

COUNTRY GUIDE – The Netherlands

March 2019

Important notes: *This guide does not override the Listing Rules (“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 the Netherlands must confirm to the Exchange, with its initial application for listing, that Dutch laws, regulations and market practices contained in this guide are still applicable, or provide us with details of any changes that are relevant to its circumstances together with a confirmation that these changes will not affect the applicant’s compliance with the shareholder protection standards under the Joint Policy Statement.

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 (published on 27 September 2013 and amended on 30 April 2018)¹. All issuers incorporated in the Netherlands as public limited liability companies (*naamloze vennootschap met beperkte aansprakelijkheid*, or *N.V.*) which is not and will not (i) offer any shares to the public in; or (ii) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within the European Economic Area (“Eligible Dutch Companies”) can apply for one or more “common waivers” and those with, or seeking, a secondary listing² do not need to apply for waivers of certain Rules which are automatically waived for them³.

Summary of our Approach

Subject to Eligible Dutch Companies meeting the conditions set out in this guide, we do not consider Dutch shareholder protection standards to be materially different to our own.

The Exchange's acceptance of the Netherlands as an Acceptable Jurisdiction is limited to Eligible Dutch Companies. No analysis has been made on the acceptability of a Dutch private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*, or *B.V.*); or a Dutch company which offers its shares to the public in, or its shares are listed (whether on a primary or secondary basis) on stock exchanges within, the European Economic Area.

The Netherlands meets our international regulatory co-operation requirements because it already has adequate measures in place with the Securities and Futures Commission of Hong Kong.

¹ Available on the HKEX website at: https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/A-List-of-Acceptable-Overseas-Jurisdictions/jps_20180430.pdf?la=en

² JPS, Section 5.

³ JPS, paragraph 94.

Table of Contents

1. Background.....	4
2. Application of this Country Guide.....	4
3. International Regulatory Co-operation Measures.....	4
4. JPS Shareholder Protection Standards	5
5. Practical and Operational Matters.....	7
6. Constitutional Documents	9
7. Accounting and Auditing Related Requirements.....	9
8. Status as an Eligible Dutch Company.....	10
9. Taxation	11
Appendix: Our Approach to Differences between Our Constitutional Document Requirements and Dutch Laws, Regulations and Practices	

1. Background

- 1.1 The Dutch company law is equivalent to the Hong Kong Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), and consists of various legal texts including the Dutch Civil Code and the Dutch Corporate Governance Code, which set out the regulatory framework for Dutch incorporated companies. Under Dutch law, any Dutch public limited liability company (*naamloze vennootschap met beperkte aansprakelijkheid*, or *N.V.*) is eligible to obtain a listing of its shares and depository receipts on an overseas stock exchange.
- 1.2 The Dutch Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*, the “**AFM**”) regulates and supervises compliance with securities laws by companies listed in the European Economic Area (the “**EEA**”) and/ or offering shares to the public in the Netherlands.

2. Application of this Country Guide

- 2.1 This Country Guide applies to primary and secondary Main Board listing applicants and primary GEM listing applicants⁴ incorporated in the Netherlands as public limited liability companies (*naamloze vennootschap met beperkte aansprakelijkheid*, or *N.V.*) which is not and will not (i) offer any shares to the public in; or (ii) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the EEA (the “**Eligible Dutch Companies**”).

3. International Regulatory Co-operation Measures

- 3.1 The Joint Policy Statement Regarding the Listing of Overseas Companies jointly published by The Stock Exchange of Hong Kong Limited (“**Exchange**”) and the Securities and Futures Commission (“**SFC**”) on 27 September 2013 and amended on 30 April 2018 (“**JPS**”) states that the statutory securities regulator of an overseas issuer’s jurisdiction of incorporation must have adequate arrangements with the SFC for regulatory co-operation⁵. This requirement is met for issuers incorporated in the Netherlands as the AFM, the statutory securities regulator in the Netherlands, is a full signatory of the IOSCO MMOU⁶. In addition, the AFM has an arrangement concerning mutual assistance and exchange of information with the SFC⁷.
- 3.2 If a listing applicant is incorporated in the Netherlands but its place of central management and control is elsewhere, similar international co-operation arrangements must generally also be in place with that jurisdiction⁸.

⁴ We do not accept applications for secondary listing on GEM.

⁵ JPS, paragraphs 47 to 50.

⁶ The International Organisation of Securities Commission’s Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

⁷ The arrangement is under a Confidentiality Understanding signed by SFC and AFM in 1994, which is available at the SFC’s website.

⁸ JPS, paragraph 50.

