

COUNTRY GUIDE – Republic of Korea

(20 December 2013, updated in April 2014 and August 2015)

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~~ Department 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 Republic of Korea (“South Korea”) must confirm to the Exchange, with its initial application for listing, that the South Korean 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 South Korean 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 South Korea 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 South Korea incorporated companies meeting the conditions set out in this guide, we do not consider South Korea's shareholder protection standards to be materially different to our own.

We will consider a listing of depositary receipts on the Exchange for South Korea incorporated companies.

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

We expect a South Korean issuer to disclose prominently and fully in its listing document details of the South Korean taxation regime applicable to Hong Kong shareholders, including withholding tax on dividends.

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.

1. Background

- 1.1 South Korea adopts a civil law system under which all legal matters and relationships are primarily governed by statutory laws rather than court judgments.
- 1.2 Under South Korean law, the corporate form that can publicly issue shares is “*chusik hoesa*”, a stock company, and the constitutional document of such a company is its articles of incorporation (“**AoI**”).
- 1.3 The Financial Services Commission (“**FSC**”) and the Financial Supervisory Service (“**FSS**”) are the statutory financial and securities regulators in South Korea.
- 1.4 A South Korean company can maintain a share register in Hong Kong in its Hong Kong branch office or engage an “eligible transfer agent” recognised by FSC to maintain a share register in Hong Kong.
- 1.5 A South Korea 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 South Korea. 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 for regulatory co-operation⁴. This requirement is met for issuers incorporated in South Korea as the FSC and the FSS are full signatories of the IOSCO MMOU⁵.
- 3.2 If a listing applicant is incorporated in South Korea 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, 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.

4. JPS Shareholder Protection Standards

- 4.1 Subject to South Korea incorporated issuers demonstrating⁷ how their practices, as set out below, conform to the JPS requirements, we do not consider South Korea'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.

Proceedings at general meetings

- 4.2 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings⁹. South Korean law provides for a notice period of at least 14 days for any general meeting.

In determining "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 requirements in the constitutional documents of a South Korea incorporated applicant to be 21 days for all general meetings.

- 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 arrangement¹⁰. South Korea incorporated listing 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;

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.

⁹ JPS, paragraph 37.

¹⁰ JPS, paragraph 38.

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~~Department if they envisage difficulties in complying with such matters, where applicable.

5.2 Paragraph 69 of the JPS provides that all listing applicants must make arrangement with Hong Kong Securities Clearing Company Limited (“HKSCC”) to ensure their securities are accepted as eligible for deposit, clearance and settlement in Central Clearing and Settlement System (“CCASS”) in accordance with the General Rules of CCASS.

Under HKSCC’s existing model, HKSCC, in its capacity as central securities depository, holds the legal title to shares of companies on the Exchange as the shareholder on record in a branch register held in Hong Kong. HKSCC’s clearing participants hold the beneficial interest in such shares in their CCASS stock accounts opened with HKSCC in its capacity as central securities depository. When a sale/purchase transaction in respect of such shares is made on the Exchange, a transfer of title in such shares amongst HKSCC’s clearing participants is effected by way of book entry transfer amongst CCASS stock accounts.

5.3 South Korean law recognises only accountholders at Korea Securities Depository¹¹ as beneficial owners of shares in South Korea incorporated companies. Based on HKSCC’s existing model, HKSCC clearing participants would not acquire proprietary rights as shareholders of South Korea incorporated companies if the shares of such companies were to be listed on the Exchange.

Our Approach

5.4 The Exchange expects a South Korea incorporated company seeking a listing in Hong Kong will list by way of depositary receipts (“DRs”). As GEM does not currently accept listings of DRs, South Korea incorporated companies seeking listings in Hong Kong can only seek listings of DRs on the Main Board. (Added in August 2015)

6. Constitutional Documents

6.1 South Korean laws and regulations do not have equivalent provisions for all our Rules on the contents of constitutional documents¹². We set out in the Appendix our approach on each of the items required to be included in a South Korea incorporated issuer’s constitutional documents in order for it to meet our requirements.

¹¹ Under paragraph 1 of Article 315 of Financial Investment Services and Capital Markets Act.

¹² Appendix 3 to the Main Board Rules.

Our Approach

- 6.2 We have previously been prepared to waive the relevant requirements under Appendix 3 to the Main Board Rules on the basis that:
- (a) the differences from the requirements of Appendix 3 are not considered material from the perspective of shareholders protection; and
 - (b) the relevant South Korean laws and regulations and the AoI are disclosed in the listing document.

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 Standards¹³.

