

COUNTRY GUIDE – Japan¹

(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 Information in this country guide may be outdated upon the introduction of such listing regime.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 Exchange². 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 Japan include SBI Holdings, Inc. (Delisted in June 2014; Old Stock Code: 06488).

² 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). In addition to the waivers described in this document, all issuers incorporated in Japan 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

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

The statutory securities regulator in Japan, namely Financial Services Agency, is a full signatory to IOSCO MMOU⁵ and Japan 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 consider waivers from strict compliance with the Rules on abstention from voting by shareholders with a material interest in a transaction. This is if the issuer meets certain conditions for voting on a transaction where shareholders' approval is required.

We are also prepared to consider other waivers from strict compliance with our Rules. These waivers may be conditional on the issuer giving us undertakings to comply with certain requirements set out in this guide.

We are prepared to accept financial statements that conform to Generally Accepted Accounting Principles of Japan 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. These must contain 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).

A Japanese issuer that issues bearer shares must explain the risks of holding these shares in certificated form on its share certificate. It must also adopt an internal rule that any

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

person seeking to have his name recorded in its Hong Kong branch share register must present share transfer forms.

We expect a Japanese issuer to prominently and fully disclose in its listing document details of all Japanese tax on gains from sales of securities, inheritance and gift taxes applicable to Hong Kong shareholders.

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1. Background

- 1.1 The Japanese equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Japanese Companies Act (“JCA”), which sets requirements for Japanese incorporated companies. Public companies in Japan must also comply with the Financial Instruments and Exchange Act (“FIEA”), and issuers listed on Tokyo Stock Exchange (“TSE”) and/or Osaka Stock Exchange (“OSE”) must, in addition, comply with the rules of these exchanges⁶. The Financial Services Agency (“FSA”) is the statutory securities regulator in Japan (*Updated in April 2014*).

2. Application of this Country Guide

- 2.1 This Country Guide is applicable to overseas listing applicants incorporated in Japan as set out in the table below.

	Primary Listing	Secondary Listing
Main Board	All sections	All sections except 7, 8 and 10*
GEM		<i>Not applicable**</i>

* *Secondary listed issuers are granted an automatic waiver from the Rules that are the subject of these sections.*

** *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 Japan as the FSA is a full signatory to the IOSCO MMOU. In addition, the FSA has signed a Statement of Intent Concerning Cooperation, Consultation and the Exchange of Information with the SFC (*Updated in January 2022*).

⁶ On 1 January 2013, the TSE and OSE merged their operations under one holding company, the Japan Exchange Group, Inc.

- 3.2 If a listing applicant is incorporated in Japan but its place of central management and control⁷ 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 Japan 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.

Based on submissions by a potential applicant, we have set out below details of the differences between practices in Japan and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (the “**JPS**”) (repealed as of 1 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. Japan 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 Japanese 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 Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of general meetings. Under Japanese law, a notice of a general meeting of a public company must be dispatched at least two weeks prior to the date of the meeting (*Last updated in January 2022*).

The Exchange has previously accepted the notice requirement for convening general meetings under Japanese law for a Japan incorporated issuer applying for secondary listing.

⁷ Main Board Rule 8.02A.

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. Japan incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*)

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 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. Japan incorporated listing applicants must demonstrate how they will comply with this requirement (see Section 6).

Subsequent Development since 1 January 2022

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. Japan incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*)

Other Core Shareholder Protection Standards

- 4.3 Compared to the then JPS and the previous Appendix 3⁸ to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives⁹ and inspect Hong Kong Branch Register¹⁰ are added to require the applicants to demonstrate conformity. Applicants incorporated in Japan 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 the 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 ("HDRs"); taxation; and stock name identifications. Applicants are encouraged to notify the Listing Division if they

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

⁹ Appendix 3, paragraph 18

¹⁰ Appendix 3, paragraph 20

envisage difficulties in complying with such matters, where applicable (*Updated in January 2022*).

Availability of Share Register for Inspection by Non-Shareholders and Non-Creditors

- 5.2 Under the then JPS, an overseas issuer must notify the Exchange and its members of any conditions for inspection of its Hong Kong branch share register.
- 5.3 Under Japan's Personal Information Protection Law, any person who is not a shareholder or creditor of a company may not inspect or obtain a copy of the shareholders' register unless specifically allowed under the law (*Updated in March 2016*).

