

COUNTRY GUIDE – The Netherlands

March 2019, updated January 2022

Important notes: *This guide does not override the Listing Rules (“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 Information in this country guide may be outdated upon the introduction of such listing regime.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of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which was superseded and no longer effective as from 1 January 2022.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 the Netherlands as public limited liability companies (naamloze vennootschap met beperkte aansprakelijkheid, or N.V.) which is not and will not (i) offer any shares to the public in; or (ii) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within the European Economic Area (“Eligible Dutch Companies”)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

Eligible Dutch Companies must demonstrate how the Dutch laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (Updated in January 2022).

This guide provides guidance on the Exchange's treatment of listing applications from Eligible Dutch Companies. No analysis has been made on a Dutch private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid, or B.V.*); or a Dutch company which offers its shares to the public in, or its shares are listed (whether on a primary or secondary basis) on stock exchanges within, the European Economic Area (Updated in January 2022).

The statutory securities regulator in the Netherlands, namely the Dutch Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*), is a full signatory to the IOSCO MMOU⁴ and the Netherlands meets our international regulatory co-operation requirements because it already has adequate measures in place with the Securities and Futures Commission of Hong Kong (Updated in January 2022).

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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Appendix: Our Approach to Differences between Our Constitutional Document Requirements and Dutch Laws, Regulations and Practices

1. Background

- 1.1 The Dutch company law is equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and consists of various legal texts including the Dutch Civil Code and the Dutch Corporate Governance Code, which set out the regulatory framework for Dutch incorporated companies. Under Dutch law, any Dutch public limited liability company (*naamloze vennootschap met beperkte aansprakelijkheid, or N.V.*) is eligible to obtain a listing of its shares and depository receipts on an overseas stock exchange.
- 1.2 The Dutch Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten, the “AFM”*) regulates and supervises compliance with securities laws by companies listed in the European Economic Area (the “EEA”) and/ or offering shares to the public in the public in the Netherlands.

2. Application of this Country Guide

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants⁵ incorporated in the Netherlands as public limited liability companies (*naamloze vennootschap met beperkte aansprakelijkheid, or N.V.*) which is not and will not (i) offer any shares to the public in; or (ii) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the EEA (the “**Eligible Dutch Companies**”).

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 the Netherlands as the AFM, the statutory securities regulator in the Netherlands, is a full signatory to the IOSCO MMOU. In addition, the AFM has an arrangement concerning mutual assistance and exchange of information with the SFC⁶ (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in the Netherlands but its place of central management and control⁷ is elsewhere, the statutory securities⁷ regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU (*Updated in January 2022*).

⁵ We do not accept applications for secondary listing on GEM.

⁶ The arrangement is under a Confidentiality Understanding signed by SFC and AFM in 1994, which is available at the SFC’s website.

⁷ Main Board Rule 8.02A

4 Core Shareholder Protection Standards

- 4.1 The Eligible Dutch Companies 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 the Netherlands 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. Netherlands incorporated applicants should amend their constitutional documents to address the shortfall in compliance with the Core Shareholder Protection Standards (*Added in January 2022*).

The information contained in this guide on Dutch 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 The then JPS requires the following resolutions of an overseas company to be approved by a super-majority vote of members or by a simple majority vote of members plus a significantly higher quorum (*Updated in January 2022*):
- (a) changes to the rights attached to any class of shares (votes by members of that class);
 - (b) material changes to an overseas company’s constitutive documents, however framed; and
 - (c) voluntary winding up of an overseas company.

Under Dutch law, the resolutions referred to in paragraph 4.2 above only require simple majority votes from members with no quorum requirements.

Our Approach prior to 1 January 2022

- 4.3 To conform with the then JPS requirements, Eligible Dutch Companies can modify their constitutional documents to specify that resolutions for changes to class rights, material changes to their constitutive documents, and their voluntary winding-up must be approved by a super-majority vote of members or by a simple majority vote of members plus a significantly higher quorum (*Updated in January 2022*).

