

COUNTRY GUIDE – Ireland

January 2020

Important notes: *This guide does not override the Listing Rules (“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 we are notified of these changes.

A new applicant for listing that is incorporated in Ireland must confirm to the Exchange, with its initial application for listing, that Irish 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 Irish 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 (published on 27 September 2013 and amended on 30 April 2018)¹. All issuers incorporated in Ireland as public limited companies (*PLC*) which is not and will not (i) offer any shares to the public in; or (ii) be listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the European Economic Area ("Eligible Irish Companies") 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 Eligible Irish Companies meeting the conditions set out in this guide, we do not consider Irish shareholder protection standards to be materially different from our own.

The Exchange's acceptance of Ireland as an Acceptable Jurisdiction is limited to Eligible Irish Companies. No analysis has been made on the acceptability of an Irish private company; or an Irish company which offers its shares to the public in, or its shares are listed (whether on a primary or secondary basis) on stock exchanges within, the European Economic Area.

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

¹ Available on the HKEX website at: https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/Understanding-the-Risks-of-Investing-in-Overseas-Issuers/jps_20180430.pdf?la=en

² Conditions for secondary listing are set out in JPS, Section 5.

³ JPS, paragraph 94.

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1. Background

- 1.1 In Ireland, the equivalent law to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (the “**HKCO**”) is the Companies Act 2014 (“**CA 2014**”). Under Irish law, any Irish public limited company (**PLC**) is eligible to obtain a listing of its shares on an overseas stock exchange.
- 1.2 The Central Bank of Ireland regulates and supervises compliance with securities laws by the companies.

2. Application of this Country Guide

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants⁴ incorporated in Ireland as PLC which is not and will not (i) offer any shares to the public in; or (ii) be listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the European Economic Area, as defined from time to time (the “**EEA**”) (the “**Eligible Irish Companies**”).

3. International Regulatory Co-operation Measures

- 3.1 The Joint Policy Statement Regarding the Listing of Overseas Companies jointly published by The Stock Exchange of Hong Kong Limited (“**Exchange**”) and the Securities and Futures Commission (“**SFC**”) on 27 September 2013 amended on 30 April 2018 (“**JPS**”) states that the statutory securities regulator of an overseas issuer’s jurisdiction of incorporation must have adequate arrangements with the SFC for regulatory co-operation⁵. This requirement is met for issuers incorporated in Ireland as the Central Bank of Ireland, the statutory securities regulator in Ireland, is a full signatory of the IOSCO MMOU⁶. In addition, the Central Bank of Ireland has an arrangement concerning mutual assistance and exchange of information with the SFC⁷.
- 3.2 If a listing applicant is incorporated in Ireland but its place of central management and control is elsewhere, similar international co-operation arrangements must generally also be in place with that jurisdiction⁸.

4. JPS Shareholder Protection Standards

- 4.1 Subject to the Eligible Irish Companies demonstrating how their practices with respect to the matters set out below conform to the JPS requirements⁹, we do

⁴ We do not accept applications for secondary listing on GEM.

⁵ JPS, paragraphs 47 to 50.

⁶ The International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

⁷ The arrangement is under a Confidentiality Understanding signed by SFC and Central Bank of Ireland in November 1997, which is available at the SFC’s website.

⁸ JPS, paragraph 50.

⁹ We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

not consider the Irish shareholder protection standards to be materially different from those in Hong Kong¹⁰.

Appointment and removal of auditors

- 4.2 Under the JPS, the appointment and removal 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.
- 4.3 Under Irish law:
- (a) other than appointment of the first auditors, a PLC shall appoint auditors by way of an ordinary resolution at general meetings and the auditor shall be deemed re-appointed without resolution unless, amongst others, an ordinary resolution is passed to appoint another auditor or to expressly provide for his non-appointment; and
 - (b) the PLC may by ordinary resolution remove an auditor, subject to there being good and substantial grounds and the resolution being in the PLC's best interest.

Our Approach

- 4.4 To conform with the JPS requirement, Eligible Irish Companies can modify their constitutional documents to provide that the appointment of auditors is required to be approved by members by simple majority vote at the company's annual general meeting ("**AGM**") to prevent auditors being re-appointed without an ordinary resolution being passed.
- 4.5 As the requirement to remove auditors in Ireland is more onerous than Hong Kong in that there must be good and substantial grounds before an auditor can be removed, we are of the view that the Irish law fulfils the JPS requirement.