Our Approach

- 5.4 An issuer subject to Japan's Personal Information Protection Law must notify the Exchange and its members whether and on what conditions its branch register in Hong Kong will be open to inspection by members or the public and under what circumstances the register will be closed.

Subsequent Development since 1 January 2022

- 5.5 Such requirement is now relocated to paragraph 18(d) of the Guidance for Overseas Issuers (HKEX-GL111-22) (*Added in January 2022*).

Identity of Proxies at Shareholders' Meetings

- 5.6 Under the then JPS, an overseas issuer must notify the Exchange of any restrictions on a Hong Kong investor's right to attend general meetings to vote and/or to appoint proxies (*Updated in January 2022*).
- 5.7 Under Japanese law, a corporate shareholder, including a clearing house, can appoint multiple corporate representatives or proxies to attend shareholders' meetings on its behalf. We understand it is a common and recommended practice for Japanese companies to restrict the appointment of proxies to persons that are either other shareholders or lawyers or accountants. This is for the purpose of the orderly conduct of shareholders' meetings. Hong Kong laws do not impose this restriction.

Our Approach

- 5.8 We do not consider this difference in requirements under Japanese law to be material to shareholder protection.

Subsequent Development since 1 January 2022

- 5.9 Such requirement is now relocated to paragraph 18(f) of the Guidance for Overseas Issuers (HKEX-GL111-22) (*Added in January 2022*).

Eligibility of securities for deposit, clearance and settlement in CCASS

- 5.8 The then JPS provides that all listing applicants must make arrangement with Hong Kong Securities Clearing Company Limited (“**HKSCC**”) to ensure their securities are accepted as eligible for deposit, clearance and settlement in Central Clearing and Settlement System (“**CCASS**”) in accordance with the General Rules of CCASS (*Last updated in January 2022*).

Under HKSCC’s existing model, HKSCC, in its capacity as central securities depository, holds the legal title to shares of companies on the Exchange as the shareholder on record in a branch register held in Hong Kong. HKSCC’s clearing participants hold the beneficial interest in such shares in their CCASS stock accounts opened with HKSCC for themselves and/or as custodian for the underlying investors that they represent. When a sale/purchase transaction in respect of such shares is made on the Exchange, a transfer of title or beneficial ownership in such shares amongst HKSCC’s clearing participants is effected by way of book entry transfer amongst CCASS stock accounts (*Added in March 2016*).

Our Approach

- 5.9 To ensure that HKSCC can continue to provide clearing and central securities depository services as envisaged in the CCASS rules and procedures, where a listing applicant wishes to list shares of a company incorporated in Japan on the Exchange, it must confirm and ensure that under Japanese law, HKSCC’s clearing participants and the underlying investors would acquire a proprietary interest in such shares which is perfected against third parties. Therefore, in addition to making the necessary disclosures in the listing documents and providing us with an appropriate legal opinion, we would request the listing applicant to, at the minimum, include an annotation in the company’s register of members to reflect HKSCC’s capacity as only holding the shares on trust for underlying investors pursuant to the CCASS rules and its existing structure as described in 5.8 above (*Last updated in January 2022*).
- 5.10 If a listing applicant is not in a position to meet the requirements mentioned in 5.9, we would request that it consider applying for the listing of depository receipts on the Exchange instead of shares (*Added in March 2016*).

Subsequent Development since 1 January 2022

- 5.11 Such requirement is now relocated to paragraph 17 of the Guidance for Overseas Issuers (HKEX-GL111-22) (*Added in January 2022*).

6. Constitutional Documents

- 6.1 Japanese laws and regulations do not have equivalent provisions to comply with the 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 a Japan incorporated issuer's constitutional documents in order for it to meet the Listing Rule requirements (*Updated in January 2022*).

Material Interest in a Transaction

- 6.2 The Rules require shareholders that are interested in a transaction to abstain from voting at a general meeting to consider the transaction¹¹. In addition, controlling shareholders must abstain from voting in favour of certain matters in a general meeting. Also, an issuer's constitutional documents must state that where any shareholder is restricted by the Rules from voting on any particular resolution, any votes cast must not be counted¹².
- 6.3 Japanese law prohibits a company from amending its constitutional document to restrain or restrict its shareholders, including a controlling shareholder, from voting on any particular resolution. Under Japanese law, each shareholder is entitled to a single vote for each share (or each unit of shares) he holds in a company and there are no circumstances in which this right may be restricted¹³.

