

COUNTRY GUIDE – Australia¹

(20 December 2013, last updated in January 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.

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 Information in this country guide may be outdated upon the introduction of such listing regime.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 Exchange.² 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 Previously listed issuers incorporated in Australia include Sino Gold Mining Limited (Delisted in December 2009; Old Stock Code: 01862).

² Including codification with modification of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies published on 27 September 2013 (amended on 30 April 2018), 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). All issuers incorporated in Australia can apply for one or more “common waivers”³ and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them⁴ (*Updated in January 2022*).

Summary of our Approach

Australia incorporated companies must demonstrate how the Australian laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards (*Updated in January 2022*).

The statutory securities regulator in Australia, namely, Australian Securities and Investments Commission (“ASIC”), is a full signatory to the IOSCO MMOU⁵ and Australia 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*).

We are prepared to accept financial statements that conform to Australian Accounting Standards from issuers with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual primary or secondary listing on the Exchange. This is on the condition that the issuer includes a reconciliation statement setting out the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards (*Updated in January 2022*).

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

⁴ Main Board Rule 19C.11.

⁵ IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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1. Background

- 1.1 Australia’s equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Corporations Act 2001, which sets requirements for Australia incorporated companies. In addition, companies listed on the Australian Stock Exchange (“**ASX**”) are bound by the ASX Listing Rules. The ASX is regulated by the Australian Securities and Investments Commission (“**ASIC**”), which reports to the Australian government annually on the ASX, and the ASIC’s role is to enforce and regulate company and financial services laws to protect investors (*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 Australia. 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. This requirement is met for issuers incorporated in Australia as the ASIC is a full signatory of the IOSCO MMOU. In addition, the ASIC has signed a memorandum of understanding with to provide mutual assistance on exchange of information in relation to securities matters with the SFC (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in Australia but its place of central management and control⁶ is elsewhere, the statutory securities regulator of that jurisdiction must also be a full signatory to the IOSCO MMOU (*Updated in January 2022*).

4. Core Shareholder Protection Standards

- 4.1 Australia 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. (*Updated in January 2022*)

Based on submissions by a potential applicant, we have set out below details of the differences between practices in Australia and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (“**JPS**”) (repealed as of 1 January 2022). Where we have in the past accepted a practice

⁶ Main Board Rule 8.02A

and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. Australia 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 Australian 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 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*)

Proceedings at general meetings

- 4.2 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 no more than 15 months should elapse between the date of one annual general meeting and the next.

Under Australian law, an Australian company only has to hold its first annual general meeting within eighteen months after its registration. The Exchange has previously accepted the timing for convening annual general meetings under Australian law (*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 (*Updated in January 2022*).

- 4.3 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of general meetings.

Under Australian law, any annual general meeting shall be convened upon a notice of not less than 28 days.

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

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. (*Updated in January 2022*)

- 4.4 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 Rules, to abstain from voting to approve the transaction or arrangement.

Under the Australian Corporations Act, members as a whole at the general meeting are allowed a reasonable opportunity to ask questions about or comment on the management of the company. The Exchange has previously accepted the requirements for the right to speak and vote at general meetings under Australian law (*updated in January 2019*).

Subsequent Development since 1 January 2022

The requirement comparable to the then JPS requirement was codified with modification in paragraphs 14(3) and 14(4) of the revised Appendix 3 of the Listing Rules. (*Updated in January 2022*)

Other Core Shareholder Protection Standards

- 4.5 Compared to the then JPS and the previous Appendix 3⁷ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives⁸ and inspect Hong Kong Branch Register⁹ are added to require the applicants to demonstrate conformity. Applicants incorporated in Australia 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*)

5. Practical and Operational Matters

- 5.1 Reference is made to Guidance for Overseas Issuers (HKEX-GL111-22) 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 (*Updated in January 2022*).

Requirement to destroy documents of title in respect of repurchased shares

- 5.2 Under Section 257H(3) of the Corporations Act, shares that are repurchased by an Australian company are cancelled immediately after the registration of the transfer of repurchased shares to the company. However, an Australian issuer with shares held in Australia in uncertificated form (i.e. paperless) is unable to

⁷ The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

⁸ Appendix 3, paragraph 18

⁹ Appendix 3, paragraph 20

comply with the Rule requirement¹⁰ to destroy the documents of title if the shares are repurchased in Australia, since there are no shares to destroy.

