

COUNTRY GUIDE – British Virgin Islands

(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 British Virgin Island (“BVI”) must confirm to the Exchange, with its initial application for listing, that the BVI 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 BVI 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 (“JPS”). All issuers incorporated in BVI 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 BVI incorporated companies meeting the conditions set out in this guide, we do not consider BVI's shareholder protection standards to be materially different to our own.

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

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.

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1. Background

- 1.1 BVI has a common law system based on the English model. English common law and equitable principles form part of the substantive laws of the BVI. The BVI courts look to English decisions for guidance in interpreting these principles.
- 1.2 BVI's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the BVI Business Companies Act, which sets requirements for BVI incorporated companies (*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 BVI. 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 BVI as the British Virgin Islands Financial Services Commission is a signatory of the IOSCO MMOU⁵.
- 3.2 If a listing applicant is incorporated in BVI 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 Shareholder Protection Standards

- 4.1 Subject to BVI incorporated issuers demonstrating⁷ how their practices, as set out below, conform to the JPS requirements, we do not consider BVI's shareholder protection standards to be materially different to our own⁸. We

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.

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.

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.

Matters requiring a super majority vote

- 4.2 A super-majority vote of members required for a material change to constitutional documents: Under the JPS, material changes to an overseas company’s constitutional documents, however framed must be approved by a super-majority vote of members⁹, or by a simple majority vote of members plus a significantly higher quorum¹⁰. Under BVI law, alteration to constitutional documents may be effected by a majority vote of resolution of members or directors if explicitly authorised by the constitutional document. There is no requirement for a special quorum for passing a resolution for change to the constitutional document in a general meeting.

We consider that BVI incorporated issuers need to modify their constitutional documents to achieve equivalence to comply with this JPS shareholder protection standard.

- 4.3 A super-majority vote of members required for a change to the rights attached to a class of shares: Under the JPS, changes to the rights attached to any class of shares of an overseas company must be approved by a super-majority vote of members of that class¹¹, or by a simple majority vote of members of that class plus a significantly higher quorum¹². There is no equivalent provision under BVI law.
- 4.4 A super-majority vote of members required for voluntary winding up of an overseas company: Under the JPS, a voluntary winding up of an overseas company must be approved by a super-majority vote of members¹³, or by a simple majority vote of members plus a significantly higher quorum¹⁴. BVI law has no specific statutory provisions in this regard.

⁹ JPS, paragraph 31(b).

¹⁰ JPS, paragraph 33.

¹¹ JPS, paragraph 31(a).

¹² JPS, paragraph 33.

¹³ JPS, paragraph 31(c).

¹⁴ JPS, paragraph 33.

Individual members to approve an increase in members' liability

- 4.5 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 writing¹⁵. BVI law does not have specific provision prohibiting increase of a member's liability without written agreement by the member.

Appointment of auditors

- 4.6 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 directors¹⁶. BVI law does not have specific statutory provisions in this regard.

Proceedings at general meetings

- 4.7 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 date of one annual general meeting of the overseas company and the next¹⁷. BVI law does not specify the exact time frame for an annual general meeting.
- 4.8 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of its general meetings¹⁸. BVI law has no specific statutory provisions in this regard.

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 a BVI applicant's constitutional documents that an annual general meeting and any extraordinary general meeting for the passing of a special resolution shall be called by notice of not less than 21 days, and any other extraordinary general meeting shall be called by not less than 14 days.

¹⁵ JPS, paragraph 34.

¹⁶ JPS, paragraph 35.

¹⁷ JPS, paragraph 36.

¹⁸ JPS, paragraph 37.

- 4.9 Right of members holding a minority stake to convene a general meeting: Under the JPS, members holding a minority stake in an overseas company must be allowed to convene an extraordinary general meeting and add resolutions to a meeting agenda, and the minimum level of members' support required to convene a meeting must be no higher than 10%¹⁹. BVI law has no specific statutory provisions in this regard.
- 4.10 Right of a recognised Hong Kong clearing house to appoint proxies to attend general meeting and creditors meeting: Under the JPS, a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meeting, and these proxies/corporate representatives should enjoy statutory rights comparable to those of members²⁰. BVI law has no specific statutory provisions in this regard.
- 4.11 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 arrangement²¹. BVI 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 identification. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable.

6. Constitutional Documents

- 6.1 Applicants should contact the Listing Division if BVI 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

¹⁹ JPS, paragraph 39.

²⁰ JPS, paragraph 40.

²¹ JPS, paragraph 38.

overseas issuers seeking a primary or secondary listing to conform to Hong Kong Financial Reporting Standards (“**HKFRS**”) or International Financial Reporting Standards (“**IFRS**”)²².

- 7.2 The financial statements of all BVI incorporated applicants, which had sought a primary listing on the Exchange, were prepared in accordance with IFRS or HKFRS.

²² 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.