

# COUNTRY GUIDE – British Virgin Islands

(20 December 2013, ~~last~~ updated in ~~April 2014~~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. ~~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 the British Virgin Island (“BVI”) must confirm to the Exchange, with its initial application for listing, that the BVI 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 BVI laws, regulations and market practices that are relevant to its circumstances.*~~

## *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 Information in this country guide may be outdated upon the introduction of such listing regime.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.<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 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.*

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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 the ~~Joint Policy Statement Regarding Listing of Overseas Companies (27 September 2013)~~<sup>2</sup> (“JPS”). 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 BVI can apply for one or more “common waivers”<sup>3</sup> and those with, or seeking, a secondary listing<sup>4</sup> do not need to apply for waivers of certain Rules which are automatically waived for them<sup>5</sup> (Updated in January 2022).**

### Summary of our Approach

~~Subject to~~ BVI incorporated companies ~~meeting the conditions set out in this guide, we do not consider BVI's shareholder protection standards to be materially different to our own~~ must demonstrate how the BVI laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards. (Updated in January 2022)

The statutory securities regulator in BVI, namely British Virgin Islands Financial Services Commission, is a full signatory to IOSCO MMOU<sup>6</sup> and BVI 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)

<sup>2</sup> Available on the HKEx website at:

[http://www.hkex.com.hk/eng/rulesreg/listrules/liststptop/listoc/Documents/new\\_jps\\_0927.pdf](http://www.hkex.com.hk/eng/rulesreg/listrules/liststptop/listoc/Documents/new_jps_0927.pdf)

<sup>3</sup> Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B

<sup>4</sup> JPS, Section 5.

<sup>5</sup> Main Board Rule 19C.11 JPS, paragraph 88.

<sup>6</sup> IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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## 1. Background

- 1.1 BVI has a common law system based on the English model. English common law and equitable principles form part of the substantive laws of the BVI. The BVI courts look to English decisions for guidance in interpreting these principles.
- 1.2 BVI's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the BVI Business Companies Act, which sets requirements for BVI incorporated companies (*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 BVI. 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 for regulatory co-operation<sup>7</sup>. 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 BVI as the British Virgin Islands Financial Services Commission is a signatory ~~of~~ to the IOSCO MMOU<sup>8</sup>. (*Updated in January 2022*)~~
- 3.2 If a listing applicant is incorporated in BVI but its place of central management and control<sup>9</sup> is elsewhere, ~~similar international co-operation arrangements must generally also be in place with that jurisdiction~~ the statutory securities regulator

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<sup>7</sup> ~~JPS, paragraphs 42 to 44.~~

<sup>8</sup> ~~International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.~~

<sup>9</sup> ~~Main Board Rule 8.02A JPS, paragraph 45.~~

of that jurisdiction must also be a full signatory to the IOSCO MMOU. (*Updated in January 2022*)

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

- 4.1 ~~Subject to BVI incorporated issuers demonstrating<sup>10</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider BVI's shareholder protection standards to be materially different to our own<sup>11</sup>.—BVI 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, ~~W~~we have set out below details of the differences between these practices in the BVI and the then JPS requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (“JPS”) (repealed as of 1 January 2022), ~~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 and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. BVI 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 the BVI 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 A super-majority vote of members required for a material change to constitutional documents: Under the then JPS, material changes to an overseas company’s constitutional documents, however framed must be approved by a

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<sup>10</sup> ~~We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.~~

<sup>11</sup> ~~Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.—~~

super-majority vote of members<sup>12</sup>, or by a simple majority vote of members plus a significantly higher quorum<sup>13</sup>.

Under BVI law, alteration to constitutional documents may be effected by a majority vote of resolution of members or directors if explicitly authorised by the constitutional document. There is no requirement for a special quorum for passing a resolution for change to the constitutional document in a general meeting.

~~We consider that BVI incorporated issuers need to modify their constitutional documents to achieve equivalence to comply with this JPS shareholder protection standard.~~

#### Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified in paragraph 16 of the revised Appendix 3 of the Listing Rules. (Updated in January 2022)

- 4.3 A super-majority vote of members required for a change to the rights attached to a class of shares: Under the then JPS, changes to the rights attached to any class of shares of an overseas company must be approved by a super-majority vote of members of that class<sup>14</sup>, or by a simple majority vote of members of that class plus a significantly higher quorum<sup>15</sup>.

There is no equivalent provision under BVI law.

#### Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraph 15 of the revised Appendix 3 of the Listing Rules. 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. (Updated in January 2022)

- 4.4 A super-majority vote of members required for voluntary winding up of an overseas company: Under the then JPS, a voluntary winding up of an overseas company must be approved by a super-majority vote of members<sup>16</sup>, or by a simple majority vote of members plus a significantly higher quorum<sup>17</sup>.