Subsequent Development since 1 January 2022

- 4.4 The requirements comparable to the then JPS requirements were codified in paragraphs 15, 16 and 21 of the revised Appendix 3 of the Listing Rules as Core Shareholder Protection Standards

on 1 January 2022. As regards variation of rights, paragraph 15 of Appendix 3 also requires that the quorum for such meeting shall be holders of at least one third of the issued shares of the class. Netherlands incorporated applicants must demonstrate how they will comply with these requirements, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

Individual members to approve an increase in members' liability (repealed as of 1 January 2022)

- 4.5 Under the then JPS, there should not be any alteration in an overseas company's constitutional documents to increase an existing member's liability to the company unless such increase is agreed by such member in writing. Dutch law does not stipulate whether such shareholders' consent must be obtained in writing (*Updated in January 2022*).

Our Approach prior to 1 January 2022

- 4.6 To conform to the then JPS requirement, Eligible Dutch Companies can modify their constitutional documents such that any alteration in constitutional documents to increase an existing member's liability will only be valid if provided in writing (*Updated in January 2022*).

Subsequent Development since 1 January 2022

- 4.7 This then JPS requirement was repealed on 1 January 2022. (*Added in January 2022*)

Appointment, removal and remuneration of auditors

- 4.8 Under the then JPS, the appointment, removal and remuneration of auditors must be approved by a majority of an overseas company's members or other body that is independent of the board of directors (*Updated in January 2022*).

- 4.9 Under Dutch law:

4.9.1 members are empowered to appoint the auditors at the company's general meeting; but if the general meeting does not appoint the auditors, the company's board of directors will be empowered to do so (or in the case of two tier structure, the supervisory board will be empowered to do so, failing which the management board will be empowered to do so);

4.9.2 only the corporate body which appointed the auditors as mentioned in subparagraph (a) above can remove the auditors; and

4.9.3 the company can arrange the remuneration of the auditors for the provision of audit services.

Our Approach prior to 1 January 2022

- 4.10 To conform with the then JPS requirement, Eligible Dutch Companies can modify their constitutional documents to provide that the appointment, removal and remuneration of the auditors are required to be approved by members by simple majority vote at the company's general meeting, or other body that is independent of the board of directors (*Updated in January 2022*).

Subsequent Development since 1 January 2022

- 4.11 The requirement comparable to the then JPS requirement was codified in paragraph 17 of the revised Appendix 3 of the Listing Rules as a Core Shareholder Protection Standard on 1 January 2022. Netherlands incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents. (***Added in January 2022***).

Notice of General Meetings

- 4.12 Under the then JPS, an overseas company must give its members reasonable written notice of general meetings. Under Dutch law, notice of the company's general meeting must be given by at least 15 days before the day of the general meetings (***Updated in January 2022***).

Our Approach prior to 1 January 2022

- 4.13 To conform to the then JPS requirement, Eligible Dutch Companies can modify their constitutional documents to provide that at least 21 days' written notice will be given to the members for convening an annual general meeting. We consider that the requirement of at least 15 days' written notice for convening other meetings under Dutch law is comparable with the JPS requirement (***Updated in January 2022***).

Subsequent Development since 1 January 2022

- 4.14 The requirement comparable to the then JPS requirement was codified in paragraph 14(2) of the revised Appendix 3 of the Listing Rules as a Core Shareholder Protection Standard on 1 January 2022. Netherlands incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (***Added in January 2022***).

Right to Speak and Vote at General Meetings

- 4.15 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 material interest in a transaction or arrangement are required, by the Listing Rules, to abstain from voting to approve the transaction or arrangement (***Updated in January 2022***).
- 4.16 Under Dutch law, all shareholders are entitled, in person or represented by a proxy authorised in writing, to attend and address the general meeting and exercise voting rights pro rata to their shareholdings, regardless whether the member has any material interest in a transaction or arrangement.

Our Approach prior to 1 January 2022

- 4.17 To conform to the then JPS requirement, Eligible Dutch Companies can modify their constitutional document to provide for a voting mechanism to achieve an outcome substantially equivalent to that under the Listing Rules (***Updated in January 2022***).

