

# COUNTRY GUIDE - Jersey<sup>1</sup>

(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 Information in this country guide may be outdated upon the introduction of such listing regime.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 Shareholders Protection Standards required by the Exchange<sup>2</sup>. Should there be any changes in the laws, regulations and market practices described in this country guide which might or would adversely affect a new applicant’s compliance with the expected Core Shareholder Protection Standards or any applicable Listing Rules, such new applicant should inform the Exchange of any such changes. A new applicant is also encouraged to consult the Exchange at the earliest opportunity if there is any enquiry on the guidance or requirements in this country guide.***

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<sup>1</sup> Previously listed issuers incorporated in Jersey include Glencore International plc (Delisted in January 2018; Old Stock Code: 00805).

<sup>2</sup> Including codification with modification of certain requirements under the Joint Policy Statement regarding the Listing of Overseas Companies, which are superseded and no longer effective as from 1 January 2022.

## Purpose of this Guide

This guide is one of a series that gives guidance on our treatment of listing applications from overseas issuers incorporated in a particular jurisdiction. The aim of this guide is to enhance applicants' understanding of our expectations, practices, procedures and the criteria we consider when applying the Rules for overseas issuers.

**This guide should be read in conjunction with the Listing Rules, in particular, the Core Shareholder Protection Standards, Chapter 19 of the Main Board Rules (Chapter 24 of the GEM Rules) (for primary listing applicants) and Chapter 19C of the Main Board Rules (for secondary listing applicants). All issuers incorporated in Jersey can apply for one or more “common waivers”<sup>3</sup> and those with, or seeking, a secondary listing do not need to apply for waivers of certain Rules which are automatically waived for them (*Updated in January 2022*)<sup>4</sup>.**

### Summary of our Approach

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

The statutory securities regulator in Jersey, Jersey Financial Services Commission, is a full signatory to the IOSCO MMOU<sup>5</sup> and Jersey 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*).

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<sup>3</sup> Primary listing: Main Board Rule 19.58 (GEM Rule 24.25); Secondary listing: Main Board Rule 19C.11B

<sup>4</sup> Main Board Rule 19C.11

<sup>5</sup> IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

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## **1. Background**

- 1.1 Jersey’s equivalence to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Companies (Jersey) Law 1991, which sets requirements for Jersey incorporated companies. The Jersey Financial Services Commission (“**JFSC**”) is the statutory securities regulator in Jersey (*Updated in April 2014*).

## **2. Application of this Country Guide**

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants incorporated in Jersey. 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 Jersey as the JFSC is a full signatory to the IOSCO MMOU. In addition, the JFSC has signed a Letter of Intent<sup>6</sup> with the SFC to facilitate the development of deeper and broader investments markets in both jurisdictions and attain closer regulatory co-operation in a mutually beneficial manner (*Updated in January 2022*).
- 3.2 If a listing applicant is incorporated in Jersey but its place of central management and control<sup>7</sup> is elsewhere, the statutory securities regulator of that jurisdiction must be also a full signatory to the IOSCO MMOU (*Updated in January 2022*).

## **4. Core Shareholder Protection Standards**

- 4.1. Jersey 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 Jersey and the then requirements in the Joint Policy Statement Regarding the Listing of Overseas Companies (“**JPS**”) (repealed as of 1 January 2022). Where we have in the past accepted a practice

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<sup>6</sup> Available on JFSC’s website: [http://www.jerseyfsc.org/pdf/LoI\\_09.09.2005.pdf](http://www.jerseyfsc.org/pdf/LoI_09.09.2005.pdf)

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

and it is still relevant for assessment under the new listing regime for overseas issuers, we have stated this below. Jersey 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 Jersey 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. Timing of an annual general meeting: Under the then JPS, an overseas company is required to hold a general meeting each year as its annual general meeting, and generally no more than 15 months should elapse between the date of one annual general meeting and the next (*Updated in January 2022*).
- 4.3. Jersey law allows for 18 months rather than 15 months between two annual general meetings. Under Jersey law, if all members of a Jersey company agree in writing that an annual general meeting shall be dispensed with, then so long as the agreement has effect, it is not necessary for the company to hold an annual general meeting (“**Exemption**”). It was submitted that it was not legally possible under Jersey law for a company to amend its constitutional document to exclude the Exemption<sup>8</sup>.
- 4.4. In a previous application of a Jersey incorporated applicant, we considered that the Exemption would not be detrimental to its members because (i) of the stringent nature of the dispensation; (ii) of the unlikelihood of all the members agreeing in writing to dispense with annual general meetings; and (iii) in the unlikely event of all members agreeing to dispense with annual general meetings, it was difficult to see how they would be prejudiced. We expected a Jersey incorporated applicant to demonstrate how it will ensure conformity to this then JPS requirement (*Updated in January 2022*).