Notice of General Meetings

- 4.6 Under the JPS, an overseas company must give its members reasonable written notice of general meetings¹¹. Under Irish law, notice of the company's AGM or an extraordinary general meeting ("**EGM**") for the passing of a special resolution must be given by at least 21 days before the day of the general meetings.
- 4.7 In determining the "reasonableness" of the notice period for general meetings, the Exchange will take into consideration (i) the provisions under the HKCO as from time to time in force as applicable to the Hong Kong incorporated

¹⁰ Notes to Main Board Rule 19.05(1) (GEM Rule 24.05(1)) and Main Board Rule 19.30(1), and JPS, paragraphs 32 and 33.

¹¹ JPS, paragraph 42.

companies¹²; (ii) the shareholding structure of the company; and (iii) facts and circumstances that are specific to the company and the transaction.

Our Approach

- 4.8 We are of the view that the requirement of at least 21 days' written notice for convening AGM or EGM under Irish law is comparable with the JPS requirement.

Right to Speak and Vote at General Meetings

- 4.9 The JPS requires that all members must have the right to speak and vote at a general meeting, except in cases where members having material interest in a transaction or arrangement are required, by the Listing Rules, to abstain from voting to approve the transaction or arrangement¹³.
- 4.10 Under Irish law, unless the constitution provides otherwise with respect to a particular class of shares (where the share capital is divided into separate classes), all shareholders have the right to attend and speak at a general meeting.

Our Approach

- 4.11 To conform to the JPS requirement, Eligible Irish Companies can modify their constitutional document to provide for a voting mechanism to achieve an outcome substantially equivalent to that under the Listing Rules.

Rights of minority shareholders to convene EGM and add resolutions to a meeting agenda

- 4.12 The JPS requires that members holding a minority stake in an overseas company must be allowed to convene an EGM and add resolutions to a meeting agenda. The minimum level of members' support required to convene a meeting must be no higher than 10%¹⁴.
- 4.13 Under Irish law, members holding at least 10% of the paid up share capital of the PLC, carrying voting rights at the general meetings, may requisition the directors to convene an EGM meeting. In addition, there is no statutory rights to add resolutions to a meeting agenda other than for companies whose securities are admitted to trading on an EEA regulated market.

Our Approach

- 4.14 To conform to the JPS requirement and avoid ambiguity, Eligible Irish Companies can modify their constitutional documents to provide for the relevant rights to achieve an outcome substantially equivalent to that under the HKCO

¹² The HKCO requires that a general meeting of a company must be called by notice of at least 21 days for an annual general meeting and at least 14 days for other meetings, unless otherwise extended by the company's articles.

¹³ JPS, paragraph 43.

¹⁴ JPS Paragraph 44.

(i.e. minimum level of members' support required to convene a meeting must be no higher than 10%).

5. Practical and Operational Matters

- 5.1 Reference is made to Section 4 of the JPS which contains guidance on an overseas company'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.

Maintenance of share register

- 5.2 CA 2014 requires that the share register of a company be kept and made available for inspection in Ireland, whilst Main Board Rule 8.16 (GEM Rule 11.08) and the Securities and Futures Ordinance ("**SFO**") also require the company's share registrar to maintain a register of members in Hong Kong.

Our Approach

- 5.3 To comply with the Rules and SFO, an Eligible Irish Company can make arrangements with an approved share registrar in Hong Kong to enable any updates on the share register to be immediately and automatically visible in real time at the offices of share registrar in Ireland such that the share register to be maintained in Hong Kong will be its only legal register. An Irish counsel opinion must be provided to the Exchange that the proposed arrangement complies with CA 2014.

Cancellation of shares

- 5.4 The Rules provide 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 shall ensure that the documents of title or purchase are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase¹⁵.
- 5.5 Under Irish law, when a PLC acquires its own shares, the PLC can instead of cancelling them, retain them as treasury shares.

Our Approach

- 5.6 To comply with the Rules, Eligible Irish Companies can modify their constitutional documents to ensure Eligible Irish Companies will not hold any treasury shares and all shares re-purchased will be cancelled.

¹⁵ Main Board Rule 10.06(5) (GEM Rule 13.14).

6. Constitutional Documents

- 6.1 Irish laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents¹⁶. We have set out in the Appendix our approach on each of the items required to be included in the Eligible Irish Company'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 or the International Financial Reporting Standards¹⁷.

