

# **COUNTRY GUIDE –**

## **The Grand Duchy of Luxembourg**

**(20 December 2013, updated in April 2014)**

**Important notes:** *This guide does not override the Rules and is not a substitute for legal, regulatory, tax, financial or any other advice from qualified professional advisers. If there is any conflict or inconsistency between this guide and the Rules, the Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Rules, or this guide.*

*The information contained in this guide on foreign laws, regulations and market practices is based on that provided to us by potential listing applicants, listing applicants, listed issuers or their respective advisers 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 the Grand Duchy of Luxembourg (“Luxembourg”) must confirm to the Exchange, with its initial application for listing, that the Luxembourg 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 Luxembourg laws, regulations and market practices that are relevant to its circumstances.***

## **Purpose of this Guide**

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

**This guide should be read in conjunction with the Joint Policy Statement Regarding Listing of Overseas Companies (27 September 2013)<sup>1</sup>. All issuers incorporated in Luxembourg 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 Luxembourg incorporated companies meeting the conditions set out in this guide, we do not consider Luxembourg's shareholder protection standards to be materially different to our own.

Luxembourg meets our international regulatory co-operation requirements because it already has adequate measures in place with Hong Kong's Securities and Futures Commission.

We are prepared to accept financial statements that conform to International Financial Reporting Standards as endorsed by the European Union. These must contain a statement of the financial effect of the material differences (if any) from either Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

We expect a Luxembourg incorporated issuer to prominently and fully disclose in its listing document details of the Luxembourg taxation regime and how it is applicable to Hong Kong shareholders, including tax on gains from sales of securities and withholding tax on dividends.

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<sup>1</sup> Available on the HKEx website at:  
[http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new\\_jps\\_0927.pdf](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new_jps_0927.pdf)

<sup>2</sup> JPS, Section 5.

<sup>3</sup> JPS, paragraph 88.

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## **1. Background**

- 1.1 Luxembourg's equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) is the Luxembourg Companies Law, which sets requirements for Luxembourg incorporated companies. The Commission de Surveillance du Secteur Financier (the "CSSF") is the statutory securities regulator in Luxembourg (*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 Luxembourg. 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 for regulatory co-operation<sup>4</sup>. This requirement is met for issuers incorporated in Luxembourg as the CSSF is a full signatory of the IOSCO MMOU<sup>5</sup>.
- 3.2 If a listing applicant is incorporated in Luxembourg but its place of central management and control<sup>6</sup> is elsewhere, similar international co-operation arrangements must generally also be in place with that other jurisdiction.

## **4. JPS Shareholder Protection Standards**

- 4.1 Subject to Luxembourg incorporated issuers demonstrating<sup>7</sup> how their practices, as set out below, conform to the JPS requirements, we do not consider Luxembourg's shareholder protection standards to be materially different to our own<sup>8</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.

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<sup>4</sup> JPS, paragraphs 42 to 44.

<sup>5</sup> International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

<sup>6</sup> JPS, paragraph 45.

<sup>7</sup> We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS.

<sup>8</sup> Notes to Main Board Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

### *Proceedings at general meetings*

- 4.2 Timing of an annual general meeting: Under the 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<sup>9</sup>. Luxembourg law requires an annual general meeting to be held within six months of the end of the financial year.
- 4.3 Notice of general meetings: Under the JPS, an overseas company must give its members reasonable written notice of general meetings<sup>10</sup>. Under Luxembourg law, the notice period for convening a general meeting is eight days if all the shares of the company are in the form of registered shares.

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 specified in the constitutional documents of Luxembourg incorporated issuers in accordance with Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as was then in force (*Updated in April 2014*).

- 4.4 Right to speak and vote at general meetings: The JPS requires that all members must have the right to speak and vote at a general meeting, except in cases where members have a material interest in a transaction or arrangement, in which case they are required, by the Rules, to abstain from voting to approve the transaction or arrangement<sup>11</sup>. Luxembourg incorporated listing applicants must demonstrate how they will comply with this requirement, which may necessitate an amendment to their constitutional documents.

## **5. Practical and Operational Matters**

- 5.1 Reference is made to Section 4 of the JPS which contains guidance on an overseas issuer’s ability to comply with Hong Kong’s rules and regulations; the eligibility of securities; cross-border clearing and settlement; Hong Kong depositary receipts; taxation; and stock name identifications. Applicants are

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<sup>9</sup> JPS, paragraph 36.

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

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

encouraged to notify the Listing Division if they envisage difficulties in complying with such matters, where applicable.

## **6. Constitutional Documents**

- 6.1 Applicants should contact Listing Division if Luxembourg law or the applicants' constitutional documents cannot meet the standards under Appendix 3 to the Main Board Rules/ Appendix 6 to GEM Rules.

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

- 7.1 We normally require the accountants' reports and financial statements of overseas issuers seeking a primary or secondary listing to conform to the Hong Kong Financial Reporting Standards (“**HKFRS**”) or the International Financial Reporting Standards (“**IFRS**”)<sup>12</sup>.

### Our Approach

- 7.2 As set out in the JPS, IFRS as endorsed by the European Union (“**EU-IFRS**”) is acceptable to the Exchange<sup>13</sup>. We have accepted the auditing standards issued by the International Auditing and Assurance Standards Board as adopted for Luxembourg by the “Commission de Surveillance du Secteur Financier” (“**IAASB-Luxembourg**”). We are therefore prepared to consider allowing a Luxembourg incorporated issuer to use EU-IFRS for its accountants' reports and all subsequent financial statements, and for these to be audited to the IAASB-Luxembourg auditing standards. However, this is on the condition the issuer includes a statement of the financial effect of the material differences (if any) from HKFRS or IFRS, in its accountants' reports and subsequent financial statements.

## **8. Taxation**

- 8.1 Capital gain tax from sales of securities: Capital gains from trading in the shares of a Luxembourg incorporated issuer are subject to capital gains tax in Luxembourg. As a result of a double tax treaty between Luxembourg and Hong Kong, a Hong Kong resident will not be subject to Luxembourg capital gain tax and is not required to take any action in order to enjoy the exemption.
- 8.2 Withholding tax on dividends<sup>14</sup>: Dividends received by the shareholders of a Luxembourg issuer are subject to withholding tax in Luxembourg. In addition,

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<sup>12</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>13</sup> JPS, paragraph 59(a).

<sup>14</sup> JPS, paragraph 79.

Hong Kong investors will enjoy certain exemptions or reductions in dividend withholding tax:

- (i) a Hong Kong resident is subject to withholding tax at a reduced rate of 10%; and
- (ii) a company which holds directly 10% or more of the company's issued capital or Shares with acquisition cost of €1.2 million is exempted from withholding tax.

8.3 However, in order to benefit from such withholding tax exemption or reduced rates, a proof of address in Hong Kong or a certificate of resident status issued by the Hong Kong Inland Revenue Department will have to be provided by shareholders who are residents of Hong Kong to the company at its registered office within such period of time before any particular dividend payment date as shall be specified by the company in its announcement of dividend payments.

#### Our Approach

8.4 We expect a Luxembourg issuer to disclose the following prominently in its listing document:

- (a) the rate of tax investors in its securities will have to pay. This disclosure must break down the tax payable by the relevant factors that affect the tax rate (e.g. residence in Luxembourg, percentage of share capital owned, timing of dividend payment, corporate or individual shareholding etc.);
- (b) details of any treaty between Luxembourg 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 (if any).

8.5 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 Luxembourg laws and regulations.