

COUNTRY GUIDE - Jersey

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

Jersey 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 Jersey's equivalence to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Companies (Jersey) Law 1991, which sets requirements for Jersey incorporated companies. The Jersey Financial Services Commission ("JFSC") is the statutory securities regulator in Jersey (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 Jersey. 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 Jersey as the JFSC is a full signatory of the IOSCO MMOU⁵. In addition, the JFSC has signed a Letter of Intent⁶ with the SFC to facilitate the development of deeper and broader investments markets in both jurisdictions and attain closer regulatory co-operation in a mutually beneficial manner.
- 3.2 If a listing applicant is incorporated in Jersey 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 Jersey incorporated issuers demonstrating⁸ how their practices, as set out below, conform to the JPS requirements, we do not consider Jersey'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

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 Available on JFSC's website: http://www.jerseyfsc.org/pdf/LoI_09.09.2005.pdf

⁷ JPS, paragraph 45.

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.

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. 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 no more than 15 months should elapse between the date of one annual general meeting and the next¹⁰. Jersey law allows for 18 months rather than 15 months between two annual general meetings. Under Jersey law, if all members of a Jersey company agree in writing that an annual general meeting shall be dispensed with, then so long as the agreement has effect, it is not necessary for the company to hold an annual general meeting (“**Exemption**”). It was submitted that it was not legally possible under Jersey law for a company to amend its constitutional document to exclude the Exemption¹¹. In a previous application of a Jersey incorporated applicant, we considered that the Exemption would not be detrimental to its members because (i) of the stringent nature of the dispensation; (ii) of the unlikelihood of all the members agreeing in writing to dispense with annual general meetings; and (iii) in the unlikely event of all members agreeing to dispense with annual general meetings, it was difficult to see how they would be prejudiced. We expect a Jersey incorporated applicant to demonstrate how it will ensure conformity to this JPS requirement.
- 4.3. Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings¹². Under Jersey law, any annual general meetings or extraordinary general meeting for the passing of a special resolution shall be convened on at least 21 days’ written notice while any other general meetings shall be convened on at least 14 days’ written notice.

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 issuer and transaction specific facts and circumstances (Updated in April 2014).

The Exchange has previously accepted the notice requirement for convening general meetings under Jersey law.

¹⁰ JPS, paragraph 36.

¹¹ Listing Decision HKEx-LD80-1.

¹² JPS, paragraph 37.

- 4.4. 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 agenda¹³. Jersey law does not specifically provide for requisition of a resolution by members.
- 4.5. Proxies or corporate representatives: Under the JPS, a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings, and these proxies/corporate representatives should enjoy statutory rights comparable to those of other members, including the right to speak and vote¹⁴. Jersey law is silent on the rights of proxies to speak at meetings.
- 4.6. 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 arrangement¹⁵. Jersey 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. Jersey laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents¹⁶. We set out in the Appendix our approach on each of the items required to be included in a Jersey incorporated issuer's constitutional documents in order for it to meet our requirements.

¹³ JPS, paragraph 39.

¹⁴ JPS, paragraph 40.

¹⁵ JPS, paragraph 38.

¹⁶ Appendix 3 to the Main Board 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 Standards (“**IFRS**”)¹⁷.
- 7.2. The financial statements of all Jersey incorporated applicants, which had sought a primary or secondary listing on the Exchange, were prepared in accordance with IFRS.

¹⁷ 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.

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

Our Approach to Differences between Our Constitutional Document Requirements and Jersey Law, Rules and Practices

Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach
Appendix 3, 1(2)	Fully-paid shares must be free from any restriction on the right of transfer and free from all liens.	Under Jersey law, shares of a listed Jersey-incorporated company that are electronically traded must be free from all restrictions on transfer subject to certain exceptions.	<p>We considered that the restrictions imposed on the transferability of the company’s shares under Jersey law would not materially impair shareholder rights. 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, 2(1)	All certificates for capital must be under seal affixed only with the authority of the directors.	Apart from affixing the deal onto the relevant share certificate, Jersey law allows share certificates to be executed or authenticated by the company by having two directors (or one director and the secretary) signing the relevant share certificate under hand.	<p>We considered that Jersey law provides the company with greater flexibility while investors are still provided with sufficient safeguards in relation to the authenticity or validity of the share certificates. 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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Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach
Appendix 3, 4(1)	A director must not vote on any board resolution in which he or any of his associates has a material interest and must not be counted in the quorum of the board meeting.	Jersey law does not impose restrictions on directors voting on transactions in which they are interested, but directors are obliged to disclose their interests and have a general fiduciary duty to act in the best interests of the company as a whole.	<p>In a previous case, a Jersey incorporated applicant provided in its articles that a director shall not be entitled to vote on any resolution (and be counted in the quorum) which he (or a person connected with him) is interested, with certain exceptions which are either similar to those set out in Note 1 to Appendix 3 of the Main Board Rules, or involve contracts, transactions or arrangements:</p> <ul style="list-style-type: none"> - in which the director is not aware of the interest; - in which the director has an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; and - concerning the giving of indemnities in favour of other directors. <p>A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver”</p>

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Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach
			for this item.
Appendix 3, 7(3)	There is no prohibition on the giving of notice to members whose registered address is outside Hong Kong.	No similar provision.	<p>In a previous case, a Jersey incorporated applicant having a primary listing in the United Kingdom provided in its articles that any member who does not supply to the company an address within Jersey, the United Kingdom or Hong Kong for the service of notices shall not be entitled to receive notices, documents, or information from the company in hard copy form. Instead, such member will be sent notices, documents or other information by electronic means if he has agreed and has not revoked the agreement. Where a member has not given his consent to receive electronic communications, the company will give a notification in hard copy to him about the posting of the notice, document or information on the company’s website. 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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Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach
Appendix 3, 8	<p>If an issuer has the power to purchase for redemption a redeemable share:</p> <p>(1) purchases not made through the market or by tender must be limited to a maximum price; and</p> <p>(2) if purchases are by tender, tenders must be available to all shareholders alike.</p>	No information regarding Jersey law.	<p>In a previous case, a Jersey incorporated applicant committed to the UK listing requirements¹⁸ in this regard that would afford shareholders with sufficient protection in relation to any purchase for redemption by the company of its redeemable shares. 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, 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 issuer.	No information regarding Jersey law	<p>In a previous case, a Jersey incorporated applicant provided in its articles that the company has the powers to restrict the rights of members to:</p> <ul style="list-style-type: none"> - vote in shareholder meetings; or - receive dividends and transfer their shares, if they have failed to disclose their interests to the company. <p>A waiver of this articles provision was</p>

¹⁸ UK Listing Rule 12.4.

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Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach
			<p>granted.</p> <p>Under the JPS, no “automatic waiver” is available to eligible secondary listing applicants for this item.</p>