4 JPS Shareholder Protection Standards

- 4.1 Subject to the Eligible Dutch Companies demonstrating how their practices with respect to the matters set out below conform to the JPS requirements⁹, we do not consider the Dutch shareholder protection standards to be materially different to those in Hong Kong¹⁰.

Matters requiring a super-majority vote

- 4.2 JPS requires the following resolutions of an overseas company to be approved by a super-majority vote of members or by a simple majority vote of members plus a significantly higher quorum¹¹:
- (a) changes to the rights attached to any class of shares (votes by members of that class);
 - (b) material changes to an overseas company's constitutive documents, however framed; and
 - (c) voluntary winding up of an overseas company.
- 4.3 Under Dutch law, the resolutions referred to in paragraph 4.2 above only require simple majority votes from members with no quorum requirements.

Our Approach

- 4.4 To conform with the JPS requirements, Eligible Dutch Companies can modify their constitutional documents to specify that resolutions for changes to class rights, material changes to their constitutive documents, and their voluntary winding-up must be approved by a super-majority vote of members or by a simple majority vote of members plus a significantly higher quorum.

Individual members to approve an increase in members' liability

- 4.5 Under the JPS, there should not be any alteration in an overseas company's constitutional documents to increase an existing member's liability to the company unless such increase is agreed by such member in writing¹². Dutch law does not stipulate whether such shareholders' consent must be obtained in writing.

Our Approach

- 4.6 To conform to the JPS requirement, Eligible Dutch Companies can modify their constitutional documents such that any alteration in constitutional documents to increase an existing member's liability will only be valid if provided in writing.

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

¹⁰ Notes to Main Board Rule 19.05(1) (GEM Rule 24.05(1)) and Main Board Rule 19.30(1), and JPS, paragraphs 32 and 33.

¹¹ JPS, paragraphs 36 to 38.

¹² JPS, paragraph 39.

Appointment, removal and remuneration of auditors

- 4.7 Under the JPS, the appointment, removal and remuneration of auditors must be approved by a majority of an overseas company's members or other body that is independent of the board of directors.
- 4.8 Under Dutch law:
- (a) members are empowered to appoint the auditors at the company's general meeting; but if the general meeting does not appoint the auditors, the company's board of directors will be empowered to do so (or in the case of two tier structure, the supervisory board will be empowered to do so, failing which the management board will be empowered to do so);
 - (b) only the corporate body which appointed the auditors as mentioned in subparagraph (a) above can remove the auditors; and
 - (c) the company can arrange the remuneration of the auditors for the provision of audit services.

Our Approach

- 4.9 To conform with the JPS requirement, Eligible Dutch Companies can modify their constitutional documents to provide that the appointment, removal and remuneration of the auditors are required to be approved by members by simple majority vote at the company's general meeting, or other body that is independent of the board of directors.

Notice of General Meetings

- 4.10 Under the JPS, an overseas company must give its members reasonable written notice of general meetings¹³. Under Dutch law, notice of the company's general meeting must be given by at least 15 days before the day of the general meetings.
- 4.11 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 the Hong Kong incorporated companies¹⁴; (ii) the shareholding structure of the company; and (iii) facts and circumstances that are specific to the company and the transaction.

Our Approach

- 4.12 To conform to the JPS requirement, Eligible Dutch Companies can modify their constitutional documents to provide that at least 21 days' written notice will be given

¹³ JPS, paragraph 42.

¹⁴ The Companies Ordinance requires that a general meeting of a company must be called by notice of at least 21 days for an annual general meeting and at least 14 days for other meetings, unless otherwise extended by the company's articles.

to the members for convening an annual general meeting. We consider that the requirement of at least 15 days' written notice for convening other meetings under Dutch law is comparable with the JPS requirement.

Right to Speak and Vote at General Meetings

- 4.13 The JPS requires that all members must have the right to speak and vote at a general meeting, except in cases where members having material interest in a transaction or arrangement are required, by the Listing Rules, to abstain from voting to approve the transaction or arrangement¹⁵.
- 4.14 Under Dutch law, all shareholders are entitled, in person or represented by a proxy authorised in writing, to attend and address the general meeting and exercise voting rights pro rata to their shareholdings, regardless whether the member has any material interest in a transaction or arrangement.

Our Approach

- 4.15 To conform to the JPS requirement, Eligible Dutch Companies can modify their constitutional document to provide for a voting mechanism to achieve an outcome substantially equivalent to that under the Listing Rules.

5 Practical and Operational Matters

- 5.1 Reference is made to Section 4 of the JPS which contains guidance on an overseas company'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 encouraged to notify the Listing Department if they envisage difficulties in complying with such matters, where applicable.