Our Approach

- 6.4 We are prepared to consider granting a waiver from the Rules in respect of the requirement that shareholders with a material interest in a transaction abstain from voting. This is on the condition the issuer undertakes that for any transaction where shareholders' approval is required:
- (a) the issuer appoints its compliance advisor or another independent financial or legal advisor to review the votes counted by the share registrar and they confirm that the resolution would have been successfully passed if the votes cast had excluded the votes of shareholders that would be required to abstain under the Rules;
 - (b) the transaction agreement contains a condition precedent that the issuer obtains the confirmation described in (a) above; and
 - (c) the issuer conducts the transaction only if the condition precedent is satisfied.

¹¹ Principle in Main Board Rule 2.15 applied specifically in Main Board Rules 6.12(1), 6.13, 7.19(6)(a), 7.19(7), 7.19(8), 7.21(2), 7.24(5)(a), 7.24(6), 7.24(7), 7.26A(2), 13.36(4)(a), 13.36(4)(b), 17.04(1) and certain Chapter 14 and 14A of the Main Board Rules.

¹² Appendix 3 to the Main Board Rules, paragraph 14(4).

¹³ Except where their shares are to be repurchased in compliance with JCA.

6.5 We are prepared to consider waivers from the Rule requiring the amendment of constitutional documents described in paragraph 6.2, if the issuer complies with the above conditions¹⁴. This may not be the only acceptable approach.

7. Audit Committee

7.1 The Rules set out requirements for the establishment, role and responsibilities of an issuer's audit committee¹⁵.

7.2 Under Japanese law, a public company is required to adopt either:

- (a) Statutory Auditors or a Board of Statutory Auditors,
- (b) a Three-Committee system by establishing a nominating committee, a remuneration committee, and an audit committee; or
- (c) an audit committee system by establishing an audit committee¹⁶. (*Updated in March 2016*)

7.3 The roles and responsibilities of the Statutory Auditors and a Board of Statutory Auditors closely correspond with those required of an audit committee by the Rules. The main difference is that a Statutory Auditor cannot act as a director or employee of an issuer or any of its subsidiaries to preserve their independence. However, Statutory Auditors owe fiduciary duties and have a duty of care to the issuer similar to that of a director under Japanese law.

Our Approach

7.4 We are prepared to consider granting a waiver from the Rules requiring an audit committee for Japanese listed companies with Statutory Auditors or a Board of Statutory Auditors. This is on the condition that the issuer:

- (a) continues to comply with its existing obligations under Japanese law and the regulations for Statutory Auditors;
- (b) undertakes to inform us and publish an announcement as soon as practicable upon the appointment or resignation of a Statutory Auditor; and
- (c) the Statutory Auditors undertake as follows:
 - (i) to amend their rules and standards to ensure that¹⁷:
 - (A) at least one Statutory Auditor nominated for appointment to the Board of Statutory Auditors will have the appropriate accounting

¹⁴ A waiver of Appendix 3 to the Main Board Rules, paragraph 14(4).

¹⁵ Main Board Rules 3.21 to 3.23.

¹⁶ The term "audit committee" is an unofficial English translation for identification purpose only. It was introduced to the Japan Companies Act in June 2014.

¹⁷ The internal rules and duties of Statutory Auditors.

or related financial management expertise required by our Rules¹⁸;

- (B) a majority of the Statutory Auditors, including the chairman of the Board of Statutory Auditors, are able to meet the independence criteria required by our Rules¹⁹; and
 - (C) the issuer explains why it does not comply with our Corporate Governance Code provisions for audit committees in its annual and interim reports²⁰;
- (ii) for as long as the issuer is listed on the Exchange:
- (A) not to reverse the amendments to the rules and standards required by (c)(i); and
 - (B) to ensure that any new Statutory Auditor appointed will provide an undertaking not to reverse the amendments to the rules and standards required by (c)(i); and
- (iii) to provide the Exchange with a set of undertakings that they will comply with their statutory duties and obligations.

8. Methods of Listing

8.1 The table below sets out our approach to dealing with offerings by Japanese companies that take place outside Hong Kong. We have categorised these by reference to the closest equivalent offering type in Hong Kong.