Our Approach

- 7.2 As set out in the JPS, IFRS as adopted by the European Union ("**EU-IFRS**") is acceptable to the Exchange for use by European Union companies¹⁸. We may allow an Eligible Irish Company to use EU-IFRS for its accountants' reports and all subsequent financial statements to be audited to a standard comparable to that required by Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board. 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.

8 Taxation

- 8.1 We expect an Eligible Irish Company to prominently disclose the following in its listing document:
- (a) taxes applicable to an Eligible Irish Company and the respective tax rate that certain shareholders may have to pay (including any taxes that a shareholder may be subject to, e.g. withholding tax on distributions entitlements, capital gains and income derived from shares, or stamp duty);
 - (b) details of any treaty between Ireland and Hong Kong or concessionary treatment obtained that may affect the tax payable by shareholders;
 - (c) the tax implications of holding its securities through Central Clearing and Settlement System ("**CCASS**") and outside CCASS on any tax payable (where applicable); and
 - (d) the procedures for paying the relevant taxes and claiming any tax relief, exemptions or credits/refunds.

¹⁶ Appendix 3 to the Main Board Rules (Appendix 3 to the GEM Rules).

¹⁷ 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 61 to 67.

¹⁸ JPS, paragraph 64.

- 8.2 We expect appropriate disclosure of taxation to be made at least in the “Summary” and “Risk Factors” sections of the applicant’s listing document and any sections summarising the applicable Irish laws and regulations.
- 8.3 Where tax treaties and/or concessionary treatment have renewable fixed terms, we expect one year prior to the expiry, the Company discloses in its annual report its intention and/or status of renewal, the parties responsible for the renewal, and highlight to investors the implications in the event the renewal is not successful. The Company should announce the results of the renewal applications (whether successful or not) as soon as they are obtained.

9 Obligations of Eligible Irish Companies

- 9.1 In addition to the requirements above, an Eligible Irish Company is also required to:
- (a) provide an undertaking in its listing document and constitutional document that it is not and will not (i) offer shares to the public in, or (ii) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the EEA without the prior written consent of the Exchange;
 - (b) provide relevant and adequate disclosure in its listing document on the major jurisdictional or regulatory differences between Ireland and Hong Kong shareholder protection requirements, especially those set out in the JPS;
 - (c) upon submission of its listing application, (i) confirm to the Exchange that the Irish laws, regulations and market practices contained in this Country Guide are still applicable and if not, provide us with details of any relevant changes; and (ii) inform the Exchange of any other Irish laws, regulations and market practices not detailed in this Country Guide that are relevant to their circumstances;
 - (d) upon admission of the Eligible Irish Company’s shares for listing and trading on the Exchange, since Hong Kong Securities Clearing Company Limited (“**HKSCC**”) is likely from time to time to have a security interest in 3% or more of the shares in an Eligible Irish Company granted to it by its participants under its clearing rules, (i) confirm that HKSCC may make a one-off disclosure in respect of such security interests to the Eligible Irish Company in order to comply with its obligations under Chapter 4 of Part 17 of the Irish Companies Act; and (ii) arrange for such disclosure to be filed with the Eligible Irish Company on the date of commencement of trading of the Eligible Irish Company’s shares on the Exchange; and
 - (e) throughout the vetting process and after listing, inform the Exchange in a timely manner of any material changes in Irish laws and regulations that significantly lower shareholder protection standards in Ireland compared with those in Hong Kong. The Exchange will impose further conditions on the issuer, and/ or reconsider the conditions for accepting future listing

applicants incorporated in Ireland. This is in line with the Exchange's practice in accepting other jurisdictions.

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

Our Approach to Differences between Our Constitutional Document Requirements under Appendix 3 of the Listing Rules and Irish Laws, Regulations and Practices

| Rule Paragraph | Rule Requirement | Irish Laws, Regulations and Practices | Our Approach |
|----------------|---|--|--|
| Appendix 3, 12 | No powers shall be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person or persons who are interested directly or indirectly therein have failed to disclose their interests to the company. | Irish laws provides that where a person has received a notice from the a PLC and that person fails to give the PLC any information required by the notice within the time specified in it, the PLC may apply to court for an order directing that the shares in question be subject to certain restrictions. | An Eligible Irish Company will be required to impose a restriction in its Memorandum and Articles of Association on its ability to apply to the Irish High Court for an order to freeze or otherwise impair any of the rights attaching to its shares by reason only that the person or persons who are interested directly or indirectly in its shares have failed to disclose their interests to the Company in accordance with a notice served under section 1062 of CA 2014. |