of the relevant meeting; and
- (b) this period of notice to be (i) extended to 40 days before the date of the meeting for meetings at which resolutions for the appointment of directors and statutory auditors are to be proposed, and (ii) reduced to 21 days before the date of the meeting for those meetings at which resolutions for the reduction of capital pursuant to losses, the reduction of capital below the legal minimum, and the appointment and replacement of liquidators are to be proposed.

*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. Italy 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 have a material interest in a transaction or arrangement, in which case they are required, by the Rules, to abstain from voting to approve the transaction or arrangement.

*Subsequent Development since 1 January 2022*

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

### ***Other Core Shareholder Protection Standards***

- 4.4 Compared to the then JPS and the previous Appendix 3<sup>8</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>9</sup> and inspect Hong Kong Branch Register<sup>10</sup> are added to require the applicants to demonstrate conformity. Applicants incorporated in Italy 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 depository receipts; taxation; and stock name identification. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable (*Updated in January 2022*).

### ***Potential requirement to dematerialise shares***

- 5.2 Under Italian law, shares of an Italy incorporated company admitted to trading on an Italian regulated market or widely distributed among the public must be fully dematerialised. Dematerialisation means that title to shares is not evidenced by way of share certificates. Under Italian law, where the shares of a company are dematerialised, title to the shares is evidenced by the member's name being recorded in the account held by the authorised intermediary qualified at Monte Titoli S.p.A, the Italian central securities depository, with whom the shares are deposited.
- 5.3 Currently, an Italian issuer listed on the Exchange would not be considered admitted to trading on a regulated market or having shares widely distributed among the public under Italian law. Therefore an Italian issuer listed on the Exchange is not required to dematerialise its shares under the relevant Italian regulations. However, there remains a possibility that the Italian regulators may adopt a different interpretation of the relevant Italian regulations in the future and require an Italian issuer listed on the Exchange to dematerialise its shares.

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<sup>8</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

<sup>9</sup> Appendix 3, paragraph 18

<sup>10</sup> Appendix 3, paragraph 20

### Our Approach

- 5.4 An Italian applicant should disclose in its listing document the risk that it may be required to dematerialise its shares and the actions that would be taken by the Italian applicant and its members should it be required to dematerialise its shares in the future, and the impact of this on its listing on the Exchange. In addition, an Italian applicant should regularly assess whether it is, or will at a future point in time, be required to dematerialise its shares under the relevant Italian regulations, and if so, it must undertake to inform the Exchange at the earliest possible opportunity, together with its detailed arrangements in this regard.

### ***Identity of Members' Proxies at General Meetings***

- 5.5 The then JPS states that an overseas issuer is to notify the Exchange of any restrictions on a Hong Kong investor's right to attend general meetings and to vote and/or to appoint proxies (*Updated in January 2022*).
- 5.6 Although Italian law provides that any person with the right to vote may appoint a proxy to attend general meetings, the identity of proxies for an Italy incorporated company not admitted to trading on a regulated market in Italy exclude:
- (a) the company's directors, members of its board of statutory auditors and its employees; and
  - (b) the company's subsidiaries and each of their respective directors, members of their boards of statutory auditors and employees.

### Our Approach

- 5.7 We do not consider this restriction under Italian law to be material to shareholder protection. However, the restriction on the identity of the proxies must be set out in the listing document.

### Subsequent Development since 1 January 2022

- 5.8 Such requirement is now relocated to paragraph 18(f) of the Guidance for Overseas Issuers (HKEX-GL111-22) (*Updated in January 2022*).

## **6. Constitutional Documents**

- 6.1 Italian 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 an Italy incorporated issuer's constitutional documents in order for it to meet the Listing Rule requirements (*Updated in January 2022*).



## 7. Accounting and Auditing Related Requirements

- 7.1 We normally require the accountants' reports and financial statements of overseas issuers seeking a primary or secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards ("HKFRS") or the International Financial Reporting Standards ("IFRS")<sup>11</sup> (*Updated in January 2022*).

