

# COUNTRY GUIDE –

## The Province of British Columbia, Canada

(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 Province of British Columbia, Canada (“British Columbia”) must confirm to the Exchange, with its initial application for listing, that the British Columbia 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 British Columbia 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 British Columbia 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 British Columbia incorporated companies meeting the conditions set out in this guide, we do not consider British Columbia's shareholder protection standards to be materially different to our own.

British Columbia 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 Canadian Generally Accepted Accounting Principles from issuers with, or seeking, a dual primary or secondary listing. This is on the condition that the issuer includes a statement of the financial effect of the material differences, if any, from Hong Kong Financial Reporting Standards or International Financial Reporting Standards, in its accountants' reports and financial statements.

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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 British Columbia's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the British Columbia Business Corporations Act, which sets requirements for British Columbia incorporated companies. Public companies in British Columbia must also comply with the British Columbia Securities Act and issuers listed on the Toronto Stock Exchange ("TSX") must additionally comply with the rules of this exchange (*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 British Columbia. 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 British Columbia as the British Columbia Securities Commission ("BCSC"), the statutory securities regulator in British Columbia, is a full signatory of the IOSCO MMOU.<sup>5</sup> In addition, the BCSC has signed a Memorandum of Understanding with the SFC<sup>6</sup>.
- 3.2 If a listing applicant is incorporated in British Columbia but its place of central management and control<sup>7</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 British Columbia incorporated issuers demonstrating<sup>8</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider British Columbia's shareholder protection standards to be materially different to our own<sup>9</sup>. We have set out below details of the differences

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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> [http://www.sfc.hk/web/doc/EN/aboutsfc/cooperation/british\\_columbia\\_960221.pdf](http://www.sfc.hk/web/doc/EN/aboutsfc/cooperation/british_columbia_960221.pdf)

<sup>7</sup> JPS, paragraph 45.

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

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

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.

***Matters requiring a super-majority vote***

- 4.2 A super-majority vote of members required for a change to the rights attached to a class of shares: Under the 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>10</sup>, or by a simple majority vote of members of that class plus a significantly higher quorum<sup>11</sup>. Under British Columbia law, the rights of a class or series cannot be prejudiced or interfered with unless shareholders holding shares of that class or series consent by a “separate special resolution” or a resolution consented to in writing by all of the shareholders holding shares of the applicable class or series can be obtained. However, British Columbia law does not define “special separate resolution”.
- 4.3 A super-majority vote of members required for voluntary winding up of an overseas company: Under the JPS, a voluntary winding up of an overseas company must be approved by a super-majority vote of members of that class<sup>12</sup>, or by a simple majority vote of members of that class plus a significantly higher quorum<sup>13</sup>. Under the British Columbia law, a company may voluntarily dissolve itself by passing an ordinary resolution, yet, before a company can voluntarily dissolve it must have no assets and either no liabilities or adequate provision for payment of its liabilities, and all the company’s assets will have to be distributed before dissolution.

***Proceedings at general meetings***

- 4.4 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meeting<sup>14</sup>.

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).

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<sup>10</sup> JPS, paragraph 31(a).

<sup>11</sup> JPS, paragraph 33.

<sup>12</sup> JPS, paragraph 31(c).

<sup>13</sup> JPS, paragraph 33.

<sup>14</sup> JPS, paragraph 37.

The Exchange has previously accepted the notice requirement for convening general meetings in the constitutional documents of a British Columbia incorporated issuer of at least 21 days.

- 4.5 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>15</sup>. British Columbia 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 identifications. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable.

## 6. Constitutional Documents

- 6.1 British Columbia laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents<sup>16</sup>. We set out in the Appendix our approach on each of the items required to be included in a British Columbia incorporated issuer's constitutional documents in order for it to meet our requirements.

## 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>17</sup>.

### Our Approach

- 7.2 As set out in the JPS, generally accepted accounting principles in Canada ("**Canadian GAAP**") and Canadian Generally Accepted Auditing Standards ("**Canadian GAAS**") are acceptable to the Exchange<sup>18</sup>. We will therefore

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<sup>15</sup> JPS, paragraph 38.