8. Closure of Books and Record Date

- 8.1 Where an issuer proposes to grant entitlements (e.g. rights to acquire further shares) that requires the approval of shareholders in a general meeting or is contingent on a transaction that is subject to the approval of shareholders in a general meeting, our Rules¹⁴ require that an issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting. Further, our Rules require that the record date (when there is no book closure) or the last registration date (where there is a book closure) must be at least three business days after the general meeting¹⁵.
- 8.2 Under South Korean law, a South Korean company may (i) fix in its constitutional documents a specific date, or a date to be determined by its board of directors, as the record date for general meetings (which shall be no earlier than three months before any general meeting), and (ii) close the register of shareholders with the last registration date being not earlier than three months before a general meeting. This is to enable a South Korean company to determine the list of members who will be entitled to attend a general meeting for approving any matters (whether or not it relates to entitlements of shareholders).
- 8.3 In a previous case where the constitutional documents of a South Korean company stated that the record date for all general meetings was to be determined by the board of directors, the board agreed to cause the record date

¹³ 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.

¹⁴ Main Board Rule 13.66(2).

¹⁵ Note 3 to Main Board Rule 13.66(2).

to fall no earlier than three months before the general meeting according to South Korean law between the publication of the full year financial results and the relevant annual general meeting.

Our Approach

- 8.4 We have in the past been prepared to grant waivers from complying with the Rules on the closure of books and the record date. However, to ensure that the applicant's members or potential investors will be fully aware of the relevant South Korean requirements, apart from the disclosure in the listing document, we expect the applicant to make an announcement in accordance with the Rules¹⁶, and remind its members that the record date will fall on a date before the relevant general meeting which is different from most listed companies in Hong Kong.

9. Taxation

- 9.1 A South Korea incorporated issuer's shareholders are subject to withholding tax on dividends paid by the issuer. South Korea has entered into a number of income tax treaties with other countries, which reduce South Korean withholding tax on dividend income. However, South Korea has not entered into any income tax treaty with Hong Kong that would benefit shareholders who are Hong Kong tax residents.

Our Approach

- 9.2 We expect appropriate disclosure of taxation in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and any sections summarising South Korean laws and regulations.

¹⁶ See Exchange's Guide on Disclosure of Record Date, Book Closure and Latest Time for Lodging Transfers of Shares.

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

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

Rule Paragraph	Rule Requirement	South Korean Laws, Regulations and Practices	Our Approach
Appendix 3, 2(1)	All certificates for capital shall be under seal, which shall only be affixed with the authority of the directors.	The name and the seal of a representative director of a South Korean company shall be affixed to each share certificate.	We have previously granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 2(2)	Where power is taken to issue share warrants to bearer, no new share warrant shall be issued to replace one that has been lost unless the issuer is satisfied beyond reasonable doubt that the original has been destroyed.	A bearer holder of share warrants who has lost his share warrants may not request the company re-issue them unless the person has obtained a judgment of nullification of such share warrants from the South Korean court.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.

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Rule Paragraph	Rule Requirement	South Korean Laws, Regulations and Practices	Our Approach
Appendix 3, 3(2)	Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend.	A claim for payment of dividend will be legally extinguished if it is not exercised for five years, and such mandatory period may not be extended by the company's AoI.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.
Appendix 3, 4(2)	Any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.	The board of directors does not have the authority to appoint a director to fill a casual vacancy on or as an addition to the board of directors of the company as the power to appoint directors only rests with the company's members.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.
Appendix 3, 4(3)	Where not otherwise provided by law, the issuer in general meeting shall have power by ordinary resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his period of office.	A director can only be removed through a member resolution passed with affirmative votes of no less than two-thirds of the voting shares present or represented at a general meeting provided that the affirmative votes also represent at least one-third of the total voting shares then issued and outstanding at the general meeting.	We granted a waiver of this item based on the reason set out in paragraph 6.2. Under the JPS, no "automatic waiver" is available to a secondary listing applicant for this item.

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Rule Paragraph	Rule Requirement	South Korean Laws, Regulations and Practices	Our Approach
Appendix 3, 8	<p>Where the issuer has the power to purchase for redemption a redeemable share:</p> <p>(a) purchases not made through the market or by tender shall be limited to a maximum price; and</p> <p>(b) if purchases are by tender, tenders shall be available to all shareholders alike.</p>	<p>The right to redeem shares must be set forth in the company’s AoI.</p>	<p>In a previous case, the applicant did not issue redeemable shares and hence its AoI did not contain any redemption right. We accepted the applicants’ undertakings that it would comply with this requirement when it decided to amend its AoI to allow the issuance of redeemable shares. We granted a waiver of this item based on the reason set out in paragraph 6.2.</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	South Korean Laws, Regulations and Practices	Our Approach
Appendix 3, 13(2)	<p>Where power is taken to sell the shares of a member who is untraceable, it will not be exercised unless:</p> <p>(a) during a period of 12 years at least three dividends in respect of the shares in question have become payable and no dividend during that period has been claimed by such member; and</p> <p>(b) on expiry of such 12 years, the issuer gives notice of its intention to sell the shares by way of an advertisement published in the newspapers and notifies the Exchange of such intention.</p>	<p>Even when a member is untraceable for a substantial period of time, a company is not permitted to sell the shares owned by such member. It was submitted that the South Korean requirements are more stringent than those in Hong Kong.</p>	<p>We granted a waiver of this item based on the reason set out in paragraph 6.2.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>