Method	Japanese Equivalent	Our Approach
Offer for subscription and offer for sale	The fairness of the allotment basis is governed by the FIEA ²¹ .	We will consider Rules waivers for any public offering an issuer undertakes outside Hong Kong ²² . This includes a waiver from the requirement for a listing document to be issued. This is on condition the issuer publishes, via the HKEx website, any announcement or document required to be issued in connection with the

¹⁸ Main Board Rule 3.10(2).

¹⁹ Main Board Rule 3.13.

²⁰ Section C.3 of Appendix 14 to the Main Board Rules.

²¹ FIEA, Articles 4(1) and 5(1).

²² Main Board Rules 7.03 to 7.05 and 7.07 to 7.08.

Method	Japanese Equivalent	Our Approach
		offering under applicable Japanese laws, rules and regulations.
Placing	Broadly equivalent to a non-pro-rata allotment of shares or share acquisition rights to specific persons. These are subject to JCA ²³ and the TSE ²⁴ or OSE ²⁵ rules.	We will consider Rules waivers for any placing an issuer undertakes outside Hong Kong ²⁶ . This includes a waiver from the requirement for a listing document to be issued.
Open Offers	No equivalent. The closest concept is an “allotment of shares to shareholders” under Japanese law ²⁷ . These allotments have very rarely been used in Japan since the 1990s.	We will consider Rules waivers for any pro-rata allotment of shares outside Hong Kong ²⁸ . This includes a waiver from the requirement for a listing document to be issued. This is on condition the issuer publishes, via the HKEx website, any announcement or document required to be issued in connection with the offering under applicable Japanese laws, rules and regulations.
		The issuer must also ascertain whether Hong Kong holders of its securities wish to accept such allotments with sufficient advance notice.

9. Accounting and Auditing Related Requirements

- 9.1 We normally require the accountants’ reports and financial statements of overseas issuers seeking a primary or secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards (“**HKFRS**”) or the International Financial Reporting Standards (“**IFRS**”)²⁹ (*Updated in January 2022*).
- 9.2 Almost all listed issuers in Japan use Japanese Generally Accepted Accounting Principles (“**JGAAP**”). The European Commission announced in December 2008 that JGAAP would be considered to be equivalent to EU-IFRS provided that the

²³ JCA, Articles 1992(2), 201(1), 238(2) and 240(1), 309(2)(vi).

²⁴ TSE Listing Regulations, Article 432.

²⁵ OSE Rules Regarding the Code of Conduct, Article 2.

²⁶ Main Board Rules 7.10 and 7.12.

²⁷ JCA, Article 202.

²⁸ Main Board Rules 7.24 to 7.27.

²⁹ 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)

Accounting Standards Board of Japan continued its convergence activities³⁰. Japanese companies listed on European Union markets are accordingly allowed to file their financial statements in accordance with JGAAP.

Our Approach

- 9.3 We are prepared to consider allowing a Japan 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 a secondary listing on the Exchange to use JGAAP³¹ for its accountants' reports and all subsequent financial statements. This is on the condition that the issuer prepares a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS in its accountants' reports and subsequent financial statements³² (*Updated in January 2022*).

10. Contents of Financial Statements

- 10.1 The Rules set out the minimum financial information that an issuer must include in its annual reports, interim reports, preliminary announcements of full-year results and preliminary announcements of interim results³³. JGAAP (see paragraphs 9.1 to 9.3) does not require the reporting of some of the information required by our Rules.

Our Approach

- 10.2 We are prepared to consider granting a waiver from our Rules on financial statement content requirements for Japanese incorporated issuers listed in Japan that we have allowed to report using JGAAP on a case-by-case basis.

11. Bearer Shares

- 11.1 Under Japanese law, ownership of shares in an issuer not listed in Japan may be transferred by the physical transfer of share certificates without the transferor and transferee having signed any document evidencing such transfer. Holders of share certificates are presumed to have legal rights over the shares represented by the certificates. This type of shares is known as "bearer shares". Issuers listed on a

³⁰ In 2007, an agreement between the Accounting Standards Board of Japan and the International Accounting Standards Board known as "The Tokyo Agreement" was announced that advanced the gradual convergence of JGAAP and IFRS.

³¹ 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.

³² 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).

