

# COUNTRY GUIDE – Australia

(20 December 2013, updated in April 2014 and January 2019)

**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. We will revise this guide to reflect changes in this information only when notified of these changes.*

***A new applicant for listing that is incorporated in Australia must confirm to the Exchange, with its initial application for listing, that the Australian laws, regulations and market practices contained in this guide are still applicable, or provide us with details of any changes, and inform us of any other Australian laws, regulations and market practices that are relevant to its circumstances.***

## **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 Joint Policy Statement Regarding Listing of Overseas Companies (27 September 2013)<sup>1</sup>. All issuers incorporated in Australia can apply for one or more “common waivers” and those with, or seeking, a secondary listing<sup>2</sup> do not need to apply for waivers of certain Rules which are automatically waived for them<sup>3</sup>.**

### **Summary of our Approach**

Subject to Australia incorporated companies meeting the conditions set out in this guide, we do not consider Australian shareholder protection standards to be materially different to our own.

Australia meets our international regulatory co-operation requirements because it already has adequate measures in place with Hong Kong's Securities and Futures Commission.

We are prepared to accept financial statements that conform to Australian Generally Accepted Accounting Practices from issuers with, or seeking, a dual primary or secondary listing. These must contain a statement of the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

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<sup>1</sup> Available on the HKEx website at:  
[http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new\\_jps\\_0927.pdf](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new_jps_0927.pdf)

<sup>2</sup> JPS, Section 5.

<sup>3</sup> JPS, paragraph 88.

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## **1. Background**

- 1.1 Australia’s equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Corporations Act 2001, which sets requirements for Australia incorporated companies. In addition, companies listed on the Australian Stock Exchange (“**ASX**”) are bound by the ASX Listing Rules. The ASX is regulated by the Australian Securities and Investments Commission (“**ASIC**”), which reports to the Australian government annually on the ASX, and the ASIC’s role is to enforce and regulate company and financial services laws to protect investors (*Updated in April 2014*).

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

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

- 3.1 Our Joint Policy Statement Regarding the Listing of Overseas Companies (27 September 2013) (“**JPS**”) states that the statutory securities regulator of an overseas issuer’s jurisdiction of incorporation must have adequate arrangements with the Securities and Futures Commission (“**SFC**”) for regulatory co-operation<sup>4</sup>. This requirement is met for issuers incorporated in Australia as the Australia Securities and Investments Commission (“**ASIC**”) is a full signatory of the IOSCO MMOU<sup>5</sup>. In addition, the ASIC has signed a memorandum of understanding with to provide mutual assistance on exchange of information in relation to securities matters with the SFC.
- 3.2 If a listing applicant is incorporated in Australia but its place of central management and control<sup>6</sup> is elsewhere, similar international co-operation arrangements must generally also be in place with that jurisdiction.

## **4. JPS Shareholder Protection Standards**

- 4.1 Subject to Australia incorporated issuers demonstrating<sup>7</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider Australian

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<sup>4</sup> JPS, paragraphs 42 to 44.

<sup>5</sup> International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

<sup>6</sup> JPS, paragraph 45.

<sup>7</sup> We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

shareholder protection standards to be materially different to our own<sup>8</sup>. We have set out below details of the differences- between these practices and the JPS requirements, ~~save for ‘Right to speak and vote at general meetings’, since this is a new JPS requirement and we have not yet received any submissions describing the differences.~~ Where we have in the past accepted a practice, we have stated this below (updated in January 2019).

### *Proceedings at general meetings*

4.2 Timing of an annual general meeting: Under the JPS, an overseas company is required to hold a general meeting each year as its annual general meeting, and generally no more than 15 months should elapse between the date of one annual general meeting and the next<sup>9</sup>. Under Australian law, an Australian company only has to hold its first annual general meeting within eighteen months after its registration. The Exchange has previously accepted the timing for convening annual general meetings under Australian law.

4.3 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meetings<sup>10</sup>. Under Australian law, any annual general meeting shall be convened upon a notice of not less than 28 days.

In determining the “reasonableness” of the notice period for general meetings, the Exchange will take into consideration (i) the provisions under the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as from time to time in force as applicable to Hong Kong incorporated companies, (ii) the shareholding structure of the company, and (iii) company and transaction specific facts and circumstances *(Updated in April 2014)*.