#### *Subsequent Development since 1 January 2022*

The requirement comparable to the then JPS requirement was codified with modification in paragraph 14(1) of the revised Appendix 3 of the Listing Rules,

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<sup>8</sup> Listing Decision HKEx-LD80-1.

which provides that an issuer must hold a general meeting for each financial year as its annual general meeting and generally, an issuer must hold its annual general meeting within six months after the end of its financial year. Jersey incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

- 4.5. Notice of general meetings: Under the then JPS, an overseas company must give its members reasonable written notice of its general meetings. (*Updated in January 2022*) Under Jersey law, any annual general meetings or extraordinary general meeting for the passing of a special resolution shall be convened on at least 21 days' written notice while any other general meetings shall be convened on at least 14 days' written notice (*Updated in January 2022*).

The Exchange has previously accepted the notice requirement for convening general meetings under Jersey law.

*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 as a Core Shareholder Protection Standard. Jersey incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

- 4.6. Right of members holding a minority stake to convene a general meeting: Under the then JPS, members holding a minority stake in an overseas company must be allowed to convene an extraordinary general meeting and add resolutions to a meeting agenda. Jersey law does not specifically provide for requisition of a resolution by members (*Updated in January 2022*).

*Subsequent Development since 1 January 2022*

The requirement comparable to the then JPS requirement was codified in paragraph 14(5) of the revised Appendix 3 of the Listing Rules. Jersey incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

- 4.7. Proxies or corporate representatives: Under the then JPS, a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings, and these proxies/corporate representatives should enjoy statutory rights comparable to those of other members, including the right to speak and vote. Jersey law is silent on the rights of proxies to speak at meetings (*Updated in January 2022*).

#### *Subsequent Development since 1 January 2022*

The requirement comparable to the then JPS requirement was codified with modification in paragraph 19 of the revised Appendix 3 of the Listing Rules. Jersey incorporated applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents (*Added in January 2022*).

- 4.8. Right to speak and vote at general meetings: The then JPS requires that all members have the right to speak and vote at a general meeting, except in cases where members having a material interest in a transaction or arrangement are required, by the Rules, to abstain from voting to approve the transaction or arrangement. Jersey incorporated applicants must address whether they are able to comply with this requirement, which may necessitate an amendment to their constitutional documents (*Updated in January 2022*).

#### *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. Jersey 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***

- 4.9. Compared to the then JPS and the previous Appendix 3<sup>9</sup> to the Listing Rules, two new shareholder protection standards, namely, members' right to appoint proxies and corporate representatives<sup>10</sup> and inspect Hong Kong Branch Register<sup>11</sup> are added to require the applicants to demonstrate conformity. Applicants incorporated in Jersey 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; taxation; and stock name

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<sup>9</sup> The previous version of Appendix 3 of the Listing Rules that was in effective on or prior to 31 December 2021

<sup>10</sup> Appendix 3, paragraph 18

<sup>11</sup> Appendix 3, paragraph 20

identifications. Applicants are encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable (*Updated in January 2022*).

## **6. Constitutional Documents**

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

## **7. Accounting and Auditing Related Requirements**

- 7.1. We normally require the accountants' reports and financial statements of overseas issuers seeking a primary or a secondary listing on the Exchange to conform to the Hong Kong Financial Reporting Standards or the International Financial Reporting Standards ("IFRS")<sup>12</sup> (*Updated in January 2022*).
- 7.2. The financial statements of all Jersey incorporated applicants, which had sought a primary or secondary listing on the Exchange, were prepared in accordance with IFRS.

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<sup>12</sup> Main Board Rules 4.11 to 4.13, 19.13, 19.25A, 19C.10D and 19C.23 and Note 2.1 to paragraph 2 of Appendix 16 (GEM Rules 7.12, 18.04 and 24.18A).