³³ Appendix 16 to the Main Board Rules.

stock exchange in Japan must have scripless shares with registration of a transfer effected through a book entry system. See Appendix (*Updated in January 2022*).

- 11.2 This means a person holding a share certificate himself or through a third party is exposed to the risk of losing the value of the shares represented by the certificate if the share certificate is lost or destroyed. A shareholder that loses his certificate is exposed to the risk a third party finds it and requires the issuer to recognise him as the shareholder. Also, Japanese law does not permit a registered shareholder of a lost certificate to transfer his shares during the mandatory one-year waiting period for a replacement certificate.

Our Approach

- 11.3 Japan incorporated issuers can apply to list HDRs instead of bearer shares to avoid these issues. HDRs can be held by Hong Kong investors in substantially the same way as shares and overcome many operational and legal difficulties. We have published guidance on our HDR regime on the HKEx website³⁴.
- 11.4 If a Japanese issuer does not list HDRs and wishes to list bearer shares, it must explain the risks of holding these shares in certificated form on the share certificate itself. This explanation can refer to full disclosure of the risks in the issuer's listing document. HKEx will also warn CCASS Participants and Exchange Participants of these risks in a circular and remind investors of them in a document attached to a share certificate when it is withdrawn from CCASS. The Exchange has also included a section on the risks of bearer shares in the "*Understanding the Risks of Investing in Overseas Issuers*" section of the HKEx website³⁵ (*Updated in January 2022*).

12. Taxation

- 12.1 We understand that a Japanese issuer's shareholders will be subject to various taxes, as summarised below.
- 12.2 Withholding tax on dividends: A Japanese issuer's shareholders are subject to withholding tax on dividends paid by the issuer. The amount of tax payable may differ according to the circumstances of the investor. Tax treaties between Japan and Hong Kong may also affect the tax payable³⁶. An investor may only be able to claim exemption or relief from tax if he holds his shares in his own name on the issuer's share register (i.e. outside CCASS).
- 12.3 Tax on gains from sales of securities: Gains derived from the sale outside Japan of a Japanese issuer's securities by a non-resident holder are in general not subject to

³⁴ http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listsptop_drf/df_main_index.htm.

³⁵ <http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/rioi.htm>

³⁶ E.g. the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income dated 9 November 2010.

Japanese income or corporation taxes, except for any holder who substantially holds:

- (a) 25% or more of the securities issued by the relevant Japanese issuer at any time during the taxable year of the sale or during two preceding years; and
- (b) transfers of 5% or more of the outstanding shares within one taxable year.

12.4 Inheritance and gift Taxes: Japanese inheritance and gift taxes at progressive rates may be payable by an individual who has acquired a Japanese issuer's securities as a legatee, heir or donee. This is even though neither the individual nor the deceased nor the donor is a resident of Japan.

Our Approach

12.5 We expect a Japanese issuer to prominently disclose the following in its listing document:

- (a) the rate of tax investors in its securities will have to pay under Japanese law. This disclosure must break down the tax payable by the relevant factors that affect the tax rate (e.g. residence in Japan, percentage of share capital owned, timing of dividend payment, corporate or individual shareholding etc.);
- (b) details of any treaty between Japan and Hong Kong that may affect the tax payable;
- (c) the effect of holding the issuer's shares through CCASS or outside CCASS on any tax payable; and
- (d) the procedures for claiming any tax relief or exemptions.

12.6 We expect appropriate disclosure of taxation in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and any sections summarising Japanese laws and regulations.

APPENDIX

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

Our Approach to Differences between Our Constitutional Document Requirements ^(note) and Japanese 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. 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	Japanese 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, 1(1)	Transfers and other documents relating to or affecting the title to any registered securities shall be registered.	<p>Issuers listed on a stock exchange in Japan</p> <p>The issuer’s shares must be scripless and registration must be made through a book-entry system operated by, Japan Securities Depository Center, Inc.</p>	<p>Issuers listed on a stock exchange in Japan</p> <p>In a previous case, we considered that the Japanese scripless book-entry system for listed shares sufficiently ensures the proper registration of transfers. A waiver of this articles provision was granted.</p>	<p>This articles provision was repealed on 1 January 2022. Rules 13.58 to 13.60 of the Listing Rules contain the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