BVI law has no specific statutory provisions in this regard.

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<sup>12</sup>— JPS, paragraph 31(b).

<sup>13</sup>— JPS, paragraph 33.

<sup>14</sup>— JPS, paragraph 31(a).

<sup>15</sup>— JPS, paragraph 33.

<sup>16</sup>— JPS, paragraph 31(e).

<sup>17</sup>— JPS, paragraph 33.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified in paragraph 21 of the revised Appendix 3 of the Listing Rules. (Updated 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<sup>18</sup>. BVI law does not have specific provision prohibiting increase of a member's liability without written agreement by the member.

***Appointment, removal and remuneration of auditors***

- 4.6 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<sup>19</sup>.

BVI law does not have specific statutory provisions in this regard.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraph 17 of the revised Appendix 3 of the Listing Rules. (Updated in January 2022)

***Proceedings at general meetings***

- 4.7 Timing of an annual general meeting: Under the then JPS, an overseas company is required to hold a general meeting each year as its annual general meeting, and generally not more than 15 months should elapse between the date of one annual general meeting of the overseas company and the next<sup>20</sup>.

BVI law does not specify the exact time frame for an annual general meeting.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraph 14(1) of the revised Appendix 3 of the Listing Rules,

<sup>18</sup>— JPS, paragraph 34.

<sup>19</sup>— JPS, paragraph 35.

<sup>20</sup>— JPS, paragraph 36.

which provides that an issuer must hold a general meeting for each financial year as its annual general meeting and generally, an issuer must hold its annual general meeting within six months after the end of its financial year. (Updated in January 2022)

- 4.8 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of its general meetings<sup>21</sup>.

BVI law has no specific statutory provisions in this regard.

~~In determining “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 in a BVI applicant’s constitutional documents that an annual general meeting and any extraordinary general meeting for the passing of a special resolution shall be called by notice of not less than 21 days, and any other extraordinary general meeting shall be called by not less than 14 days.

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. (Updated in January 2022)

- 4.9 Right of members holding a minority stake to convene a general meeting: Under the then JPS, members holding a minority stake in an overseas company must be allowed to convene an extraordinary general meeting and add resolutions to a meeting agenda, and the minimum level of members’ support required to convene a meeting must be no higher than 10%<sup>22</sup>.

BVI law has no specific statutory provisions in this regard.

Subsequent Development since 1 January 2022

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<sup>21</sup>— JPS, paragraph 37.

<sup>22</sup>— JPS, paragraph 39.



The requirement comparable to the then JPS requirement was codified with modification in paragraph 14(5) of the revised Appendix 3 of the Listing Rules. (Updated in January 2022)

- 4.10 Right of a recognised Hong Kong clearing house to appoint proxies to attend general meeting and creditors meeting: 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 meeting, and these proxies/corporate representatives should enjoy statutory rights comparable to those of members<sup>23</sup>.

BVI law has no specific statutory provisions in this regard.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraph 19 of the revised Appendix 3 of the Listing Rules. (Updated in January 2022)

- 4.11 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<sup>24</sup>.

BVI incorporated applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents.

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraphs 14(3) and 14(4) of the revised Appendix 3 of the Listing Rules. (Updated in January 2022)

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<sup>23</sup>—JPS, paragraph 40.

<sup>24</sup>—JPS, paragraph 38.

## Other Core Shareholder Protection Standards

- 4.12 Compared to the then JPS and the previous Appendix 3<sup>25</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>26</sup> and inspect Hong Kong Branch Register<sup>27</sup> are added to require the applicants to demonstrate conformity. Applicants incorporated in BVI 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 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 identification. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable (Updated in January 2022).

## **6. Constitutional Documents**

- 6.1 Applicants should contact the Listing Division if BVI law, rules and regulations and ~~or~~ the applicants' constitutional documents do not provide the Core Shareholder Protection Standards set out in ~~cannot meet the standards under~~ Appendix 3 to the Main Board Rules / Appendix ~~6-3~~ to GEM Rules (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 Hong Kong Financial Reporting Standards ("HKFRS") or International Financial Reporting Standards ("IFRS")<sup>28</sup> (Updated in January 2022).
- 7.2 The financial statements of all BVI incorporated applicants, which had sought a primary listing or a secondary listing on the Exchange, were prepared in

<sup>25</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

<sup>26</sup> Appendix 3, paragraph 18

<sup>27</sup> Appendix 3, paragraph 20

<sup>28</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), 19.39 and Notes 2.1 and 2.4 to paragraph 2 of Appendix 16. See also JPS, paragraphs 56 to 62.

accordance with IFRS or HKFRS *(Updated in January 2022)*.