

# **COUNTRY GUIDE – Italy**

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

Italy 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 International Financial Reporting Standards as endorsed by the European Union. These must contain a statement of the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

We expect an Italian issuer to disclose prominently and fully in its listing document details of the Italian taxation regime applicable to Hong Kong shareholders, including tax on gain from sales of securities, withholding tax on dividends and financial transactions tax, and the risk that an Italian issuer may be required to dematerialise its shares.

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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 The standard type of Italy incorporated company used for listing shares is the joint stock company (“JSC”).
- 1.2 An Italy incorporated company will generally have one of the three different management and control structures: a default structure, a one-tier structure, or a two-tier structure.
- 1.3 The majority of JSCs adopt the default structure, under which a company is managed by a sole director or a board of directors, with a board of statutory auditors supervising compliance with the relevant laws and the constitutional documents and an external auditor carrying out the accounting control of the JSC.
- 1.4 Italian law generally provides greater shareholder protection over companies “admitted to trading on Italian regulated markets” or with “shares widely distributed among the public”. Apart from minor exceptions<sup>4</sup>, provisions applicable to companies listed on a regulated market in Italy also apply to JSCs with shares widely distributed among the public. Currently, an Italy incorporated issuer listed on the Exchange would be considered neither “admitted to trading on a regulated market” nor having “shares widely distributed among the public”<sup>5</sup> under Italian law.
- 1.5 The principal Italian laws and regulations applicable to companies with a default structure are the Italian Civil Code, the Italian Consolidated Financial Act and the Commissione Nazionale per le Società e la Borsa (“Consob”) Regulation.
- 1.6 This Country Guide analyses Italian law applicable to a JSC with a default structure.

## 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 Italy. We do not accept applications for secondary listing on GEM.

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<sup>4</sup> JSCs with shares widely distributed among the public are subject to the provisions applicable to companies **not listed** on a regulated market in Italy for the following matters: (i) takeover bids; (ii) issue of special categories of shares; (iii) regime applicable to proxies; (iv) election of at least one director by minority shareholders; (v) procedure for purchase of treasury shares and redemption of redeemable shares.

<sup>5</sup> The Italian Securities and Exchange Commission has not yet issued any decision on whether an Italian issuer listed on a foreign exchange either inside or outside the European Union has to be treated as a company with shares widely distributed among the public

### 3. International Regulatory Co-operation Measure

- 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 (“**SFC**”) for regulatory co-operation<sup>6</sup>. This requirement is met for issuers incorporated in Italy as the Consob, the Italian Securities and Exchange Commission, is a full signatory of the IOSCO MMOU<sup>7</sup>. In addition, Consob has entered into a Memorandum of Understanding with the SFC for the purposes of exchange of information and investigatory assistance.
- 3.2 If a listing applicant is incorporated in Italy but its place of central management and control<sup>8</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 Italy incorporated issuers demonstrating<sup>9</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider Italy’s shareholder protection standards to be materially different to our own<sup>10</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 describing the differences. Where we have in the past accepted a practice, we have stated this below.

#### *Proceedings at general meetings*

- 4.2 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meetings<sup>11</sup>. Under Italian law, a general meeting of a company not admitted to trading on a regulated market is required to be called at least 15 days prior to the date of 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

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<sup>6</sup> JPS, paragraphs 42 to 44.

<sup>7</sup> International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

<sup>8</sup> JPS, paragraph 45.

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

<sup>10</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

<sup>11</sup> JPS, paragraph 37.

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 following notice requirement in the constitutional documents of an Italy incorporated issuer not listed on a regulated market:

- (a) the notice of call of a general meeting to be given at least 30 days prior to the date of the relevant meeting; and
- (b) this period of notice to be (i) extended to 40 days before the date of the meeting for meetings at which resolutions for the appointment of directors and statutory auditors are to be proposed, and (ii) reduced to 21 days before the date of the meeting for those meetings at which resolutions for the reduction of capital pursuant to losses, the reduction of capital below the legal minimum, and the appointment and replacement of liquidators are to be proposed.

4.3 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 have a material interest in a transaction or arrangement, in which case they are required, by the Rules, to abstain from voting to approve the transaction or arrangement<sup>12</sup>. Italy incorporated listing applicants must demonstrate how they will 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.

### ***Potential requirement to dematerialise shares***

5.2 Under Italian law, shares of an Italy incorporated company admitted to trading on an Italian regulated market or widely distributed among the public must be fully dematerialised. Dematerialisation means that title to shares is not evidenced by way of share certificates. Under Italian law, where the shares of a company are dematerialised, title to the shares is evidenced by the member's name being recorded in the account held by the authorised intermediary

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<sup>12</sup> JPS, paragraph 38.

qualified at Monte Titoli S.p.A, the Italian central securities depository, with whom the shares are deposited.

