

COUNTRY GUIDE –

The State of California, the United States of America

(20 December 2013, updated in April 2014)

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 State of California (“California”) of the United States of America (“US”) must confirm to the Exchange, with its initial application for listing, that the California 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 California 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)¹. All issuers incorporated in California can apply for one or more “common waivers” and those with, or seeking, a secondary listing² do not need to apply for waivers of certain Rules which are automatically waived for them³.

Summary of our Approach

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

California 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 the United States Generally Accepted Accounting Principles 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.

¹ Available on the HKEx website at:
http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new_jps_0927.pdf

² JPS, Section 5.

³ JPS, paragraph 88.

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1. Background

- 1.1 California's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the California General Corporation Law, a division of the California Corporation Code, which sets requirements for California incorporated companies. Public companies⁴ incorporated in California must also comply with the US securities laws. The US Securities and Exchange Commission ("SEC") is the statutory securities regulator in the United States (Updated in April 2014).
- 1.2 A California incorporated company has yet to be listed on the Exchange.

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 California. 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-operation⁵. This requirement is met for issuers who are public companies incorporated in California as the SEC is a full signatory of the IOSCO MMOU⁶, and has also entered into a Memorandum of Understanding Concerning Cooperation of Securities Laws with the SFC.
- 3.2 If a listing applicant is incorporated in California but its place of central management and control⁷ is elsewhere outside the US, similar international co-operation arrangements must generally also be in place with that jurisdiction.

⁴ A public company in the United States is a company whose securities are registered with the US Securities and Exchange Commission when either (i) its securities are listed on a US securities exchange or (ii) it has assets exceeding US\$1,000,000 and more than 500 shareholders, regardless of where those shareholders are located. Accordingly, a California corporation held by non-US shareholders (e.g. upon a Hong Kong listing), even if it is not listed in the US, must register with the US Securities and Exchange Commission and would, thus, be a public company subject to its oversight, if it has more than 500 shareholders of record and total assets exceeding US\$1,000,000.

⁵ JPS, paragraphs 42 to 44.

⁶ International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

⁷ JPS, paragraph 45.

4. JPS Shareholder Protection Standards

- 4.1 Subject California incorporated issuers demonstrating⁸ how their practices, as set out below, conform to the JPS requirements, we do not consider California's shareholder protection standards to be materially different to our own⁹. 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.

Appointment of auditors

- 4.2 Under the 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 directors¹⁰. California law contains no such requirement, unless Sarbanes-Oxley-Act of 2002 applies.

Proceedings at general meetings

- 4.3 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 next¹¹. A California corporation must hold an annual general meeting for the election of directors on a date in accordance with its bylaw.
- 4.4 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meeting¹². Under California law, provisions regarding notice of a general meeting are contained in the bylaws of a California corporation.

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).

⁸ We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

⁹ Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

¹⁰ JPS, paragraph 35.

¹¹ JPS, paragraph 36.

¹² JPS, paragraph 37.

The Exchange has previously accepted the notice requirement in the constitutional documents of a California incorporated applicant for convening general meetings upon a written notice of at least 14 and not more than 60 days before the proposed date of the general meeting, and provided that if there is any resolution proposed to be passed that requires the affirmative vote of the holders of not less than three-quarter of the then outstanding shares entitled to vote the notice shall not be at least 21 days.

- 4.5 Right of members holding a minority stake to convene a general meeting: Under the 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 agenda¹³. Under California law, provisions regarding time, place and manner of calling and conducting a general meeting are contained in the bylaws of a California corporation.
- 4.6 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 arrangement¹⁴. California incorporated applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents.

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 identification. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable .

6. Constitutional Documents

- 6.1 Applicants should contact Listing Division if California law or the applicants' constitutional documents cannot meet the standards under Appendix 3 to the Main Board Rules/ Appendix 6 to GEM Rules.

¹³ JPS, paragraph 39.

¹⁴ JPS, paragraph 38.

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 or the International Financial Reporting Standards. Issuers with, or seeking, a dual primary or secondary listing can use United States Generally Accepted Accounting Principles¹⁵.

¹⁵ 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.