APPENDIX

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

Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach Prior to 1 January 2022	Subsequent Development Since 1 January 2022
(not effective after 31 December 2021)				
		<p>(“JASDEC”)³⁷. Registration in the shareholders’ registry is ordinarily updated upon receipt of a general shareholders’ notice given by JASDEC and not upon receipt of individual claims by shareholders.</p> <p>Issuers not listed on a stock exchange in Japan</p> <p>If the issuer’s articles state that physical share certificates must be issued, ownership can be transferred simply by the delivery of the share certificates, regardless of</p>	<p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p> <p>Issuers not listed on a stock exchange in Japan issuing physical share certificates</p> <p>We expect the issuer to have a Hong Kong branch share register recording the names of shareholders holding shares on that register, to adopt an internal rule and to give a related undertaking to the Exchange that, effective upon listing, any person seeking to have his name recorded as a shareholder in</p>	

³⁷ Book-Entry Act, Article 140.

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		whether the transferor is named in the share register as the legal holder of the relevant shares.	the issuer's Hong Kong branch share register must present share transfer forms in order for a registration to be valid. These forms are not required for a new entry to the issuer's share register in Japan.	
Appendix 3, 1(2)	Fully-paid shares must be free from any restriction on the right of transfer and free from all liens	Japanese law contains no equivalent requirement for free transferability or being free of liens. However, TSE and OSE rules require the de-listing of an issuer's securities if transfer restrictions are imposed upon them ³⁸ . Japanese law requires that all shares must	In a previous case, as an alternative to changing its constitutional documents, we accepted an issuer's undertaking that it will not take any action to impose transfer restrictions on any of its fully-paid shares that are listed or proposed to be listed on the Exchange or	This articles provision was repealed on 1 January 2022. Rule 8.13 of the Listing Rules contains the comparable requirement. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.

³⁸ TSE Listing Regulations, Article 601, paragraph 1(14); OSE Delisting Rules, Article 2, paragraph 1(14).

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		be fully-paid before issuance.	subject these shares to any lien. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	
Appendix 3, 1(3)	Any limit on the number of shareholders on a joint securities account must not be higher than four persons.	Japanese law contains no equivalent requirement.	In a previous case, as an alternative to changing its constitutional documents, we accepted an issuer’s undertaking that it will not impose a limitation on the number of persons that may register for a joint account. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant	This articles provision was repealed on 1 January 2022.

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			is entitled to an “automatic waiver” for this item.	
Appendix 3, 2(1)	All certificates for capital must be under seal affixed only with the authority of the directors.	TSE rules and the Book-Entry Act require listed shares to be scripless ³⁹ .	In a previous case, we considered that the Japanese scripless system complies with the principle of the Rule requirement and provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022. Paragraphs 4, 11 and 28 of Appendix 2B of the Listing Rules contain the comparable requirement. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3,	No new share warrant to bearer can be issued to	Under Japanese law, any holders of bearer share	In a previous case, we considered that Japanese law	This articles provision was repealed on 1 January 2022.

³⁹ TSE Listing Regulations, Article 205(11) and Article 601, paragraph 1(16); Book-Entry Act, Article 128, paragraph 1.

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2(2)	replace one that has been lost, unless the issuer is satisfied beyond reasonable doubt the original has been destroyed	warrants who have lost certificates may not request the reissuance of their certificates until they have obtained a decision for invalidation by a court of justice in Japan ⁴⁰ (<i>Updated in March 2016</i>).	provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item. See also paragraph 11.4 of this Country Guide.	
Appendix 3, 3(1)	Any amount paid in advance on calls on any share may carry interest but must not entitle the holder to participate in a subsequently declared dividend.	Japanese law contains no equivalent requirement. All consideration due for shares issued must be paid in full upon their issuance and subsequently the party	In a previous case, we considered that the requirement was not applicable. A waiver of this articles provision was granted.	This articles provision was repealed on 1 January 2022.

⁴⁰ Non-Contentious Cases Procedures Act of Japan, Article 100; JCA, Article 291 (*Updated in March 2016*).

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		subscribing to the shares would be entitled to dividends ⁴¹ .	Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	
Appendix 3, 4(1) and Note	A director must not vote on any board resolution in which he or any of his associates has a material interest and must not be counted in the quorum of the board meeting.	Japanese law requires a director to disclose the material facts of any proposal he is interested in at the beginning of the relevant meeting of the board of directors to approve the transaction and he or she is not entitled to vote at the board meeting, or to be included in the quorum ⁴² .	In a previous case, we considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022. Rule 13.44 contains the comparable requirement. Main Board Rule 19C.11 provides an automatic waiver for secondary listing applicants for compliance with the relevant Listing Rule.

