

# **COUNTRY GUIDE –**

## **The Province of Alberta, Canada**

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

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

We are prepared to accept financial statements that conform to Canadian Generally Accepted Accounting Principles from issuers with, or seeking, a dual primary or secondary listing. This is on the condition that the issuer includes a statement of the financial effect of the material differences, if any, from Hong Kong Financial Reporting Standards or International Financial Reporting Standards, in its accountants' reports and financial statements.

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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 Alberta's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Business Corporations Act (Alberta), which sets requirements for Alberta incorporated companies. Public companies in Alberta must also comply with the Securities Act (Alberta) and issuers listed on the Toronto Stock Exchange must additionally comply with the rules of this exchange (*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 Alberta. 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 incorporated in Alberta as the Alberta Securities Commission, the statutory securities regulator in Alberta, is a full signatory of the IOSCO MMOU<sup>5</sup>.
- 3.2 If a listing applicant is incorporated in Alberta but its place of central management and control<sup>6</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 Alberta incorporated issuers demonstrating<sup>7</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider Alberta's shareholder protection standards to be materially different to our own<sup>8</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

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

<sup>5</sup> International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

<sup>6</sup> JPS, paragraph 45.

<sup>7</sup> We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

<sup>8</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

describing the differences. Where we have in the past accepted a practice, we have stated this below.

***Matters requiring a super-majority vote***

- 4.2 A super-majority vote of members required for a material change to constitutional document: Under the JPS, material changes to an overseas company's constitutive documents, however framed must be approved by a super-majority vote of members<sup>9</sup>, or by a simple majority vote of members plus a significantly higher quorum<sup>10</sup>. Alberta law requires a two-third majority vote of member for passing amendments to the articles of associations, a company's primary constitutive document, but only a simple majority without a significantly higher quorum for amendments to the by-laws, the secondary constitutive document.

***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>. A limited company incorporated in Alberta can convert to an unlimited liability company through obtaining at least a two-third majority vote of shareholders who voted at a meeting. Upon conversion, the shareholders of the unlimited liability company are liable for the debts and liabilities of the company whether those debts and liabilities arose before or after the conversion.

***Proceedings at general meetings***

- 4.4 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meeting<sup>12</sup>. Under Alberta law, any annual general meeting shall be convened not less than 21 days and not more than 50 days before such meeting, unless notice of the meeting is waived by all persons entitled to attend the meeting.

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*).

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<sup>9</sup> JPS, paragraph 31(b).

<sup>10</sup> JPS, paragraph 33.

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

<sup>12</sup> JPS, paragraph 37.

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

- 4.5 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 arrangement<sup>13</sup>. Alberta 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 Alberta laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents<sup>14</sup>. We set out in the Appendix our approach on each of the items required to be included in an Alberta incorporated issuer's constitutional documents in order for it to meet our requirements.

## 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 ("HKFRS") or the International Financial Reporting Standards ("IFRS")<sup>15</sup>.

### Our Approach

- 7.2 As set out in the JPS, generally accepted accounting principles in Canada ("Canadian GAAP") and Canadian Generally Accepted Auditing Standards ("Canadian GAAS") are acceptable to the Exchange<sup>16</sup>. We will therefore allow an Alberta incorporated issuer seeking a dual-primary or secondary

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<sup>13</sup> JPS, paragraph 38.

<sup>14</sup> Appendix 3 to the Main Board Rules.

<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.

<sup>16</sup> JPS, paragraphs 50 and 59.

listing on the Exchange to use Canadian GAAP for its accountants' reports and all subsequent financial statements, and for these to be audited to Canadian GAAS. However, this is on the condition that the issuer includes a statement of the financial effect of the material differences (if any) from HKFRS or IFRS, in its accountants' reports and subsequent financial statements, and it must revert to HKFRS or IFRS if it is no longer listed in a jurisdiction that allows Canadian GAAP.