- 5.3 Currently, an Italian issuer listed on the Exchange would not be considered admitted to trading on a regulated market or having shares widely distributed among the public under Italian law. Therefore an Italian issuer listed on the Exchange is not required to dematerialise its shares under the relevant Italian regulations. However, there remains a possibility that the Italian regulators may adopt a different interpretation of the relevant Italian regulations in the future and require an Italian issuer listed on the Exchange to dematerialise its shares.

#### Our Approach

- 5.4 An Italian applicant should disclose in its listing document the risk that it may be required to dematerialise its shares and the actions that would be taken by the Italian applicant and its members should it be required to dematerialise its shares in the future, and the impact of this on its listing on the Exchange. In addition, an Italian applicant should regularly assess whether it is, or will at a future point in time, be required to dematerialise its shares under the relevant Italian regulations, and if so, it must undertake to inform the Exchange at the earliest possible opportunity, together with its detailed arrangements in this regard.

#### ***Identity of Members' Proxies at General Meetings***

- 5.5 The JPS states that an overseas issuer must notify the Exchange of any restrictions on a Hong Kong investor's right to attend general meetings and to vote and/or to appoint proxies<sup>13</sup>.
- 5.6 Although Italian law provides that any person with the right to vote may appoint a proxy to attend general meetings, the identity of proxies for an Italy incorporated company not admitted to trading on a regulated market in Italy exclude:
- (a) the company's directors, members of its board of statutory auditors and its employees; and
  - (b) the company's subsidiaries and each of their respective directors, members of their boards of statutory auditors and employees.

#### Our Approach

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<sup>13</sup> JPS, paragraph 70(f).

- 5.7 We do not consider this restriction under Italian law to be material to shareholder protection. However, the restriction on the identity of the proxies must be set out in the listing document.

## **6. Constitutional Documents**

- 6.1 Italian 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 Italy 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, International Financial Reporting Standards as endorsed by the European Union ("EU-IFRS") for use by European Union companies and the Italian Auditing Standards are acceptable to the Exchange<sup>16</sup>. In a previous case, we allowed an Italy incorporated issuer to use EU-IFRS for its accountants' reports and all subsequent financial statements, and for these to be audited to Italian auditing standards. 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 understand that members of an Italy incorporated issuer will be subject to various Italian taxes including:
- (a) capital gains tax on gains earned on a sale of shares;
  - (b) withholding tax on dividends; and
  - (c) financial transactions tax on all transactions involving the transfer of ownership of shares.

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<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 50 and 56 to 62.

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



- 8.2 The applicable tax rates of the above taxes are dependent on, among other things, whether the Exchange is considered a regulated market under Italian regulations and whether there is any double tax treaty or exchange of information agreement in force between Hong Kong and Italy. Currently, the Exchange is not such a regulated market, and there is no double tax treaty and no exchange of information agreement in force between Hong Kong and Italy.

Our Approach

- 8.3 We expect an Italy incorporated applicant to disclose the following prominently in its listing document:
- (a) the rate of tax investors in its securities will have to pay. This disclosure must break down the tax payable by the relevant factors that affect the tax rate (e.g. residence in Italy, percentage of share capital owned, corporate or individual shareholding etc.);
  - (b) whether an Italian issuer listed on the Exchange would be considered admitted to trading on a regulated market or having shares widely distributed among the public under Italian law;
  - (c) a statement on whether there is any treaty between Italy and Hong Kong that may affect the tax payable;
  - (d) the tax reporting obligations that Hong Kong investors will be subject to;
  - (e) the effect of holding the issuer's shares through CCASS or outside CCASS on any tax payable (if any); and
  - (f) the procedures for claiming any tax relief or exemptions (if any).
- 8.4 We expect appropriate disclosure of taxation in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and in any sections summarising Italian laws and regulations. An Italy incorporated issuer should also consider issuing publications to its members explaining the steps to file tax returns with the Italian authorities, and after listing, as and when necessary, it should publish announcements in respect of any updates to the Italian tax regime which may affect Hong Kong investors.

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

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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Italian Laws, Regulations and Practice</b>	<b>Our Approach</b>
Appendix 3, 2(1)	All certificates for capital must be under seal affixed only with the authority of the directors.	Under Italian law, a company’s share certificates will be issued either under the hand of or machine imprinted signature of one director of the company who is being granted the authority of the board of directors.	<p>In a previous case, an Italy incorporated company was not required to have a seal under Italian law, and we considered that this would not result in undue risks or prejudice to the interests of its shareholders. 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, 3(2)	Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend.	Power to forfeit unclaimed dividend shall be exercised within 5 years, a longer period is not allowed under Italian law.	<p>In a previous case, we considered that imposing a six-year restriction period would be inconsistent with and unenforceable under Italian law. 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>