Cancellation of shares

- 5.2 The Rules provide that the listing of all shares which are purchased by an issuer (whether on the Exchange or otherwise) shall be automatically cancelled upon purchase and the issuer shall ensure that the documents of title or purchase are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase¹⁶.
- 5.3 Under Dutch law, the repurchase of shares and cancellation of the repurchased shares are two separate events. The former requires a simple majority approval at a general meeting, and the latter requires a higher approval threshold¹⁷. Further, the shares repurchased are allowed to be held as treasury shares and such shares do not carry any voting rights or dividend rights.

¹⁵ JPS, paragraph 43.

¹⁶ Main Board Rule 10.06(5) (GEM Rule 13.14).

¹⁷ Two thirds of the votes cast if less than half of the issued share capital is present or represented; otherwise, a simple majority.

- 5.4 A share cancellation will only become effective two months after the publication of the aforementioned general meeting resolution approving the share cancellation (the “**Two Months Period**”), and provided that no creditors have filed any objection with the court during such period. If such objection is filed and the court found the objection claim to be valid, the company will be required to provide guarantees to the creditors to serve as security for any debts. As such, a Dutch company may only proceed to cancel the relevant shares once sufficient guarantees have been provided, or when the objection was waived or found to be invalid by the court.

Our Approach

- 5.5 To comply with the Rules, Eligible Dutch Companies can modify their constitutional documents to provide measures to ensure (a) shares will only be repurchased for the purpose of cancellation (i.e. no treasury shares will be kept); (b) shareholders’ approval for both repurchase and cancellation must be obtained before the company proceeds with the repurchase; and (c) the repurchased shares will be cancelled as soon as practicable upon the earlier of the expiration of the Two Months Period or provision of guarantee by the company to any creditor who files an objection that is ruled in favour by the court.
- 5.6 In the event that a share cancellation does not become effective after the Two Months Period, we will consider, on a case by case basis, granting a waiver from strict compliance with Main Board Rule 10.06(5) to an Eligible Dutch Company.

Property law regime of the shares

- 5.7 The property law regime of shares includes (a) the transfer of proprietary interests in the shares; (b) who may exercise rights as a shareholder; (c) the proprietary rights to such shares; and (d) the creation of security interests over those shares.
- 5.8 Further, a particular regime applies to Dutch companies which issue depository receipts for their shares with the cooperation of the relevant Dutch company, under which certain specific rights are attributed to the holder of the depository receipts (who is not considered the holder of the legal title to the underlying shares under Dutch law). Given the variety of acts that could establish “cooperation” under Dutch law, Dutch companies that do not intend to be subject to this particular regime will generally amend their articles of associations to include the restriction that they are prohibited from lending their cooperation to the issuance of depository receipts for their shares (“**DR Restriction**”).
- 5.9 Under Dutch law, for shares of an Eligible Dutch Company that are administered in a foreign clearing and custody model, the applicable property law regime is the law of the jurisdiction in which the foreign clearing and custody model is maintained. Otherwise, the applicable property law regime would be Dutch law.
- 5.10 Accordingly, shares of an Eligible Dutch Company that are administered in Central Clearing and Settlement System (“**CCASS**”) (and hence registered in the name of the HKSCC Nominees Limited) are subject to Hong Kong property law regime and

CCASS rules¹⁸. Shares of an Eligible Dutch Company that are maintained outside of CCASS (“**Non CCASS Shares**”) (e.g. due to subscription of shares to be issued in the applicants’ own names or withdrawal of shares from CCASS post-listing) are subject to Dutch property law regime.

- 5.11 There are no material differences between the Dutch and the Hong Kong property law regime except for the recognition of the concept of beneficial ownership. The construct of beneficial ownership under Dutch law is of a contractual nature only. This means if the beneficial owners of the Non CCASS Shares allows an intermediary to be the person or entity in whose name the Non CCASS Shares are entered into the branch register (“**Registered Shareholder**”), they will only have *in personam* rights, i.e. a contractual relationship vis-à-vis the Registered Shareholder (as oppose to *in rem* rights, i.e. a proprietary relationship vis-à-vis the shares). They can only claim for damages against the intermediary, and cannot pursue legal claims against the Eligible Dutch Company as a shareholder as they are not a Registered Shareholder.