<sup>16</sup> Appendix 3 of the Main Board Rules.

<sup>17</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>18</sup> JPS, paragraphs 50 and 59.

allow a British Columbia incorporated issuer seeking a dual-primary or secondary listing on the Exchange to use Canadian GAAP for its accountants' reports and all subsequent financial statements, and for these to be audited to Canadian GAAS. However, this is on the condition that 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 Canadian GAAP.

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

**Our Approach to Differences between Our Constitutional Document Requirements  
and British Columbia Laws, Rules and Practices**

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>British Columbia Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 1(1)	Transfers and other documents relating to or affecting the title to any registered securities shall be registered and where any fee or fees is/are charged, such fee or fees shall not exceed the maximum fees prescribed by the Exchange from time to time in the Rules.	British Columbia law contains an equivalent registration requirement.	In a previous case, we considered that British Columbia statutory obligations have a substantially similar effect as the relevant requirement in Appendix 3. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 1(2)	Fully-paid shares shall be free from any restriction on the right of transfer and shall also be free from all lien.	No information.	In a previous case, a British Columbia incorporated applicant provided in its constitutional documents that it has a lien on all shares registered in the name of a shareholder or his legal representative for any debt of that shareholder to the company. The applicant undertook that it will not utilize this lien while it is a public company. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 2(1)	All certificates for capital shall be under seal, which shall only be affixed with the authority of	The compulsory affixing of seals on certificates is inconsistent with Canadian practice and adequate	In a previous case, we accepted a British Columbia incorporated applicant’s undertaking that its seal shall only be affixed with the authority of the directors. A waiver of



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	the directors.	security measures are provided by the TSX.	<p>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>
Appendix 3, 2(2)	Where power is taken to issue share warrants to bearer, that no new share warrant shall be issued to replace one that has been lost, unless the issuer is satisfied beyond reasonable doubt that the original has been destroyed.	The British Columbia Securities Transfer Act provides that an issuer must issue a new certificate only under specific circumstances including provision of an indemnity bond. Bonding companies require a statutory declaration that a certificate has been lost, destroyed or wrongfully taken before issuing an indemnity bond. However, it is not customary for Canadian public companies to issue scrip or bearer securities.	<p>In a previous case, we considered that British Columbia statutory obligations have a substantially similar effect as the relevant requirement in Appendix 3. A waiver of this articles provision was granted.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>
Appendix 3, 4(1)	A director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.	This requirement is inconsistent with Canadian corporate law or practice, under which a director prohibited from voting would still be counted as quorum for the meeting.	In a previous case, it was submitted that a strict compliance with this articles provision in Appendix 3 may result in situations where an applicant will be unable to approve matters put to the board, and that shareholder rights will not be prejudiced in that shareholder protection is available from three sources: (i) the disclosure requirement under the British Columbia law will provide shareholders with information about the extent of the interest of each director in a transaction; (ii) the general overriding duty that

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			<p>directors are required to act honestly and in good faith with a view to the best interests of the applicant; and (iii) the related party rules require shareholder approval and formal valuations of certain transactions with related parties. 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>
Appendix 3, 4(3)	The issuer in general meeting shall have power by ordinary resolution to remove any director before the expiration of his period of office.	British Columbia’s default threshold for removal of any director before the expiration of his period of office is a special resolution. This is a standard Canadian corporate practice.	<p>In a previous case, we considered that British Columbia statutory obligations have a substantially similar effect as the relevant requirement in Appendix 3. 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>
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 7 days.	There is no such requirement under the British Columbia law or the rules of the TSX. Such a requirement is inconsistent with Canadian corporate practice.	<p>In a previous case, it was submitted that it may be perceived by institutional shareholders to be detrimental to the fundamental right of shareholders in Canada to nominate directors at meetings without notice to the company. 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>

