

COUNTRY GUIDE – Guernsey

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

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

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 Guernsey's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Companies (Guernsey) Law of 2008 (Updated in April 2014).
- 1.2 A Guernsey 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 Guernsey. 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-operation⁴. This requirement is met for issuers incorporated in Guernsey as the Guernsey Financial Services Commission is a full signatory of the IOSCO MMOU⁵, and it has also signed a Letter of Intent with the SFC.
- 3.2 If a listing applicant is incorporated in Guernsey but its place of central management and control⁶ 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 Guernsey incorporated issuers demonstrating⁷ how their practices, as set out below, conform to the JPS requirements, we do not consider Guernsey's shareholder protection standards to be materially different to our own⁸. 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.

⁴ JPS, paragraphs 42 to 44.

⁵ International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

⁶ JPS, paragraph 45.

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

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

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 the members of that class⁹, or by a simple majority vote of the members of that class plus a significantly higher quorum¹⁰. Guernsey law provides for a three-quarter majority vote of members of the affected class, or such other procedure as contained in the company's constitutional documents (e.g. which could require for a less stringent members' resolution).
- 4.3 A super-majority vote of members required for a material change to constitutional documents: Under the JPS, material changes to an overseas company's constitutional documents, however framed, must be approved by a super-majority vote of members¹¹, or by a simple majority vote of members plus a significantly higher quorum¹². Guernsey law requires a three-quarter majority vote of member for passing a majority of the amendments to the constitutional documents, but permits the amendment of certain provisions of the constitutional documents to be made in accordance with the terms of the constitutional documents (e.g. which could require for a less stringent members' resolution).
- 4.4 A super-majority vote of members required for a 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 members¹³, or by a simple majority vote of members of that class plus a significantly higher quorum¹⁴. Guernsey law generally requires a three-quarter majority vote of members but permits an ordinary resolution in some circumstances.

Individual members to approve an increase in members' liability

- 4.5 Under the 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 writing¹⁵. Guernsey law does not have any specific provisions prohibiting the increase of a member's liability without the written agreement by the member.

⁹ JPS, paragraph 31(a).

¹⁰ JPS, paragraph 33.

¹¹ JPS, paragraph 31(b).

¹² JPS, paragraph 33.

¹³ JPS, paragraph 31(c).

¹⁴ JPS, paragraph 33.

¹⁵ JPS, paragraph 34.

Appointment of auditors

- 4.6 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 directors¹⁶. Guernsey law allows for the deemed re-appointment of auditors.

Proceedings at general meetings

- 4.7 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings¹⁷. Guernsey law provides for a notice period of at least 10 days for any general meeting or such longer period as the constitutional document may provide.

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 in the constitutional documents of a Guernsey incorporated applicant of at least 21 days for approving special resolutions and at least 14 days for other general meetings.

- 4.8 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 agenda, and the minimum level of members' support required to convene a meeting must be no higher than 10%¹⁸. Guernsey law requires a threshold of more than 10% of the capital carrying the right to vote at a general meeting.
- 4.9 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 arrangement¹⁹. Guernsey incorporated applicants must address

¹⁶ JPS, paragraph 35.

¹⁷ JPS, paragraph 37.

¹⁸ JPS, paragraph 39.

¹⁹ JPS, paragraph 38.

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 the Listing Division if Guernsey law or the applicants' constitutional documents cannot meet the standards under Appendix 3 to the Main Board Rules/ Appendix 6 to GEM 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 or the International Financial Reporting Standards²⁰.

²⁰ 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.