⁴¹ JCA, Articles 34 and 208.

⁴² JCA, Article 356.

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Appendix 3, 4(2)	Any person appointed by the directors to fill a casual vacancy on the board must hold office only until the following annual general meeting and will then be eligible for re-election.	Under Japanese law, a vacant directorship may only be filled following a vote of shareholders in a general meeting. If the vacancy causes the number of appointed directors to fall below the number of directors required (three directors are required to be appointed under Japanese law), the other directors must without delay convene a shareholders' meeting to a fine of up to ¥1million if they fail to comply.	We consider that this requirement is not applicable and would expect to be able to grant a waiver of this articles provision. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This item has remained effective in the revised Appendix 3. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3,	The issuer in a general	Japanese law provides a	In a previous case, we	This item has remained effective in

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4(3)	meeting must have power by ordinary resolution to remove any director before the expiration of his period of office.	shareholders' meeting with an equivalent power ⁴³ .	considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, no "automatic waiver" is available to a secondary listing applicant for this item.	the revised Appendix 3.
Appendix 3, 4(4)	The minimum length of the period for notice to the issuer of an intention to propose a person for election as a director and that person to notify the issuer of his willingness to be elected,	Under Japanese law, a shareholder is permitted to propose an amendment of any agenda at a shareholders' meeting without any prior notice if the agenda is scheduled to	In a previous case, we considered that Japanese law would provide an acceptable level of shareholder protection, subject to the condition that if the issuer receives a notice from a	This articles provision was repealed on 1 January 2022.

⁴³ JCA, Article 339, paragraph 1.

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	<p>must be at least seven days.</p> <p>An issuer must publish an announcement or issue a supplementary circular upon receipt of a notice from a shareholder to propose a person for election as a director at a general meeting where the notice is received by the issuer after publication of the notice of meeting (Main Board Rule 13.70).</p>	<p>be discussed and determined at the general shareholders' meeting⁴⁴. Such last minute changes to the agenda are exceptionally rare in practice.</p> <p>A seven-day notice period would be inconsistent with and unenforceable under Japanese law.</p>	<p>shareholder in the circumstances described by Appendix 3, paragraph 4(4), the issuer must use all means and resources reasonably available to announce the notices referred to in Rule 13.70 as soon as reasonably practicable before the meeting. This notice must be published in both English and Chinese on both the HKEx website and the issuer's website. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant</p>	
Appendix 3, 4(5)	The period for lodgment of notices referred to in Appendix 3, paragraph 4(4) must start no earlier than the day after the dispatch of the			<p>This articles provision was repealed on 1 January 2022. Note to Rule 13.70 contains the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of</p>

⁴⁴ JCA, Article 304

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	notice of the meeting appointed for such election and end no later than seven days prior to the date of the meeting.		is entitled to an “automatic waiver” for this item.	compliance from the relevant Listing Rule if it considers necessary.
Appendix 3, 5	<p>A copy of either (i) the directors’ report, with the balance sheet and profit and loss account or income and expenditure account; or (ii) the summary financial report shall, at least 21 days before the date of the general meeting, be delivered or sent by post to the registered address of every member.</p> <p>An overseas issuer must send every member and every other holder of its listed</p>	<p>Under Japanese law, an annual general meeting (“AGM”) must be held within three months after the financial year end, rather than four months under the Rules.</p> <p>Japanese law requires a company to send its shareholders a convocation notice containing a business report and an audited financial report not less than 14 days before the</p>	<p>In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer’s undertaking with use reasonable endeavours to deliver the convocation notice at least 21 days before the AGM in hard copy. The issuer can publish the business report and financial statements electronically and make reference to them in the convocation notice. A</p>	<p>This articles provision was repealed on 1 January 2022. Rules 13.46(1) and 13.46(2) contain the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.</p>

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	securities a copy of either its annual report, or summary financial report, not less than 21 days before its AGM and in any event not more than four months after its financial year end (Rule 13.46(2)(a)).	AGM ⁴⁵ .	waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	
Appendix 3, 6(1)	Adequate voting rights must be secured to shareholders who hold preference shares.	Preferred shareholders are afforded the right by Japanese law to vote in cases where their particular rights as a class are prejudiced ⁴⁶ .	In a previous case, we considered that Japanese law provided an acceptable level of shareholder 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.