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Appendix 3, 4(5)	The period for lodgement of the notices referred to in subparagraph 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 7 days prior to the date of such meeting.	See discussion under 4(4) above.	See discussion under 4(4) above.  A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 5	A copy of either (i) the directors’ report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account, or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.	In accordance with Canadian rules and regulations, financial statements are available to shareholders on SEDAR and are also available for inspection at the annual general meeting.	In a previous case, one of the applicants sought a partial waiver so that the requirements of this paragraph apply with respect to the shareholders with a registered address in Hong Kong only. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 6(1)	Adequate voting rights will be secured to preference shareholders.	British Columbia law protects the right of the preferred shareholders to vote in cases where a special right is	In a previous case, we considered that British Columbia statutory obligations have a substantially similar effect as the relevant requirement in Appendix 3. A waiver of this

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		prejudiced.	articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 6(2)	The quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one-third of the issued shares of the class.	It was submitted that a quorum requirement as set out in Appendix 3 is uncommon in Canada. However, under the British Columbia law, minority shareholders may challenge in court an unfairly prejudicial shareholders’ resolution, including an improper variation that is oppressive, through oppression remedies available both at statute and at common law.	In a previous case, we considered that British Columbia law generally provides an acceptable level of investor protection. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 7(2)	An overseas issuer whose primary listing is or is to be on the Exchange shall give notice sufficient to enable members, whose registered addresses are in Hong Kong, to exercise their rights or comply with the terms of the notice. If the overseas issuer’s primary listing is on another stock exchange, the Exchange will normally be	No information.	In a previous case, we accepted a British Columbia incorporated applicant’s undertaking to provide sufficient notice to Hong Kong shareholders to exercise their rights or comply with the terms of the notice. A waiver of this articles provision was granted.  Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.

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	satisfied with an undertaking by the issuer to do so and will not normally request the issuer to change its articles to comply with this paragraph where it would be unreasonable to do so.		
Appendix 3, 8(1) and (2)	Where the issuer has the power to purchase for redemption a redeemable share:  (1) purchase not made through the market or by tender shall be limited to a maximum price; and  (2) if such a purchase is made by tender, tenders must be available to all shareholders alike.	No information.	In a previous case, an applicant’s constitutional documents provided that it may purchase its own shares at the price and upon the terms determined by the directors. Another applicant’s constitutional documents provided that it, if authorized by the directors, may purchase its own shares at the price and upon the terms specified in such resolution. We accepted the applicants’ undertakings to make the same offer to all shareholders in the event of an issuer bid. A waiver of this articles provision was granted to each applicant.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
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.	The rules of the TSX provide for the designation requirement.	We consider that the TSX Rules have a substantially similar effect as the relevant requirement in Appendix 3. In a previous case where a British Columbia applicant was subject to the TSX Rules, a waiver of this articles provision was granted.

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			Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 10(2)	Where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words “restricted voting” or “limited voting”.	See discussion under 10(1) above.	A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 11(1)	Where provision is made in the articles as to the form of proxy, this must be so worded as not to preclude the use of the two-way form.	Canadian securities law precludes the use of two-way voting for the appointment of an auditor and the election of directors.	In a previous case, an applicant submitted that it could not amend its articles to override Canadian securities law. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 14	Where any shareholder is, under these Exchange Listing Rules, required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of	It is the Canadian corporate practice that an issuer’s constitutional documents do not contain such a provision.  In a previous case where a British Columbia incorporated applicant was a reporting issuer in Ontario and was	In a previous case, where the applicant was a reporting issuer in Ontario and subject to MI 61-101, we accepted the applicant’s undertaking that votes cast by a shareholder in contravention of these requirements will not be counted. A waiver of this articles provision was granted.  Under the JPS, no “automatic waiver” is available to a

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	such shareholder in contravention of such requirement or restriction shall not be counted.	subject to MI 61-101 (Ontario).  MI 61-101 sets out parties who have an interest in a transaction under consideration and are restricted from voting on that transaction, and provides that their votes cast in contravention of this requirement shall not be counted.	secondary listing applicant for this item.