

COUNTRY GUIDE – The Isle of Man

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

The Isle of Man 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.

Table of Contents

1. Background.....	4
2. Application of this Country Guide.....	4
3. International Regulatory Co-operation Measures.....	4
4. JPS Shareholder Protection Standards.....	4
5. Practical and Operational Matters.....	7
6. Constitutional Documents.....	7
7. Accounting and Auditing Related Requirements	7

1. Background

- 1.1 The Isle of Man's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) are the Isle of Man Companies Acts of 1931-2004 and Companies Act 2006. These sets of the company law co-exist and set requirements for Isle of Man incorporated companies⁴ (Updated in April 2014).
- 1.2 An Isle of Man 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 the Isle of Man. 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 incorporated in the Isle of Man as the Financial Supervision Commission of the Isle of Man is a full signatory of the IOSCO MMOU⁶, and has also entered into a Confidentiality Undertaking with the SFC.
- 3.2 If a listing applicant is incorporated in the Isle of Man but its place of central management and control⁷ 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 Isle of Man incorporated issuers demonstrating⁸ how their practices, as set out below, conform to the JPS requirements, we do not consider Isle of

⁴ Companies Acts 1931-2004 include the Company Act passed in 1931 and the amending and supplementary acts. The Companies Act 1931 is modelled on the Companies Act 1929 of England and Wales and provides for a “traditional English style” company form. Companies Act 2006 is a stand-alone piece of legislation that provides for a modern corporate vehicle form. Companies formed under the Companies Act 2006 are subject to the liquidation and receivership provisions of the Companies Acts 1931-2004.

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.

Man'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. Under Companies Acts 1931-2004 the remuneration of auditors may be fixed by the directors or by the Financial Supervision Commission if the auditors are appointed by the directors or by the Financial Supervision Commission. The Companies Act 2006 contains no explicit provisions on the procedure for appointment, removal and remuneration of auditors.

Matters requiring a super majority vote

- 4.3 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 class¹¹, or by a simple majority vote of members of that class plus a significantly higher quorum¹². The Companies Acts 1931-2004 provide that the procedure for a variation of the rights attaching to any class of shares in an Isle of Man company may be set out in its constitutional document.
- 4.4 A super-majority vote of members required for a material change to constitutional document: Under the JPS, material changes to an overseas company's constitutional documents, however framed must be approved by a super-majority vote of members¹³, or by a simple majority vote of members plus a significantly higher quorum¹⁴. The Companies Act 2006 provides that the company's constitutional documents can be amended by a resolution of members, or by the company's directors so authorised.

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 31(a).

¹² JPS, paragraph 33.

¹³ JPS, paragraphs 31(b).

¹⁴ JPS, paragraph 33.

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. The Companies Act 2006 does not have specific provision prohibiting increase of a member's liability without written agreement by the member.

Proceedings at general meetings

- 4.6 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 not more than 15 months should elapse between the date of one annual general meeting of the overseas company and the next¹⁶. The Companies Act 2006 contains no explicit provisions in this regard.
- 4.7 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings¹⁷. The Companies Acts 1931-2004 require a 21-days' notice for a meeting at which a special resolution is passed and 14-days' notice for any other meeting, and the Companies Act 2006 requires a 14-days' notice for any meeting of members.

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 an Isle of Man 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. The Companies Acts 1931-2004 and Companies Act 2006 provide for a similar right to

¹⁵ JPS, paragraph 34.

¹⁶ JPS, paragraph 36.

¹⁷ JPS, paragraph 37.

¹⁸ JPS, paragraph 39.

convene an extraordinary general meeting but contain no details of the procedures for circulation of added resolutions to members.

- 4.9 Right of a recognised Hong Kong clearing house to appoint proxies to attend general meeting and creditors meeting: Under the JPS, a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditor meetings, and these proxies/corporate representatives should enjoy statutory rights comparable to those of other shareholders, including the right to speak and to vote¹⁹. The Companies Acts 1931-2004 and Companies Act 2006 are silent on the ability of a member that is a recognised clearing house to appoint a proxy.
- 4.10 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 Listing Rules, to abstain from voting to approve the transaction or arrangement²⁰. Isle of Man 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 the Listing Division if the Isle of Man 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

¹⁹ JPS, paragraph 40.

²⁰ JPS, paragraph 38.

Kong Financial Reporting Standards or the International Financial Reporting Standards²¹.

²¹ 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.