## APPENDIX

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

### Our Approach to Differences between Our Constitutional Document Requirements and Jersey Law, 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 in the Listing Rules. For details, please see the column headed “Subsequent Development since 1 January 2022”. New applicants shall assess whether it can comply with the relevant Listing Rules or seek waiver from compliance. *(Added in January 2022)*

Rule Paragraph	Rule Requirement	Jersey Laws, Regulations and Practice	Our Approach prior to 1 January 2022	Subsequent Development since 1 January 2022
<b>(not effective after 31 December 2021)</b>				
Appendix 3, 1(2)	Fully-paid shares must be free from any restriction on the right of transfer and free from all liens.	Under Jersey law, shares of a listed Jersey-incorporated company that are electronically traded must be free from all restrictions on transfer subject to certain exceptions.	We considered that the restrictions imposed on the transferability of the company’s shares under Jersey law would not materially impair shareholder rights. A waiver of this articles provision was granted.	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

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<b>(not effective after 31 December 2021)</b>				
			Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.	the Exchange for a waiver of compliance from the relevant Listing Rule if it considers necessary.
Appendix 3, 2(1)	All certificates for capital must be under seal affixed only with the authority of the directors.	Apart from affixing the deal onto the relevant share certificate, Jersey law allows share certificates to be executed or authenticated by the company by having two directors (or one director and the secretary) signing the relevant share certificate under hand.	<p>We considered that Jersey law provides the company with greater flexibility while investors are still provided with sufficient safeguards in relation to the authenticity or validity of the share certificates. A waiver of this articles provision was granted.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an</p>	<p>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.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver of compliance from the</p>

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			“automatic waiver” for this item.	relevant Listing Rule if it considers necessary.
Appendix 3, 4(1)	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.	Jersey law does not impose restrictions on directors voting on transactions in which they are interested, but directors are obliged to disclose their interests and have a general fiduciary duty to act in the best interests of the company as a whole.	In a previous case, a Jersey incorporated applicant provided in its articles that a director shall not be entitled to vote on any resolution (and be counted in the quorum) which he (or a person connected with him) is interested, with certain exceptions which	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

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<b>(not effective after 31 December 2021)</b>				
			<p>are either similar to those set out in Note 1 to Appendix 3 of the Main Board Rules, or involve contracts, transactions or arrangements:</p> <ul style="list-style-type: none"> <li>- in which the director is not aware of the interest;</li> <li>- in which the director has an interest which cannot reasonably be regarded as likely to give rise to a conflict of interest; and</li> <li>- concerning the giving of indemnities in favour of other directors.</li> </ul>	compliance with the relevant Listing Rule.

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<b>(not effective after 31 December 2021)</b>				
			<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, 7(3)	There is no prohibition on the giving of notice to members whose registered address is outside Hong Kong.	No similar provision.	In a previous case, a Jersey incorporated applicant having a primary listing in the United Kingdom provided in its articles that any member who does not supply to the company an address within Jersey, the United Kingdom or Hong Kong	<p>This articles provision was repealed on 1 January 2022. Rule 13.71 contains the comparable requirement.</p> <p>Secondary listing applicants shall apply to the Exchange for a waiver</p>

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			<p>for the service of notices shall not be entitled to receive notices, documents, or information from the company in hard copy form. Instead, such member will be sent notices, documents or other information by electronic means if he has agreed and has not revoked the agreement. Where a member has not given his consent to receive electronic communications, the company will give a notification in hard copy to him about the posting of the notice, document or information on the</p>	<p>of compliance from the relevant Listing Rule if it considers necessary.</p>

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			<p>company’s website. 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, 8	<p>If an issuer has the power to purchase for redemption a redeemable share:</p> <p>(1) purchases not made through the market or by tender must be limited to a maximum price; and</p>	No information regarding Jersey law.	In a previous case, a Jersey incorporated applicant committed to the UK listing	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.		<p>requirements <sup>13</sup> in this regard that would afford shareholders with sufficient protection in relation to any purchase for redemption by the company of its redeemable shares. 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>	

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<b>(not effective after 31 December 2021)</b>				
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.	No information regarding Jersey law	<p>In a previous case, a Jersey incorporated applicant provided in its articles that the company has the powers to restrict the rights of members to:</p> <ul style="list-style-type: none"> <li>- vote in shareholder meetings; or</li> <li>- receive dividends and transfer their shares, if they have failed to disclose their interests to the company.</li> </ul> <p>A waiver of this articles provision was granted.</p> <p>Under the JPS, no “automatic waiver” is available to eligible</p>	This articles provision was repealed on 1 January 2022.

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			secondary listing applicants for this item.	