

# **COUNTRY GUIDE – England and Wales**

**(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 England and Wales must confirm to the Exchange, with its initial application for listing, that the laws of England & Wales (“English 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 English 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 England & Wales 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 England & Wales incorporated companies meeting the conditions set out in this guide, we do not consider shareholder protection standards of England & Wales to be materially different to our own.

England & Wales 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 United Kingdom Generally Accepted Accounting Standards or International Financial Reporting Standards as endorsed by the European Union 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 In England & Wales, the equivalent law to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Companies Act 2006 (“**CA 2006**”). The United Kingdom Financial Conduct Authority (“**FCA**”) is the statutory securities regulator in the United Kingdom. Issuers listed on the London Stock Exchange (“**LSE**”) must, in addition, comply with certain rules issued by the UK Listing Authority, which is a division of FCA (the “**UK Listing Rules**”). A company incorporated in England & Wales is also subject to the Financial Services and Markets Act 2000 (“**FSMA**”) and various European Union regulations (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 England & Wales. 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 England & Wales as the FCA is a full signatory of the IOSCO MMOU<sup>5</sup>. In addition, the FCA has signed a Memorandum of Understanding with the SFC.
- 3.2 If a listing applicant is incorporated in England & Wales 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 England & Wales incorporated issuers demonstrating<sup>7</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider shareholder protection standards of England & Wales to be materially different to our own<sup>8</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> 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.

<sup>8</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.

### *Proceedings at general meetings*

- 4.2 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meetings<sup>9</sup>. Under the CA 2006, a general meeting of a public company must be called by notice of, in the case of an annual general meeting, at least 21 days and, in any other case, at least 14 days<sup>10</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).

The Exchange has previously accepted the notice requirement for convening general meetings under the CA 2006.

- 4.3 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>. England & Wales 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.

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<sup>9</sup> JPS, paragraph 37.

<sup>10</sup> Where the company is a “traded company”, meaning that its shares are admitted to trading on a regulated market in an EEA State (which includes the Main Market of the LSE) by or with the consent of the company, these notice periods apply subject to certain conditions set out in CA 2006.

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



## 6. Constitutional Documents

- 6.1 English laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents<sup>12</sup>. We set out in the Appendix our approach on each of the items required to be included in an England & Wales 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>13</sup>.

### Our Approach

- 7.2 As set out in the JPS, United Kingdom Generally Accepted Accounting Standards (“**UK GAAP**”), IFRS as endorsed by the European Union (“**EU-IFRS**”) for use by European Union companies and the Standards for Investment Reporting issued by the Auditing Practice Board in the United Kingdom are acceptable to the Exchange<sup>14</sup>. We will therefore allow an England & Wales incorporated issuer seeking a dual-primary or secondary listing on the Exchange to use UK GAAP or EU-IFRS for its accountants' reports and all subsequent financial statements, and for these to be audited to United Kingdom 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 UK GAAP or EU-IFRS, respectively.

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<sup>12</sup> Appendix 3 to the Main Board Rules.

<sup>13</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>14</sup> JPS, paragraphs 50 to 59.

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

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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 4(1)	Subject to such exceptions specified in the articles of association as the Exchange may approve, 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.	<p>Section 175 of the CA 2006 provides that a director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with interests of the company. This duty to avoid indirect conflicts extends to the director’s close family members and persons with close business relationship with the director.</p> <p>In a previous case considered by the Exchange, an England &amp; Wales incorporated applicant provided in its articles that a director shall not be entitled to vote or be counted in the quorum in relation to any resolution of the Board in respect of any contract in which he or she has an interest.</p>	<p>We considered that the combined effect of the applicant’s articles provision and the relevant English laws have a substantially similar effect as the relevant requirement in the Appendix 3. Accordingly, requiring the company to amend its articles to comply strictly with the requirement under Appendix 3 would be disproportionate to the relative benefit to shareholders of such amendment. 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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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 5	A copy of either (i) the directors’ report, accompanied by the balance sheet 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.	The CA 2006 provides for similar provisions (sections 415(1), 396(1), 424(3)).	<p>In a previous case where an England &amp; Wales incorporated applicant was subject to the CA 2006, we considered that English law provided 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, 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.	The CA 2006 provides for similar provisions (section 334(4)).	<p>In a previous case where an England &amp; Wales incorporated applicant was subject to the CA 2006, we considered that English law provided 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>

