

# COUNTRY GUIDE – Japan

(20 December 2013, updated in April 2014 and March 2016)

**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 Department 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 Japan must confirm to the Exchange, with its initial application for listing, that the Japanese 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 Japanese 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>. In addition to the waivers described in this document, all issuers incorporated in Japan 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 Japan incorporated companies meeting the conditions set out in this guide, we do not consider Japan's shareholder protection standards to be materially different to our own.

Japan 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 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 Japanese Generally Accepted Accounting Principles from issuers with, or seeking, a dual primary or secondary listing. 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.

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 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.

<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 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 exchanges<sup>4</sup>. 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 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>5</sup>. This requirement is met for issuers incorporated in Japan as the FSA is a full signatory of the IOSCO MMOU<sup>6</sup>. In addition, the FSA has signed a Statement of Intent Concerning Cooperation, Consultation and the Exchange of Information with the SFC.

<sup>4</sup> On 1 January 2013, the TSE and OSE merged their operations under one holding company, the Japan Exchange Group, Inc.

<sup>5</sup> JPS, paragraphs 42 to 44.

<sup>6</sup> International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

- 3.2 If a listing applicant is incorporated in Japan but its place of central management and control<sup>7</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 Japan incorporated issuers demonstrating<sup>8</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider Japan's shareholder protection standards to be materially different to our own<sup>9</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>10</sup>. 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 (***Updated in March 2016***).

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 Miscellaneous Provisions) Ordinance (Cap. 32) as from time to time in force as applicable to Hong Kong incorporated companies, (ii) the shareholding structure of the company, and (iii) company and transaction specific facts and circumstances (***Updated in April 2014***).

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

- 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

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<sup>7</sup> JPS, paragraph 45.

<sup>8</sup> We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

<sup>9</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

<sup>10</sup> JPS, paragraph 37.

from voting to approve the transaction or arrangement<sup>11</sup>. Japan incorporated listing applicants must demonstrate how they will comply with this requirement (see Section 6).

## 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 ("**HDRs**"); taxation; and stock name identifications. Applicants are encouraged to notify the Listing Department if they envisage difficulties in complying with such matters, where applicable.

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

- 5.2 Under the JPS, an overseas issuer must notify the Exchange and its members of any conditions for inspection of its Hong Kong branch share register<sup>12</sup>.
- 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.

### ***Identity of Proxies at Shareholders' Meetings***

- 5.5 Under the 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<sup>13</sup>.
- 5.6 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

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<sup>11</sup> JPS, paragraph 38.

<sup>12</sup> JPS paragraph 70(d).

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

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

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

#### ***Eligibility of securities for deposit, clearance and settlement in CCASS***

- 5.8 Paragraph 69 of the 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 (***Added in March 2016***).

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 be able to 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 prospectus 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 (***Added in March 2016***).
- 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***).

## **6. Constitutional Documents**

- 6.1 Japanese 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 a Japan incorporated issuer's constitutional documents in order for it to meet our requirements.

### ***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 transaction<sup>15</sup>. 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 counted<sup>16</sup>.
- 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 restricted<sup>17</sup>.

### 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

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<sup>14</sup> Appendix 3 to the Main Board Rules.

<sup>15</sup> 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.

<sup>16</sup> Appendix 3 to the Main Board Rules, paragraph 14.

<sup>17</sup> Except where their shares are to be repurchased in compliance with JCA.



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.

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 conditions<sup>18</sup>. 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 committee<sup>19</sup>.

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 committee<sup>20</sup>.  
***(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;

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<sup>18</sup> A waiver of Appendix 3 to the Main Board Rules, paragraph 14.

<sup>19</sup> Main Board Rules 3.21 to 3.23.

<sup>20</sup> The term "audit committee" is an unofficial English translation for identification purpose only. It was introduced to the Japan Companies Act in June 2014.

- (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 that<sup>21</sup>:
    - (A) at least one Statutory Auditor nominated for appointment to the Board of Statutory Auditors will have the appropriate accounting or related financial management expertise required by our Rules<sup>22</sup>;
    - (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 Rules<sup>23</sup>; and
    - (C) the issuer explains why it does not comply with our Corporate Governance Code provisions for audit committees in its annual and interim reports<sup>24</sup>;
  - (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.

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<sup>21</sup> The internal rules and duties of Statutory Auditors.

<sup>22</sup> Main Board Rule 3.10(2).

<sup>23</sup> Main Board Rule 3.13.

<sup>24</sup> Section C.3 of Appendix 14 to the Main Board Rules.