### Our Approach

- 7.2 We are prepared to accept financial statements that conform to IFRS as endorsed by the European Union ("EU-IFRS")<sup>12</sup> for use by European Union companies and the Italian Auditing Standards<sup>13</sup>. In a previous case, we allowed an Italy incorporated issuer to use EU-IFRS for its accountants' reports and all subsequent financial statements, and for these to be audited to Italian auditing standards. However, this is on the condition that the issuer includes a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS, in its accountants' reports and subsequent financial statements<sup>14</sup> (*Updated in January 2022*).

## 8. Taxation

- 8.1 We understand that members of an Italy incorporated issuer will be subject to various Italian taxes including:
- (a) capital gains tax on gains earned on a sale of shares;
  - (b) withholding tax on dividends; and
  - (c) financial transactions tax on all transactions involving the transfer of ownership of shares.
- 8.2 The applicable tax rates of the above taxes are dependent on, among other things, whether the Exchange is considered a regulated market under Italian regulations and whether there is any double tax treaty or exchange of information agreement in force between Hong Kong and Italy. Currently, the Exchange is not such a

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<sup>11</sup> 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)

<sup>12</sup> A list of alternative overseas financial reporting standards that are considered comparable to HKFRS and IFRS is published on the Exchange's website, as amended from time to time.

<sup>13</sup> A list of alternative overseas auditing standards that are considered comparable to the standards required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants is published on the Exchange's website, as amended from time to time.

<sup>14</sup> Primary listing: Main Board Rule 19.14 and GEM Rule 7.14 (accountants' reports) and Main Board Rule 19.25A and GEM Rule 24.18A (annual / interim/ quarterly financial statements). Secondary listing: note 4 to Main Board Rules 19C.10D (accountants' reports) and 19C.23 (annual /interim financial statements).

regulated market, and there is no double tax treaty and no exchange of information agreement in force between Hong Kong and Italy.

### Our Approach

- 8.3 We expect an Italy incorporated applicant to disclose the following prominently in its listing document:
- (a) the rate of tax investors in its securities will have to pay. This disclosure must break down the tax payable by the relevant factors that affect the tax rate (e.g. residence in Italy, percentage of share capital owned, corporate or individual shareholding etc.);
  - (b) whether an Italian issuer listed on the Exchange would be considered admitted to trading on a regulated market or having shares widely distributed among the public under Italian law;
  - (c) a statement on whether there is any treaty between Italy and Hong Kong that may affect the tax payable;
  - (d) the tax reporting obligations that Hong Kong investors will be subject to;
  - (e) the effect of holding the issuer's shares through CCASS or outside CCASS on any tax payable (if any); and
  - (f) the procedures for claiming any tax relief or exemptions (if any).
- 8.4 We expect appropriate disclosure of taxation in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and in any sections summarising Italian laws and regulations. An Italy incorporated issuer should also consider issuing publications to its members explaining the steps to file tax returns with the Italian authorities, and after listing, as and when necessary, it should publish announcements in respect of any updates to the Italian tax regime which may affect Hong Kong investors.

## APPENDIX

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

### **Our Approach to Differences between Our Constitutional Document Requirements <sup>(note)</sup> and Italian 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	Italian Laws, Regulations and Practice	Our Approach prior to 1 January 2022	Subsequent Development since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
Appendix 3, 2(1)	All certificates for capital must be under seal affixed only with the authority of the directors.	Under Italian law, a company’s share certificates will be issued either under the hand of or machine imprinted signature of one director of the company who is being granted the authority of the board of directors.	In a previous case, an Italy incorporated company was not required to have a seal under Italian law, and we considered that this would not result in undue risks or prejudice to the interests of its shareholders. A waiver of this articles provision	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.  Secondary listing applicants shall apply to the Exchange for a

## APPENDIX

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

Rule Paragraph	Rule Requirement	Italian Laws, Regulations and Practice	Our Approach prior to 1 January 2022	Subsequent Development since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
			<p>was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>	<p>waiver of compliance from the relevant Listing Rule if it considers necessary.</p>
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.	Power to forfeit unclaimed dividend shall be exercised within 5 years, a longer period is not allowed under Italian law.	<p>In a previous case, we considered that imposing a six-year restriction period would be inconsistent with and unenforceable under Italian law. A waiver of this articles provision was granted.</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.</p>