Subsequent Development since 1 January 2022

- 4.18 The requirement comparable to the then JPS requirement was codified in paragraph 14(3) of the revised Appendix 3 of the Listing Rules as a Core Shareholder Protection Standard on 1 January 2022. Netherlands 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

- 4.19 Compared to the then JPS and the previous Appendix 3⁸ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives⁹ and inspect Hong Kong Branch Register¹⁰ are added to require the applicants to demonstrate conformity. Applicants incorporated in the Netherlands 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 company'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 identifications. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable (*Updated in January 2022*).

Cancellation of shares

- 5.2 The Rules provide that the listing of all shares which are purchased by an issuer (whether on the Exchange or otherwise) shall be automatically cancelled upon purchase and the issuer shall ensure that the documents of title or purchase are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase¹¹.
- 5.3 Under Dutch law, the repurchase of shares and cancellation of the repurchased shares are two separate events. The former requires a simple majority approval at a general meeting, and the latter requires a higher approval threshold¹². Further, the shares repurchased are allowed to be held as treasury shares and such shares do not carry any voting rights or dividend rights.
- 5.4 A share cancellation will only become effective two months after the publication of the aforementioned general meeting resolution approving the share cancellation (the "**Two Months Period**"), and provided that no creditors have filed any objection with the court during such period. If such objection is filed and the court found the objection claim to be valid, the

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

⁹ Appendix 3, paragraph 18

¹⁰ Appendix 3, paragraph 20

¹¹ Main Board Rule 10.06(5) (GEM Rule 13.14).

¹² Two thirds of the votes cast if less than half of the issued share capital is present or represented; otherwise, a simple majority.

company will be required to provide guarantees to the creditors to serve as security for any debts. As such, a Dutch company may only proceed to cancel the relevant shares once sufficient guarantees have been provided, or when the objection was waived or found to be invalid by the court.

Our Approach

- 5.5 To comply with the Rules, Eligible Dutch Companies can modify their constitutional documents to provide measures to ensure (a) shares will only be repurchased for the purpose of cancellation (i.e. no treasury shares will be kept); (b) shareholders' approval for both repurchase and cancellation must be obtained before the company proceeds with the repurchase; and (c) the repurchased shares will be cancelled as soon as practicable upon the earlier of the expiration of the Two Months Period or provision of guarantee by the company to any creditor who files an objection that is ruled in favour by the court.
- 5.6 In the event that a share cancellation does not become effective after the Two Months Period, we will consider, on a case by case basis, granting a waiver from strict compliance with Main Board Rule 10.06(5) to an Eligible Dutch Company.

Property law regime of the shares

- 5.7 The property law regime of shares includes (a) the transfer of proprietary interests in the shares; (b) who may exercise rights as a shareholder; (c) the proprietary rights to such shares; and (d) the creation of security interests over those shares.
- 5.8 Further, a particular regime applies to Dutch companies which issue depository receipts for their shares with the cooperation of the relevant Dutch company, under which certain specific rights are attributed to the holder of the depository receipts (who is not considered the holder of the legal title to the underlying shares under Dutch law). Given the variety of acts that could establish "cooperation" under Dutch law, Dutch companies that do not intend to be subject to this particular regime will generally amend their articles of associations to include the restriction that they are prohibited from lending their cooperation to the issuance of depository receipts for their shares ("**DR Restriction**").
- 5.9 Under Dutch law, for shares of an Eligible Dutch Company that are administered in a foreign clearing and custody model, the applicable property law regime is the law of the jurisdiction in which the foreign clearing and custody model is maintained. Otherwise, the applicable property law regime would be Dutch law.
- 5.10 Accordingly, shares of an Eligible Dutch Company that are administered in Central Clearing and Settlement System ("**CCASS**") (and hence registered in the name of the HKSCC Nominees Limited) are subject to Hong Kong property law regime and CCASS rules¹³. Shares of an Eligible Dutch Company that are maintained outside of CCASS ("**Non CCASS Shares**") (e.g. due to subscription of shares to be issued in the applicants' own names or withdrawal of shares from CCASS post-listing) are subject to Dutch property law regime.
- 5.11 There are no material differences between the Dutch and the Hong Kong property law regime except for the recognition of the concept of beneficial ownership. The construct of beneficial ownership under Dutch law is of a contractual nature only. This means if the beneficial