Method	Japanese Equivalent	Our Approach
<b>Offer for subscription and offer for sale</b>	The fairness of the allotment basis is governed by the FIEA <sup>25</sup> .	<p>We will consider Rules waivers for any public offering an issuer undertakes outside Hong Kong<sup>26</sup>. This includes a waiver from the requirement for a listing document to be issued.</p> <p>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.</p>
<b>Placing</b>	Broadly equivalent to a non- pro-rata allotment of shares or share acquisition rights to specific persons. These are subject to JCA <sup>27</sup> and the TSE <sup>28</sup> or OSE <sup>29</sup> rules.	We will consider Rules waivers for any placing an issuer undertakes outside Hong Kong <sup>30</sup> . This includes a waiver from the requirement for a listing document to be issued.
<b>Open Offers</b>	No equivalent. The closest concept is an “allotment of shares to shareholders” under Japanese law <sup>31</sup> . These allotments have very rarely been used in Japan since the 1990s.	<p>We will consider Rules waivers for any pro-rata allotment of shares outside Hong Kong<sup>32</sup>. This includes a waiver from the requirement for a listing document to be issued.</p> <p>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</p>

<sup>25</sup> FIEA, Articles 4(1) and 5(1).

<sup>26</sup> Main Board Rules 7.03 to 7.05 and 7.07 to 7.08.

<sup>27</sup> JCA, Articles 1992(2), 201(1), 238(2) and 240(1), 309(2)(vi).

<sup>28</sup> TSE Listing Regulations, Article 432.

<sup>29</sup> OSE Rules Regarding the Code of Conduct, Article 2.

<sup>30</sup> Main Board Rules 7.10 and 7.12.

<sup>31</sup> JCA, Article 202.

<sup>32</sup> Main Board Rules 7.24 to 7.27.

		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 to conform to the Hong Kong Financial Reporting Standards ("HKFRS") or the International Financial Reporting Standards ("IFRS")<sup>33</sup>.
- 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 Accounting Standards Board of Japan continued its convergence activities<sup>34</sup>. 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 allow a Japan incorporated issuer listed in Japan to use JGAAP for its accountants' reports and all subsequent financial statements. 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 financial statements, and it must revert to HKFRS or IFRS if it is no longer listed in a jurisdiction that allows JGAAP.

## 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 results<sup>35</sup>. JGAAP (see paragraphs 9.1 to 9.3) does not require the reporting of some of the information required by our Rules.

<sup>33</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 56 to 62.

<sup>34</sup> 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.

<sup>35</sup> Appendix 16 to the Main Board 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 stock exchange in Japan must have scripless shares with registration of a transfer effected through a book entry system. See page 1 of the Appendix.
- 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 website<sup>36</sup>.
- 11.4 If a Japanese issuer cannot 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

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<sup>36</sup> [http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listsptop\\_drf/df\\_main\\_index.htm](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listsptop_drf/df_main_index.htm).

section on the risks of bearer shares in the “*Understanding the Risks of Investing in Overseas Issuers*” section of the HKEx website<sup>37</sup>.

## 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 payable<sup>38</sup>. 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 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

<sup>37</sup>

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

<sup>38</sup>

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.

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.

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 and Japanese Laws, Rules and Practices

Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach
Appendix 3, 1(1)	Transfers and other documents relating to or affecting the title to any registered securities shall be registered.	<p><b>Issuers listed on a stock exchange in Japan</b></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. ("<b>JASDEC</b>")<sup>39</sup>. 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><b>Issuers not listed on a stock exchange in Japan</b></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</p>	<p><b>Issuers listed on a stock exchange in Japan</b></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>Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.</p> <p><b>Issuers not listed on a stock exchange in Japan issuing physical share certificates</b></p> <p>We expect the issuer to have a Hong Kong branch share register recording the</p>

<sup>39</sup> Book-Entry Act, Article 140.



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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
		of whether the transferor is named in the share register as the legal holder of the relevant shares.	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 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 <sup>40</sup> . Japanese law requires that all shares must be fully-paid before issuance.	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 subject these shares to any lien. A waiver of this articles provision was granted.

<sup>40</sup> TSE Listing Regulations, Article 601, paragraph 1(14); OSE Delisting Rules, Article 2, paragraph 1(14).

**APPENDIX**

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

<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
			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 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 <sup>41</sup> .	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.

<sup>41</sup> TSE Listing Regulations, Article 205(11) and Article 601, paragraph 1(16); Book-Entry Act, Article 128, paragraph 1.

