

# **COUNTRY GUIDE – Labuan**

**(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 Labuan must confirm to the Exchange, with its initial application for listing, that the Labuan 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 Labuan 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)<sup>1</sup>. All issuers incorporated in Labuan can apply for one or more “common waivers” and those with, or seeking, a secondary listing<sup>2</sup> do not need to apply for waivers of certain Rules which are automatically waived for them<sup>3</sup>.**

### **Summary of our Approach**

Subject to Labuan incorporated companies meeting the conditions set out in this guide, we do not consider Labuan's shareholder protection standards to be materially different to our own.

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

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<sup>1</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>2</sup> JPS, Section 5.

<sup>3</sup> JPS, paragraph 88.

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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 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-operation<sup>4</sup>. This requirement is met for issuers who are companies incorporated in Labuan as the Labuan Financial Services Authority (“LFSA”)<sup>5</sup> is a full signatory of the IOSCO MMOU<sup>6</sup>.

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<sup>4</sup> JPS, paragraphs 42 to 44.

<sup>5</sup> 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.

<sup>6</sup> International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

- 3.2 If a listing applicant is incorporated in Labuan but its place of central management and control<sup>7</sup> 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 Labuan incorporated issuers demonstrating<sup>8</sup> 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 own<sup>9</sup>. 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 directors<sup>10</sup>. 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.

##### *Individual members to approve an increase in members' liability*

- 4.3 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 writing<sup>11</sup>. Labuan law does not have specific provision prohibiting increase of a member's liability without written agreement by the member.

##### *Proceedings at general meetings*

- 4.4 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 dated of one

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<sup>7</sup> JPS, paragraph 45.

<sup>8</sup> We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

<sup>9</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

<sup>10</sup> JPS, paragraph 35.

<sup>11</sup> JPS, paragraph 34.

annual general meeting of the overseas company and the next<sup>12</sup>. Labuan law does not specify the exact time frame for an annual general meeting.

- 4.5 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings<sup>13</sup>. 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.

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.

- 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 Listing Rules, to abstain from voting to approve the transaction or arrangement<sup>14</sup>. Labuan incorporated applicants must address whether they are able to comply with the abstention 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.

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<sup>12</sup> JPS, paragraph 36.

<sup>13</sup> JPS, paragraph 37.

<sup>14</sup> JPS, paragraph 38.

## **6. Constitutional Documents**

- 6.1 Applicants should contact the Listing Division if Labuan 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 Kong Financial Reporting Standards or the International Financial Reporting Standards<sup>15</sup>.

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<sup>15</sup> 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.