⁴⁵ JCA, Article 196(1) (*Updated in March 2016*).

⁴⁶ JCA, Article 322.

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			waiver” for this item.	
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	Under Japanese law, the quorum requirement for a meeting of holders of any class of shares is, as a general rule, a majority of the votes of the shareholders of that class.	In a previous case, we considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	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.
Appendix 3, 8	If an issuer has the power to purchase for redemption a redeemable share: (1) purchases not made through the market or by tender must be limited to a maximum price; and	Under Japanese law, a company may issue callable shares so long as such shares are issued as a separate class (<i>Updated in March 2016</i>).	We considered that this requirement was not applicable. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant	This articles provision was repealed on 1 January 2022. Please refer to the Code on Share Buy-backs for protection for redeemable shareholders.

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	(2) if purchases are by tender, tenders must be available to all shareholders alike.		is entitled to an “automatic waiver” for this item.	
Appendix 3, 10(1)	If the capital of the issuer includes shares that do not carry voting rights, the words “non-voting” must appear in the designation of such shares.	No equivalent requirement exists under Japanese law, or TSE/ OSE rules.	In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer’s undertaking to designate: <ul style="list-style-type: none"> (i) shares and HDRs which do not carry voting rights with “non-voting”; and (ii) shares and HDRs, other than those with the most favourable voting rights, with “restricted voting” or “limited voting”. 	This articles provision was repealed on 1 January 2022. Paragraph 5(2) in Part B in Appendix 2 of the Listing Rules contains the comparable requirement. Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3, 10(2)	If the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most			This articles provision was repealed on 1 January 2022.

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	favourable voting rights, must include the words “restricted voting” or “limited voting”.		A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	
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 issuer.	There are no relevant provisions under Japanese law that would empower an issuer to take action on a shareholder’s failure to disclose their interests to the issuer.	In a previous case, we considered that this requirement was not applicable. A waiver of this articles provision was granted. Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.	This articles provision was repealed on 1 January 2022.

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Appendix 3, 13(1)	An issuer must not stop sending dividend warrants by post until these warrants are left uncashed on two consecutive occasions. However, an issuer may stop sending dividend warrants after the first occasion on which one is returned undelivered.	Japanese law states that in cases where notices (including dividend warrants) have not reached a shareholder for five consecutive years, the issuer is no longer required to give notices to the relevant shareholder. ⁴⁷	In a previous case, we considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	This articles provision was repealed on 1 January 2022.
Appendix 3, 13(2)	That where power is taken to sell the shares of a member who is untraceable it will not be exercised unless:- (a) during a period of 12 years at least three dividends in respect of	Japanese law provides that in cases where notices have not reached a shareholder for five consecutive years and the shareholder has not received dividends of surplus for five consecutive years, the company shall be	In a previous case, we considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted. Under the JPS, no	This articles provision was repealed on 1 January 2022.

⁴⁷ JCA, Article 437.

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	<p>the shares in question have become payable and no dividend during that period has been claimed; and</p> <p>(b) on expiry of the 12 years the issuer gives notice of its intention to sell the shares by way of an advertisement published in the newspapers and notifies the Exchange of such intention.</p>	<p>entitled to sell or auction the shares⁴⁸.</p> <p>In exercising this right, a company is required to make a public notice and a demand to a shareholder or a registered pledgee of the shares seeking no objection to the action at least three months before the sale or auction under Japanese law⁴⁹.</p>	<p>“automatic waiver” is available to a secondary listing applicant for this item.</p>	
Appendix 3, 14	If any shareholder is, under the Rules, required to abstain from voting on any particular resolution or restricted from voting only for or only	Japanese law contains no equivalent requirement (see paragraph 6.2 of this Country Guide).	In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer’s undertakings described in	This articles provision was relocated to Appendix 3, paragraph 14(3) and (4) on 1 January 2022.

⁴⁸ JCA, Article 197.

⁴⁹ JCA, Article 198.

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	against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.		<p>paragraph 6.4 of this Country Guide or other acceptable undertakings. A waiver of this articles provision was granted.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>	