¹³ Guidance for Overseas Issuers HKEX-GL111-22, paragraph 17.

owners of the Non CCASS Shares allows an intermediary to be the person or entity in whose name the Non CCASS Shares are entered into the branch register (“**Registered Shareholder**”), they will only have *in personam* rights, i.e. a contractual relationship vis-à-vis the Registered Shareholder (as oppose to *in rem* rights, i.e. a proprietary relationship vis-à-vis the shares). They can only claim for damages against the intermediary, and cannot pursue legal claims against the Eligible Dutch Company as a shareholder as they are not a Registered Shareholder.

Our Approach

There are no material differences between the Dutch and the Hong Kong property law regime except for the construct of beneficial ownership. We expect an Eligible Dutch Company to (a) include the DR Restrictions in its articles of association; and (b) prominently and clearly disclose, in layman terms, (i) a comparison of the Dutch and the Hong Kong property law regime, (ii) the practical differences between holding shares in an Eligible Dutch Company directly and holding such shares via CCASS and how the situation compares to that for a Hong Kong-incorporated company, and (iii) the implications and risks of holding Non CCASS Shares (including relevant implications of the Code on Takeovers and Mergers and Share Buy-backs), in the listing document, formal notice, application channels, as well as its and the Exchange’s websites and annual and interim reports of the Eligible Dutch Company for investors’ and shareholders’ information (*Updated in January 2022*).

6 Constitutional Documents

Dutch laws and regulations do not have equivalent provisions to comply with all Listing Rules. We have set out in the Appendix our approach on each of the items required to be included in the Eligible Dutch Company’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**”)¹⁴ (*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**”)¹⁵ for use by European Union companies. We may consider to allow an Eligible Dutch Company to use EU-IFRS for its accountants’ reports and all subsequent financial statements to be audited to a standard comparable to that required by Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board. 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

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).

¹⁵ 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.

HKFRS or IFRS, in its accountants' reports and subsequent financial statements¹⁶ (*Updated in January 2022*).

8 Status as an Eligible Dutch Company

- 8.1 This guide provides guidance on the Exchange's treatment of listing applications from Eligible Dutch Companies. No analysis on any other form of Dutch corporations has been made (*Updated in January 2022*).
- 8.2 An Eligible Dutch Company must provide an undertaking in its listing document and constitutional document that it (i) is not and will not (a) offer shares to the public in, or (b) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the EEA without the prior written consent of the Exchange; and (ii) has included in its articles of associations that it is prohibited from lending its cooperation to the issuance of Dutch law depository receipts for shares.

9 Taxation

- 9.1 We expect an Eligible Dutch Company to prominently disclose the following in its listing document:
- (a) tax rate that investors in its securities will have to pay (including any taxes that a shareholder may be subject to, e.g. withholding tax on distributions entitlements or capital gains and income derived from shares);
 - (b) details of any treaty between the Netherlands and Hong Kong that may affect the tax payable;
 - (c) the effect of holding its securities through CCASS or outside CCASS on any tax payable (where applicable); and
 - (d) the procedure for claiming any tax relief or exemptions.
- 9.2 We expect appropriate disclosure of taxation to be made at least in the "Summary" and "Risk Factors" sections of the applicant's listing document and any sections summarising the applicable Dutch laws and regulations.

¹⁶ 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: Main Board Rules 19C.10D (accountants' reports) and 19C.23 (annual/ interim financial statements).

APPENDIX

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

Our Approach to Differences between Our Constitutional Document Requirements^(note) under Appendix 3 of the Listing Rules and Dutch Laws, Regulations 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	Dutch 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, 10(1)	Where the capital of the issuer includes shares which do not carry voting rights, the words “non-voting” must appear in the designation of such shares.	Under Dutch law, Dutch companies are prohibited from issuing non-voting shares.	Dutch companies are required to apply for, and we will grant, a waiver from strict compliance with this Rule. 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. Paragraph 5(2) in Part B in Appendix 2 of the Listing Rules contains the comparable requirement. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.