Our Approach

- 5.12 There are no material differences between the Dutch and the Hong Kong property law regime except for the construct of beneficial ownership. We expect an Eligible Dutch Company to (a) include the DR Restrictions in its articles of association; and (b) prominently and clearly disclose, in layman terms, (i) a comparison of the Dutch and the Hong Kong property law regime, (ii) the practical differences between holding shares in an Eligible Dutch Company directly and holding such shares via CCASS and how the situation compares to that for a Hong Kong-incorporated company, and (iii) the implications and risks of holding Non CCASS Shares (including relevant implications of the Code on Takeovers and Mergers and Share Buy-backs), in the listing document, formal notice, application forms, as well as its and the Exchange’s websites and annual and interim reports of the Eligible Dutch Company for investors’ and shareholders’ information.

6 Constitutional Documents

- 6.1 Dutch laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents¹⁹. We have set out in the Appendix our approach on each of the items required to be included in the Eligible Dutch Company’s constitutional documents in order for it to meet our requirements.

7 Accounting and Auditing Related Requirements

- 7.1 We normally require the accountants’ reports and financial statements of overseas issuers seeking a primary or secondary listing to conform to the Hong Kong Financial Reporting Standards or the International Financial Reporting Standards²⁰.

¹⁸ JPS, paragraph 74.

¹⁹ Appendix 3 to the Main Board Rules (Appendix 3 to the GEM Rules).

²⁰ 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 61 to 67.

Our Approach

7.2 As set out in the JPS, IFRS as endorsed by the European Union (“**EU-IFRS**”) is acceptable to the Exchange for use by European Union companies²¹. We may allow an Eligible Dutch Company to use EU-IFRS for its accountants’ reports and all subsequent financial statements to be audited to a standard comparable to that required by Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board. However, this is on the condition that the issuer includes a statement of the financial effect of the material differences (if any) from HKFRS or IFRS, in its accountants’ reports and subsequent financial statements.

8 Status as an Eligible Dutch Company

8.1 The Exchange’s acceptance of the Netherlands as an Acceptable Jurisdiction is limited to Eligible Dutch Companies. No analysis on the acceptability of any other form of Dutch corporations has been made.

8.2 An Eligible Dutch Company must provide an undertaking in its listing document and constitutional document that it (i) is not and will not (a) offer shares to the public in, or (b) listed or seek a listing of its shares (whether on a primary or secondary basis) on stock exchanges within, the EEA without the prior written consent of the Exchange; and (ii) has included in its articles of associations that it is prohibited from lending its cooperation to the issuance of Dutch law depository receipts for shares.

8.3 An Eligible Dutch Company is also required to:

- (a) provide relevant and adequate disclosure in its listing document the major jurisdictional or regulatory differences between the Netherlands and Hong Kong shareholder protection requirements, especially those set out in the JPS;
- (b) upon submission of its listing application, (i) confirm to the Exchange that the Dutch laws, regulations and market practices contained in this Country Guide are still applicable and if not, provide us with details of any relevant changes; and (ii) inform the Exchange of any other Dutch laws, regulations and market practices not detailed in this Country Guide that are relevant to their circumstances; and
- (c) throughout the vetting process and after listing, inform the Exchange in a timely manner on any material changes in Dutch laws and regulations that significantly lower shareholder protection standards in the Netherlands compared with those in Hong Kong. The Exchange will impose further conditions on the issuer, and/ or reconsider the conditions for accepting future listing applicants incorporated in the Netherlands. This is in line with the Exchange’s practice in accepting other jurisdictions.

²¹ JPS, paragraph 64.

9 Taxation

- 9.1 We expect an Eligible Dutch Company to prominently disclose the following in its listing document:
- (a) tax rate that investors in its securities will have to pay (including any taxes that a shareholder may be subject to, e.g. withholding tax on distributions entitlements or capital gains and income derived from shares);
 - (b) details of any treaty between the Netherlands and Hong Kong that may affect the tax payable;
 - (c) the effect of holding its securities through CCASS or outside CCASS on any tax payable (where applicable); and
 - (d) the procedure for claiming any tax relief or exemptions.
- 9.2 We expect appropriate disclosure of taxation to be made at least in the “Summary” and “Risk Factors” sections of the applicant’s listing document and any sections summarising the applicable Dutch laws and regulations.

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

Our Approach to Differences between Our Constitutional Document Requirements under Appendix 3 of the Listing Rules and Dutch Laws, Regulations and Practices

Rule Paragraph	Rule Requirement	Dutch Laws, Regulations and Practices	Our Approach
Appendix 3, 10(1)	Where the capital of the issuer includes shares which do not carry voting rights, the words “non-voting” must appear in the designation of such share	Under Dutch law, Dutch companies are prohibited from issuing non-voting shares.	Dutch companies are required to apply for, and we will grant, a waiver from strict compliance with this Rule. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.