Our Approach

- 5.3 Having considered that (i) it is a statutory requirement to cancel immediately any shares repurchased by Australian issuer, and (ii) the documents of title are held in uncertificated form which cannot be “destroyed”, we have granted a waiver to an Australian issuer in a previous case.

6. Constitutional Documents

- 6.1 Australian laws and regulations do not have equivalent provisions to comply with all Listing Rules relating to the relevant shareholder protection. We set out in the Appendix our approach on each of the items required to be included in an Australia incorporated issuer’s constitutional documents in order for it to meet the Listing Rule requirements (*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 (“**HKFRS**”) or the International Financial Reporting Standards (“**IFRS**”)¹¹ (*Updated in January 2022*).

Our Approach

- 7.2 We are prepared to accept financial statements that conform to Australian Accounting Standards¹² and Australian Auditing Standards¹³. We are prepared to consider an Australia incorporated issuer with, or seeking, a primary listing in the same jurisdiction as the standard setter that have, or are seeking, a dual-primary or secondary listing on the Exchange to use Australian Accounting Standards for its accountants’ reports and all subsequent financial statements, and for these to be audited to Australian Auditing Standards, provided that the issuer includes a reconciliation statement setting out the financial effect of the

¹⁰ Main Board Rule 10.06(5) requires that the listing of all shares which are purchased by an issuer (whether on the Exchange or otherwise) shall be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

¹¹ Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D, 19C.23 and Note 2.1 to paragraph 2 of Appendix 16 (GEM Rules 7.12, 18.04 and 24.18A).

¹² A list of alternative overseas financial reporting standards that are considered comparable to HKFRS and IFRS is published on the Exchange’s website, as amended from time to time.

¹³ A list of alternative overseas auditing standards that are considered comparable to the standards required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants is published on the Exchange’s website, as amended from time to time.

material differences (if any) from either HKFRS or IFRS, in its accountants' reports and subsequent financial statements¹⁴.*(Updated in January 2022)*.

¹⁴ Primary Listing: Main Board Rule 19.14 and GEM Rule 7.14 (accountants' reports) and Main Board Rule 19.25A and GEM Rule 24.18A (annual/ interim/ quarterly financial statements). Secondary Listing: Main Board Rules 19C.10D (accountants' reports) and 19C.23 (annual/ interim financial statements).

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

Our Approach to Differences between Our Constitutional Document Requirements ^(note) and Australian Laws, Rules and Practices

Note: Some of the Constitutional Document Requirements stated herein were either (i) repealed on 1 January 2022 because they were not considered to be fundamental to shareholder protection or they overlapped with the requirements in the Listing Rules; or (ii) codified with modification as Core Shareholder Protection Standards in the Listing Rules. For details, please see the column headed “Subsequent Development since 1 January 2022”. New applicants shall assess whether it can comply with the relevant Listing Rules or seek waiver from compliance. *(Added in January 2022)*

Rule Paragraph	Rule Requirement	Australian Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
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.	In a previous case, an Australia incorporated issuer followed the ASX requirements and provided in its constitutional document that nominations for directors can be made at any time during the year after the last general meeting but other than after the notice of meeting has been dispatched.	The ASX requirements conflicted with the articles provisions in Appendix 3. We considered that the combined effect of the ASX and the applicant’s constitutional requirements provided acceptable protection. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic	This articles provision was repealed on 1 January 2022. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.

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

Rule Paragraph	Rule Requirement	Australian Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
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 and end no later than seven days prior to the date of such meeting.		waiver” for this item.	This articles provision was repealed on 1 January 2022. The note to Rule 13.70 contains the comparable requirement.
Appendix 3, 6(2)	The quorum for a separate class meeting to consider a variation of the rights of any class of shares must be the holders of at least one-third of the issued shares of that class.	In a previous case, an Australia incorporated applicant’s constitutional documents required the quorum for the meeting of members holding shares in the class to be constituted by not less than 25% of the issued shares of the class.	On the basis that (i) the applicant would be subject to the ASX requirements and Australian law, and (ii) the difference in the constitutional document provisions was immaterial, we granted a waiver of this articles provision. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic	This articles provision was repealed on 1 January 2022 and was relocated to note 1 to paragraph 15 of Appendix 3 of the Listing Rules. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.

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

Rule Paragraph	Rule Requirement	Australian Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
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			waiver” for this item.	