

COUNTRY GUIDE – Labuan

(20 December 2013, last updated in April 2014January 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.~~

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 Information in this country guide may be outdated upon the introduction of such listing regime.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 Exchange¹. 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.

¹ *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 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) ~~Joint Policy Statement Regarding Listing of Overseas Companies (27 September 2013)~~². All issuers incorporated in Labuan can apply for one or more “common waivers”³ and those with, or seeking, a secondary listing⁴ do not need to apply for waivers of certain Rules which are automatically waived for them⁵ (Updated in January 2022).

Summary of our Approach

~~Subject to Labuan incorporated companies must demonstrate how the Labuan laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (Updated in January 2022) meeting the conditions set out in this guide, we do not consider Labuan's shareholder protection standards to be materially different to our own.~~

The statutory securities regulator in Labuan, namely, Labuan Financial Services Authority, is a full signatory to the IOSCO MMOU⁶ and Labuan 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).

² Available on the HKEx website at:

http://www.hkex.com.hk/eng/rulesreg/listrules/liststptop/listoc/Documents/new_jps_0927.pdf

³ Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B

⁴ JPS, Section 5.

⁵ Main Board Rule 19C.11 JPS, paragraph 88.

⁶ IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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1. Background

- 1.1 Labuan was declared an international offshore financial centre in 1990 but later renamed as Labuan International Business and Financial Centre. Labuan is administered directly by the Ministry of Federal Territories of the Federal Government of Malaysia.
- 1.2 The legal system in Labuan is, as in the rest of Malaysia, derived from the English Common Law. Labuan is subject to both the federal laws of Malaysia and state laws and Islamic laws of the state of Sabah and Sarawak. As for the international financial services in Labuan, specific legislation was enacted to separate these services from the domestic economy.
- 1.3 Labuan's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Labuan Companies Act, as amended, which sets requirements for companies incorporated and registered under it. The constitutional document of a Labuan company is its Memorandum and Articles of Association (*Updated in April 2014*).
- 1.4 A Labuan incorporated company has yet to be listed on the Exchange.

2. Application of this Country Guide

- 2.1 This Country Guide is applicable to primary and secondary Main Board listing applicants and primary GEM listing applicants incorporated in Labuan. We do not accept applications for secondary listing on GEM.

3. International Regulatory Co-operation Measures

- 3.1 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.~~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 cooperation⁷.~~ This requirement is met for issuers who are companies incorporated in Labuan as the Labuan Financial Services Authority

⁷ ~~JPS, paragraphs 42 to 44.~~

(“LFSA”)⁸ is a full signatory ~~of to~~ the IOSCO MMOU⁹ (Updated in January 2022).

- 3.2 If a listing applicant is incorporated in Labuan but its place of central management and control¹⁰⁺¹¹ is elsewhere, the statutory securities regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU similar international co-operation arrangements must generally also be in place with that jurisdiction (Updated in January 2022).

4. **JPS-Core Shareholder Protection Standards**

- 4.1 Subject to Labuan 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 .

Based on submissions by a potential applicant, we demonstrating¹² how their practices, as set out below, conform to the JPS requirements, we do not consider Labuan’s shareholder protection standards to be materially different to our own¹³. We have set out below details of the differences between the practices in Labuan 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. Labuan 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 Labuan 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

⁸ LFSA is the sole regulatory authority in Labuan with jurisdiction encompassing international financial services including banking, insurance, trust companies, fund management and the registration of Labuan companies, trust companies, limited partnerships, limited liability partnerships and foundations. Its principal functions are to administer, enforce and carry into effect the provisions of the legislation applicable to the international business and financial services carried on in Labuan.

⁹ ~~International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.~~

¹⁰ ~~Main Board Rule 8.02A~~

¹¹ ~~JPS, paragraph 45.~~

¹² ~~We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.~~

¹³ ~~Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.~~

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)

Appointment, removal and remuneration of auditors

4.2 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 directors¹⁴. Under Labuan law, the method of appointment is not prescribed, although an auditor's removal must be made in a general meeting. Further, under Labuan law, the remuneration of an auditor may be determined by the directors but it can also be determined by the members at the meeting upon request by the auditor (Updated in January 2022).

Subsequent Development since 1 January 2022

4.1 The requirement comparable to the then JPS requirement was codified in paragraph 17 of the revised Appendix 3 of the Listing Rules. Labuan incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (Added in January 2022).

Individual members to approve an increase in members' liability (repealed as of 1 January 2022)

4.3 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 writing¹⁵. Labuan law does not have specific provision prohibiting increase of a member's liability without written agreement by the member (Updated in January 2022).

Subsequent Development since 1 January 2022

4.2 The then JPS requirement was repealed as of 1 January 2022 (Added in January 2022).

Proceedings at general meetings

4.4 Timing of an annual general meeting: Under the then 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

¹⁴ ~~JPS, paragraph 35.~~

¹⁵ ~~JPS, paragraph 34.~~

annual general meeting of the overseas company and the next⁺⁶. Labuan law does not specify the exact time frame for an annual general meeting (Updated in January 2022).

Subsequent Development since 1 January 2022

This then JPS requirement was codified with modification in paragraph 14(1) of the revised Appendix 3 of the Listing Rules, which provides that an issuer must hold a general meeting for each financial year as its annual general meeting and generally, an issuer must hold its annual general meeting within six months after the end of its financial year. A Labuan incorporated applicant is expected to demonstrate how it will ensure conformity to this Core Shareholder Protection Standard (Added in January 2022).

4.34.5 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of its general meetings⁺⁷. Under Labuan law, a notice period of at least seven days is required for a general meeting provided that a notice of meeting for passing a special resolution in a general meeting must be made at least 21 days prior to the meeting (Updated in January 2022).

~~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 requirement in the constitutional documents of a Labuan applicant of at least 21 days for any annual general meeting and any extraordinary general meeting at which a resolution that requires approval of members by three-quarter majority vote will be proposed, and at least 14 days for any other general meeting.

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 as a Core Shareholder Protection Standard. A Labuan incorporated applicant is

⁺⁶— JPS, paragraph 36.

⁺⁷— JPS, paragraph 37.

expected to demonstrate how it will ensure conformity to this Core Shareholder Protection Standard (Added in January 2022).

4.6 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 Listing Rules, to abstain from voting to approve the transaction or arrangement¹⁸. Labuan incorporated applicants must address whether they are able to comply with the abstention requirement, which may necessitate an amendment to their constitutional documents (Updated in January 2022).

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified in paragraph 14(3) of the revised Appendix 3 of the Listing Rules as a Core Shareholder Protection Standard. A Labuan incorporated applicant is expected to demonstrate how it will ensure conformity to this Core Shareholder Protection Standard (Added in January 2022)

Other Core Shareholder Protection Standards

4.7 Compared to the then JPS and the previous Appendix 3¹⁹ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives²⁰ and inspect Hong Kong Branch Register²¹ are added to require the applicants to demonstrate conformity. Applicants incorporated in Labuan 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).

4.4

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

¹⁸ JPS, paragraph 38.

¹⁹ The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

²⁰ Appendix 3, paragraph 18

²¹ Appendix 3, paragraph 20

Division if they envisage difficulties in complying with such matters, where applicable *(Updated in January 2022)*.

6. Constitutional Documents

- 6.1 Applicants should contact the Listing Division if Labuan law, rules and regulations ~~and~~ or the applicants' constitutional documents do not provide the Core Shareholder Protection Standards ~~cannot meet the standards under Appendix 3 to the Main Board Rules/ Appendix 6 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 Standards²² *(Updated in January 2022)*.

²² Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D and, 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.