

# COUNTRY GUIDE – Ireland

(January 2020, last updated in January 2022)

**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.*

## **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 Information in this country guide may be outdated upon the introduction of such listing regime.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.<sup>1</sup> 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.*

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<sup>1</sup> Including codification with modification of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, 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 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"<sup>2</sup> and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them<sup>3</sup>.(Updated in January 2022)**

## **Summary of our Approach**

Eligible Irish Companies must demonstrate how the Irish laws and regulations and their constitutional documents, in combination, provide the Core Shareholder Protection Standards. (Updated in January 2022)

The statutory securities regulator in Ireland, namely the Central Bank of Ireland, is a full signatory to IOSCO MMOU<sup>4</sup> and Ireland meets our international regulatory co-operation requirements because it already has adequate measures in place with Hong Kong's Securities and Futures Commission. This guide gives guidance on the Exchange's treatment of listing application from 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. (Updated in January 2022)

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<sup>2</sup> Primary Listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary Listing: Main Board Rule 19C.11B

<sup>3</sup> Main Board Rule 19C.11

<sup>4</sup> IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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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 applicants<sup>5</sup> 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 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 Ireland as the Central Bank of Ireland, the statutory securities regulator in Ireland, is a full signatory to the IOSCO MMOU. In addition, the Central Bank of Ireland has an arrangement concerning mutual assistance and exchange of information with the SFC<sup>6</sup>. (*Updated in January 2022*)
- 3.2 If a listing applicant is incorporated in Ireland but its place of central management and control<sup>7</sup> 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** Eligible Irish Companies 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 set out in Appendix 3 of the Main Board Rules (Appendix 3 of the GEM Rules).

Based on submissions from a potential applicant, we have set out below details of the differences between the practices in Ireland and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (“**JPS**”) (repealed as of 1

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<sup>5</sup> We do not accept applications for secondary listing on GEM.

<sup>6</sup> 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.

<sup>7</sup> Main Board Rule 8.02A

January 2022). Where we have in the past accepted a practice and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. Ireland 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 Irish 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)***

#### **Appointment, removal and remuneration of auditors**

- 4.1 Under the then 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.
- 4.2 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 prior to 1 January 2022**

- 4.3 To conform with the then 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.
- 4.4 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 then JPS requirement.

#### **Subsequent development after 1 January 2022**

- 4.5 The requirement comparable to the then JPS requirement was codified in paragraph 17 of the revised Appendix 3 of the Listing Rules. ***(Updated in January 2022)***

### **Notice of General Meetings**

4.6 Under the then JPS, an overseas company must give its members reasonable written notice of general meetings. 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 *(Deleted in January 2022)*

#### **Our Approach prior to 1 January 2022**

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 then JPS requirement.

#### **Subsequent development after 1 January 2022**

4.9 The requirement comparable to the then JPS requirement was codified in paragraph 14(2) of the revised Appendix 3 of the Listing Rules. *(Updated in January 2022)*

### **Right to Speak and Vote at General Meetings**

4.10 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 material interest in a transaction or arrangement are required, by the Listing Rules, to abstain from voting to approve the transaction or arrangement.

4.11 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 prior to 1 January 2022**

4.12 To conform to the then 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.

#### **Subsequent development after 1 January 2022**

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

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

4.14 The then 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%.

- 4.15 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 prior to 1 January 2022

- 4.16 To conform to the then 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 (i.e. minimum level of members' support required to convene a meeting must be no higher than 10%).

#### Subsequent development after 1 January 2022

- 4.17 The requirement comparable to the then JPS requirement was codified in paragraph 14(5) of the revised Appendix 3 of the Listing Rules (*Updated in January 2022*)

#### ***Other Core Shareholder Protection Standards***

- 4.18 Compared to the then JPS and the previous Appendix 3<sup>8</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>9</sup> and inspect Hong Kong Branch Register<sup>10</sup> are added to require applicants to demonstrate conformity. Applicants incorporated in Ireland 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** Reference is made to the Guidance for Overseas Issuers HKEX-GL111-22 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 (*Updated in January 2022*).

#### **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.

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<sup>8</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021.

<sup>9</sup> Appendix 3, paragraph 18

<sup>10</sup> Appendix 3, paragraph 20

### 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 purchase<sup>11</sup>.
- 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.

- 6. Constitutional Documents** Irish laws and regulations do not have equivalent provisions to comply with the Listing Rules relating to the relevant shareholder protection. 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 the Listing Rule requirements (*Updated in January 2022*).

- 7. Accounting and Auditing Related Requirements** 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")<sup>12</sup> (*Updated in January 2022*).

### Our Approach

- 7.2 We are prepared to accept financial statements that conform to IFRS as adopted by the European Union ("EU-IFRS")<sup>13</sup> for use by European Union companies. 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 reconciliation

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<sup>11</sup> Main Board Rule 10.06(5) (GEM Rule 13.14).

<sup>12</sup> 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).

<sup>13</sup> 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.

statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS, in its accountants' reports and subsequent financial statements<sup>14</sup> (*Updated in January 2022*).

**8. Taxation** 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.

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** 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) (*Deleted in January 2022*)
- (c) (*Deleted in January 2022*)
- (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

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<sup>14</sup> Primary Listing: Main Board Rule 19.14 and GEM Rules 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).

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) *(Deleted in January 2022)*.

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 <sup>(note)</sup> under Appendix 3 of the Listing Rules and Irish Laws, Regulations 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)*

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Irish Laws, Regulations and Practices</b>	<b>Our Approach Prior to 1 January 2022</b>	<b>Subsequent Development Since 1 January 2022</b>
(not effective after 31 December 2021)				
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 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.	This articles provision was repealed on 1 January 2022.