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 7(1)	Where power is taken to give notice by advertisement such advertisement may be published in the newspapers.	<p>There is no relevant rule in England &amp; Wales.</p> <p>In a previous case considered by the Exchange, an England &amp; Wales incorporated applicant provided in its articles that the company shall send any notice or other document or information under its articles, the Companies Act or other rules applicable to the company ... by [any] other method approved by the board of directors.</p>	<p>The applicant gave an undertaking to the Exchange to comply with the manner of publication in the newspapers under the Rules if the power to give notice is exercised. We granted a waiver of this articles provision based on the provision in the applicant’s articles and related undertaking.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>
Appendix 3, 7(3)	There is no prohibition on the giving of notice to members whose registered address is outside Hong Kong.	<p>In a previous case considered by the Exchange, an England &amp; Wales incorporated applicant provided in its articles that a member who does not supply the applicant an address within the United Kingdom or an electronic address for the service of notices shall not be entitled to receive notices, documents, or information from the applicant.</p>	<p>The applicant gave an undertaking to the Exchange to send notices to members whose addresses are in Hong Kong. We considered that undertaking provided shareholders with sufficient opportunity to receive notices, documents or other information. In addition, the applicant’s articles provision did not prohibit the applicant from sending notices to overseas shareholders.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 8(1) and (2)	<p>Where the issuer has the power to purchase for redemption a redeemable share:</p> <p>(1) purchases not made through the market or by tender shall be limited to a maximum price; and</p> <p>(2) if purchases are by tender, tenders shall be available to all shareholders alike.</p>	<p>Section 694 of the CA 2006 requires such off-market purchases to be approved by a special resolution and the company will, in practice, set a maximum price at which the purchases are to be made when proposing the resolution.</p> <p>In a previous case where an England &amp; Wales incorporated applicant was subject to the UK Listing Rules, it was submitted that UK Listing Rule 12.4 contains requirements on pricing and tender to all shareholders in relation to the purchases of a company’s own shares.</p>	<p>We considered that the combined effect of the CA 2006 and the UK Listing Rules was to afford shareholders of the England &amp; Wales incorporated applicant with similar protection as that required under 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, 9	<p>Where the share capital of the issuer consists of more than one class of share it must also be stated how the various classes shall rank for any distribution by way of dividend or otherwise.</p>	<p>The CA 2006 requires similar information on the share capital of the issuer to be disclosed in the statement of capital that needs to be filed by the company on the allotment of shares or along with the annual return.</p>	<p>We considered that the CA 2006 afforded shareholders of an England &amp; Wales incorporated applicant with similar protection as that required under 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>

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 10(1) &(2)	<p>(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.</p> <p>(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”.</p>	There is no designation requirement under the CA 2006 or UK Listing Rules.	<p>In a previous case considered by the Exchange, an England &amp; Wales incorporated applicant gave an undertaking to the Exchange to designate:</p> <p>(i) shares which do not carry voting rights with the words “non-voting”; or</p> <p>(ii) shares which do not contain most favourable voting rights with the words “restricted voting” or “limited voting”.</p> <p>We granted a waiver of this articles provision based on the applicant’s undertaking.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>
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.	In a previous case where an England & Wales incorporated applicant was subject to the UK Listing Rules, it was submitted that the applicant complied with a more onerous requirement under UK Listing Rule 9.3.6 which requires that proxy forms permit at least three-way voting on all resolutions intended to be proposed.	<p>We considered the UK Listing Rules to which the applicant was subject imposed a more onerous requirement on the applicant than the relevant requirement in Appendix 3. A waiver of this article provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic</p>

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
			waiver” for this item.
Appendix 3, 12	No powers shall be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person or persons who are interested directly or indirectly therein have failed to disclose their interests to the company.	<p>In a previous case considered by the Exchange, an England &amp; Wales incorporated applicant which was subject to the CA 2006 and the UK Listing Rules provided in its articles that if a shareholder fails to comply with the disclosure of interest obligations pursuant to a notice issued to him under the CA 2006 (section 793), the applicant had the power to restrict the rights of the shareholder to:</p> <ul style="list-style-type: none"> <li>• vote in shareholder meetings; or</li> <li>• receive dividends and transfer their shares, if they have failed to disclose their interests to the shares.</li> </ul> <p>It was submitted that section 794 of the CA 2006 also allows a listed issuer to take action to freeze or otherwise restrict any of the rights attaching to any share by application to the court. In addition, UK Listing Rule 9.3.9 provides for how the restrictions on the shares are to be exercised.</p> <p>The applicant considered its articles provision was consistent with the CA 2006 and the UK Listing Rules (Rule 9.3.9).</p>	<p>We considered that the applicant’s articles provision was consistent with the CA 2006 and UK Listing Rules safeguards as regards the exercise of the restrictions imposed on the shares. A waiver of this articles provision was granted notwithstanding it not being in compliance with Appendix 3.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>English Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 14	Where any shareholder is, under these 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 such shareholder in contravention of such requirement or restriction shall not be counted.	In a previous case considered by the Exchange, an England & Wales incorporated applicant which was subject to the UK Listing Rules submitted that the UK Listing Rules require it to ensure that in certain circumstances votes are not cast by a shareholder required to abstain from voting (e.g. where the company is seeking the shareholders’ approval for a “related party transaction”).	We considered that the UK Listing Rules provided similar effect as the relevant requirement in Appendix 3. A waiver of this articles provision was granted.  Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.