

# COUNTRY GUIDE – Guernsey

(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 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.*~~

## 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 Information in this country guide may be outdated upon the introduction of such listing regime.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>. 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 Guernsey 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~~ 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.~~ must demonstrate how the -Guernsey laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards. (Updated in January 2022)

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

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<sup>2</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>3</sup> ~~Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B~~

~~JPS, Section 5.~~

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

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

## Table of Contents

1. Background.....	1
2. Application of this Country Guide.....	1
3. International Regulatory Co-operation Measures.....	1
4. <u>JPS-Core</u> Shareholder Protection Standards .....	2
5. Practical and Operational Matters.....	<del>65</del>
6. Constitutional Documents.....	<del>75</del>
7. Accounting and Auditing Related Requirements .....	<del>76</del>

## 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-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 Guernsey as the Guernsey Financial Services Commission is a full signatory ~~of to~~ the IOSCO MMOU<sup>8</sup>, and it has also signed a Letter of Intent with the SFC (*Updated in January 2022*).~~
- 3.2 If a listing applicant is incorporated in Guernsey but its place of central management and control<sup>9</sup> is elsewhere, ~~the statutory securities regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU (*Updated in January 2022*) similar international co-operation arrangements must generally also be in place with that jurisdiction.~~

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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> ~~JPS, paragraph 45. Main Board Rule 8.02A~~

## 4. JPS-Core Shareholder Protection Standards

- 4.1 ~~Subject to Guernsey incorporated issuers demonstrating<sup>40</sup> 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 own<sup>41</sup>. Guernsey 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 set out in Appendix 3 of the Main Board Rules (Appendix 3 of the GEM Rules).~~

~~Based on submissions by a potential applicant, we~~ We have set out below details of the differences between these practices 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. Guernsey 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 Guernsey 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)

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<sup>40</sup> ~~We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.~~

<sup>41</sup> ~~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 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 the members of that class<sup>12</sup>, or by a simple majority vote of the members of that class plus a significantly higher quorum<sup>13</sup>.

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).

#### Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified 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)

- 4.3 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 super-majority vote of members<sup>14</sup>, or by a simple majority vote of members plus a significantly higher quorum<sup>15</sup>.

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).

#### 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)

- 4.4 A super-majority vote of members required for a voluntary winding-up of an overseas company: Under the then JPS, a voluntary winding up of an overseas

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<sup>12</sup> — JPS, paragraph 31(a).

<sup>13</sup> — JPS, paragraph 33.

<sup>14</sup> — JPS, paragraph 31(b).

<sup>15</sup> — JPS, paragraph 33.

company must be approved by a super-majority vote of members<sup>16</sup>, or by a simple majority vote of members of that class plus a significantly higher quorum<sup>17</sup>.

Guernsey law generally requires a three-quarter majority vote of members but permits an ordinary resolution in some circumstances.

#### Subsequent Development since 1 January 2022

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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 from 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>. Guernsey law does not have any specific provisions prohibiting the increase of a member's liability without the 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>. See paragraph 17 of the revised Appendix 3 of the Listing Rules, which contains a comparable requirement. (Updated in January 2022)

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

#### Subsequent Development since 1 January 2022

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

#### *Proceedings at general meetings*

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<sup>16</sup> — JPS, paragraph 31(e).

<sup>17</sup> — JPS, paragraph 33.

<sup>18</sup> — JPS, paragraph 34.

<sup>19</sup> — JPS, paragraph 35.

- 4.7 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of its general meetings<sup>20</sup>.

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).~~

Our approach prior to 1 January 2022

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.

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)

- 4.8 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>21</sup>.

Guernsey law requires a threshold of more than 10% of the capital carrying the right to vote at a general meeting.

Subsequent Development since 1 January 2022

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)

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<sup>20</sup> JPS, paragraph 37.

<sup>21</sup> JPS, paragraph 39.

- 4.9 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>22</sup>.

Guernsey 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)

**Other Core Shareholder Protection Standards**

- 4.10 Compared to the then JPS and the previous Appendix 3<sup>23</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>24</sup> and inspect Hong Kong Branch Register<sup>25</sup> are added to require the applicants to demonstrate conformity. Applicants incorporated in Guernsey 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).

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<sup>22</sup> JPS, paragraph 38.

<sup>23</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

<sup>24</sup> Appendix 3, paragraph 18

<sup>25</sup> Appendix 3, paragraph 20

## 6. Constitutional Documents

- 6.1 Applicants should contact the Listing Division if Guernsey laws, 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 a secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards or the International Financial Reporting Standards<sup>26</sup> (Updated in January 2022).

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<sup>26</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.