The Exchange has previously accepted the notice requirement for convening general meetings under Australian law.

4.4 Right to speak and vote at general meetings: The 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<sup>11</sup>. ~~Australia incorporated applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents~~Under the Australian Corporations Act, members as a whole at the general meeting should be allowed a reasonable

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<sup>8</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

<sup>9</sup> JPS, paragraph 36.

<sup>10</sup> JPS, paragraph 37.

<sup>11</sup> JPS, paragraph 38.

opportunity to ask questions about or comment on the management of the company. The Exchange has previously accepted the requirements for the right to speak and vote at general meetings under Australian law (updated in January 2019).

## **5. Practical and Operational Matters**

- 5.1 Reference is made to Section 4 of the JPS 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. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable.

### ***Requirement to destroy documents of title in respect of repurchased shares***

- 5.2 Under Section 257H(3) of the Corporations Act, shares that are repurchased by an Australian company are cancelled immediately after the registration of the transfer of repurchased shares to the company. However, an Australian issuer with shares held in Australia in uncertificated form (i.e. paperless) is unable to comply with the Rule requirement<sup>12</sup> to destroy the documents of title if the shares are repurchased in Australia, since there are no shares to destroy.

### **Our Approach**

- 5.3 Having considered that (i) it is a statutory requirement to cancel immediately any shares repurchased by Australian issuer, and (ii) the documents of title are held in uncertificated form which cannot be "destroyed", we have granted a waiver to an Australian issuer in a previous case.

## **6. Constitutional Documents**

- 6.1 Australian laws and regulations do not have equivalent provisions for all our Rules on the contents of constitutional documents<sup>13</sup>. We set out in the Appendix our approach on each of the items required to be included in an Australia incorporated issuer's constitutional documents in order for it to meet our requirements.

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<sup>12</sup> Main Board Rule 10.06(5) requires 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 must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

<sup>13</sup> Appendix 3 to the Rules.

## 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 to conform to the Hong Kong Financial Reporting Standards ("**HKFRS**") or the International Financial Reporting Standards ("**IFRS**")<sup>14</sup>.

### Our Approach

- 7.2 As set out in the JPS, the generally accepted accounting principles of Australia ("**Australian GAAP**") and Australian Auditing Standards are acceptable to the Exchange<sup>15</sup>. We will therefore allow an Australia incorporated issuer seeking a dual-primary or secondary listing on the Exchange to use Australian GAAP for its accountants' reports and all subsequent financial statements, and for these to be audited to Australian Auditing Standards. However, this is on the condition the issuer includes a statement of the financial effect of the material differences (if any) from HKFRS or IFRS, in its accountants' reports and subsequent financial statements, and it must revert to HKFRS or IFRS if it is no longer listed in a jurisdiction that allows Australian GAAP.

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<sup>14</sup> Main Board Rules 4.11 to 4.13, 19.13, 19.39 and Notes 2.1 and 2.4 to paragraph 2 of Appendix 16. See also JPS, paragraphs 56 to 62.

<sup>15</sup> JPS paragraphs 50 and 59.

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

### **Our Approach to Differences between Our Constitutional Document Requirements and Australian Laws, Rules and Practices**

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Australian Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 4(4)	The minimum length of the period, during which notice to the issuer of the intention to propose a person for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least seven days.	In a previous case, an Australia incorporated issuer followed the ASX requirements and provided in its constitutional document that nominations for directors can be made at any time during the year after the last general meeting but other than after the notice of meeting has been dispatched.	The ASX requirements conflicted with the articles provisions in Appendix 3. We considered that the combined effect of the ASX and the applicant's constitutional requirements provided acceptable protection. A waiver of this articles provision was granted.
Appendix 3, 4(5)	The period for lodgment of the notices referred to in sub-paragraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election and end no later than seven days prior to the date of such meeting.		Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.



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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Australian Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 6(2)	The quorum for a separate class meeting to consider a variation of the rights of any class of shares must be the holders of at least one-third of the issued shares of that class.	In a previous case, an Australia incorporated applicant’s constitutional documents required the quorum for the meeting of members holding shares in the class to be constituted by not less than 25% of the issued shares of the class.	On the basis that (i) the applicant would be subject to the ASX requirements and Australian law, and (ii) the difference in the constitutional document provisions was immaterial, we granted a waiver of this articles provision.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.