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

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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Alberta Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 2(1)	All certificates for capital shall be under seal, which shall only be affixed with the authority of the directors.	The compulsory affixing of seals on shares certificates is not required by Alberta law and is inconsistent with Canadian practice. In practice, as the corporate seal may be kept in the company’s registered office in Canada it would be practically difficult for a seal to be applied on share certificates issued in the principal and branch share registrars.	In a previous case, we accepted an Alberta incorporated applicant’s undertaking and including in its articles of associations and by-laws that all share certificates must bear the signature of at least one director or duly authorized officer of the Company. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 4(1)	A director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.	Alberta law allows directors to be counted towards the quorum, even when they are prohibited from voting on a resolution.	In a previous case, we did not require any change to the constitutional documents on the conditions that:  (i) the disclosure requirement under the articles of associations and by-laws and the Alberta law will provide information about the extent of the interest of each director in a transaction or contract;  (ii) the general overriding duty that directors are required to act honestly and in good faith with a view to the best interests of the company; and



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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Alberta Laws, Regulations and Practice</b>	<b>Our Approach</b>
			<p>(iii) a transaction or contract where a director has a material interest may be void or voidable if it is not fair and reasonable to the company at the time it was entered into.</p> <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” for this item.</p>
Appendix 3, 4(4)	The minimum length of the period, during which notice to the issuer of the intention to propose a person for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least seven days.	Under Alberta law, the company or the shareholder must prepare and deliver to the shareholders an information circular providing full disclosure of all director nominees not less than 21 calendar days before any meeting of shareholders where such instruments of proxy are to be used.	<p>In a previous case, we considered that Alberta law provides an acceptable level of investor protection. 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, 4(5)	The period for lodgment of the notices referred to in subparagraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election	Under Alberta law, the company or the shareholder must prepare and deliver to the shareholders an information circular providing full disclosure of all director nominees not less than 21 calendar days before any meeting of shareholders where such instruments of proxy are to be used.	<p>In a previous case, we considered that Alberta law provides an acceptable level of investor protection. 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	Alberta Laws, Regulations and Practice	Our Approach
	and end no later than seven days prior to the date of such meeting.		
Appendix 3, 5	A copy of either (i) the directors' report, accompanied by the balance sheet (including every document required by law to be annexed thereto) and profit and loss account or income and expenditure account, or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.	Under Alberta law, annual meeting notices of an Alberta-incorporated company (including business report and financial results) must be sent at least 21 days and no more than 50 days before the date of the annual general meeting.	In a previous case, we considered that Alberta law provides an acceptable level of investor protection. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.
Appendix 3, 6(2)	The quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one-third of the issued shares	Alberta law does not contain specific quorum requirements in the event of meetings for holders of separate classes of shares. It was submitted that the quorum requirement is uncommon in Canada.	Alberta law provides (1) shareholders who would be entitled to a separate class vote with the right to dissent for certain fundamental amendments to the constitutional documents which would enable the dissenting shareholders to require the company to purchase their shares and pay them the fair value; and (2) persons including shareholders with the right to apply to the court for a rectification order for

**APPENDIX**

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Alberta Laws, Regulations and Practice</b>	<b>Our Approach</b>
	of the class.		<p>oppressive actions of the company. In a previous case, the Exchange considered that Alberta law generally provides an acceptable level of investor protection. 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, 10(1)	Where the capital of the issuer includes shares which do not carry voting rights, the words “ <i>non-voting</i> ” must appear in the designation of such shares.	Alberta law does not have these designation requirements.	<p>In a previous case, we accepted an undertaking to designate shares which do not carry voting rights with the words “<i>non-voting</i>”. 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, 10(2)	Where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words “ <i>restricted voting</i> ” or “ <i>limited voting</i> ”.	Alberta law does not have these designation requirements.	<p>In a previous case, we accepted an undertaking to designate shares, other than those with the most favourable voting rights, with the words “<i>restricted voting</i>” or “<i>limited voting</i>”. 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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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Alberta Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 11(1)	Where provision is made in the articles as to the form of proxy, this must be so worded as not to preclude the use of the two-way form.	Under Alberta law, proxy statements relating to the appointment of auditors or the election of directors will only provide an option for a shareholder to vote for the resolution or withhold from voting. Amending the articles of incorporation and by-laws to allow the use of two-way proxy forms would violate Alberta law and Canadian securities law.	In a previous case, we did not require any change to the constitutional documents on the condition that the applicant only uses two-way proxy forms for resolutions other than appointment of an auditor and the election of directors. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.