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
			Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 2(2)	No new share warrant to bearer can be issued to replace one that has been lost, unless the issuer is satisfied beyond reasonable doubt the original has been destroyed.	Under Japanese law, any holders of bearer share 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 <sup>42</sup> ( <b>Updated in March 2016</b> ).	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 “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 subscribing to the shares would be entitled to dividends <sup>43</sup> .	In a previous case, we considered that the requirement was not applicable. A waiver of this articles provision was granted.  Under the JPS, an eligible secondary listing applicant is entitled to an

<sup>42</sup> Non-Contentious Cases Procedures Act of Japan, Article 100; JCA, Article 291 (**Updated in March 2016**).

<sup>43</sup> JCA, Articles 34 and 208.

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
			“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 <sup>44</sup> .	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.
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 appoint a successor. They will be subject	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.

<sup>44</sup> JCA, Article 356.

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Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach
		to a fine of up to ¥1million if they fail to comply.	
Appendix 3, 4(3)	The issuer in a general meeting must have power by ordinary resolution to remove any director before the expiration of his period of office.	Japanese law provides a shareholders' meeting with an equivalent power <sup>45</sup> .	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 "automatic waiver" is available to a secondary listing applicant for this item.
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, must be at least seven days.  An issuer must publish an	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 be discussed and determined at the general shareholders' meeting <sup>46</sup> . Such last minute changes to the agenda are exceptionally rare in practice.	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 shareholder in the circumstances described by Appendix 3, paragraph 4(4), the issuer must use all means and resources reasonably available to

<sup>45</sup> JCA, Article 339, paragraph 1.

<sup>46</sup> JCA, Article 304

**APPENDIX**

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Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach
	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).	A seven-day notice period would be inconsistent with and unenforceable under Japanese law.	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.  Under the JPS, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.
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 notice of the meeting appointed for such election and end no later than seven days prior to the date of the meeting.		
Appendix 3, 5	A copy of either (i) the directors' report, with the balance sheet and profit and loss account or	Under Japanese law, an annual general meeting (" <b>AGM</b> ") must be held within three months after the financial year end, rather	In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer's undertaking

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Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach
	<p>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 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)).</p>	<p>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 AGM<sup>47</sup>.</p>	<p>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 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, 6(1)	Adequate voting rights must be secured to shareholders who	Preferred shareholders are afforded the right by Japanese law to vote in cases	In a previous case, we considered that Japanese law provided an acceptable

<sup>47</sup> JCA, Article 196(1) (**Updated in March 2016**).

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Rule Paragraph	Rule Requirement	Japanese Laws, Regulations and Practice	Our Approach
	hold preference shares.	where their particular rights as a class are prejudiced <sup>48</sup> .	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.
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.
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	Under Japanese law, a company may issue callable shares so long as such shares are issued as a separate class ( <b>Updated in March 2016</b> ).	We considered that this requirement was not applicable. 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.

<sup>48</sup> JCA, Article 322.



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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
	<p>maximum price; and</p> <p>(2) if purchases are by tender, tenders must be available to all shareholders alike.</p>		
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.	<p>In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer’s undertaking to designate:</p> <p>(i) shares and HDRs which do not carry voting rights with “non-voting”; and</p> <p>(ii) shares and HDRs, other than those with the most favourable voting rights, with “restricted voting” or “limited voting”.</p> <p>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, 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 favourable voting rights, must include the words “restricted voting” or “limited voting”.		
Appendix 3,	No powers shall be taken to	There are no relevant provisions under	In a previous case, we considered that

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
12	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.	Japanese law that would empower an issuer to take action on a shareholder's failure to disclose their interests to the issuer.	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.
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. <sup>49</sup>	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.
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:-	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	In a previous case, we considered that Japanese law provided an acceptable level of shareholder protection. A waiver of this articles provision was granted.

<sup>49</sup> JCA, Article 437.

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
	<p>(a) during a period of 12 years at least three dividends in respect of 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>five consecutive years, the company shall be entitled to sell or auction the shares<sup>50</sup>.</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 law<sup>51</sup>.</p>	<p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>
<p>Appendix 3, 14</p>	<p>If any shareholder is, under the Rules, required to abstain from voting on any particular resolution or restricted from voting only for or only against any particular resolution, any</p>	<p>Japanese law contains no equivalent requirement (see paragraph 6.2 of this Country Guide).</p>	<p>In a previous case, as an alternative to amending its constitutional documents, we accepted an issuer’s undertakings described in paragraph 6.4 of this Country Guide or other acceptable</p>

<sup>50</sup> JCA, Article 197.

<sup>51</sup> JCA, Article 198.

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<b>Rule Paragraph</b>	<b>Rule Requirement</b>	<b>Japanese Laws, Regulations and Practice</b>	<b>Our Approach</b>
	votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.		undertakings. A waiver of this articles provision was granted.  Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.