

## **Frequently Asked Questions Series 25 (Effective on 27 September 2013)**

### **Revised Joint Policy Statement Regarding the Listing of Overseas Companies**

#### **Status of “Frequently Asked Questions”**

The following frequently asked questions (“**FAQs**”) are designed to assist applicants and professional advisers understand and comply with the new Joint Policy Statement Regarding the Listing of Overseas Companies, effective on 27 September 2013 (“**Revised JPS**”).

You should refer to the Listing Rules themselves together with the Revised JPS and, if necessary, seek advice from qualified professional advisers. The FAQs are not a substitute for the Listing Rules or the Revised JPS. If there is any discrepancy between these FAQs and the Listing Rules/Revised JPS, the Listing Rules/Revised JPS prevail. Defined terms used in this document have the same meaning as that given to them in the Listing Rules and Revised JPS, unless stated otherwise.

In formulating our “*responses*”, we may have assumed certain underlying facts, selectively summarised the Listing Rules and/or Revised JPS or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be given to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Please contact the Listing Division at the earliest opportunity with any queries.

No.	Relevant Rules and Guidance	Question	Response
<b>Application of the Revised JPS</b>			
1.	Revised JPS paragraphs 16, 94 and 95.	What companies are effected by the Revised JPS and these FAQs?	<p>The Revised JPS and these FAQs, are relevant to companies that:</p> <p>(a) are incorporated outside of Hong Kong, the People’s Republic of China, Bermuda and the Cayman Islands and have, or are seeking, a primary or dual primary listing on the Exchange’s markets; or</p> <p>(b) are incorporated outside Hong Kong with a centre of gravity outside Greater China that have, or are seeking, a secondary listing on the Exchange’s markets.</p>
<b>Destination of Existing Provisions</b>			
2.	2007 Joint Policy Statement Regarding the Listing of Overseas Companies (“ <b>2007 JPS</b> ”)	What 2007 JPS provisions have been retained in the Revised JPS and which have not?	A destination table, mapping 2007 JPS provisions to the Revised JPS, forms the Appendix to these FAQs.
<b>Waivers</b>			
3.	Revised JPS paragraphs 63, 65, 66, 88 and 89 and the Main Board Rule Application Table for Overseas Issuers of Equity Securities (“ <b>Rule Application Table</b> ”)	Does an overseas company with, or seeking, a secondary listing need to disclose that it has been granted an “automatic waiver”?	<p>Yes.</p> <p>An overseas company seeking a secondary listing must disclose in its listing document the details of the “automatic waivers” it has been granted under the Revised JPS.</p> <p>Any overseas company with, or seeking, a secondary listing must also disclose these details in the relevant section of</p>

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			<p>their Company Information Sheet submitted through HKEx-ESS for publication on the HKEx website.</p> <p>The disclosures in a listing document and Company Information Sheet mentioned above must include the full details of the waiver including any limitations or restrictions, and state that the company will, instead, follow the relevant foreign laws and regulations that are applicable to it as set out in the summary of foreign laws and regulations section of its Company Information Sheet.</p>
4.	Revised JPS paragraphs 20 to 22, 88 and 89 and the Rule Application Table.	Will the Exchange grant the “automatic waivers” and “common waivers”, set out in the Rule Application Table, to issuers that were listed before 27 September 2013?	<p><b>“Automatic Waivers”</b></p> <p>To enjoy “automatic waivers”, overseas companies that were secondary listed before 27 September 2013 must:</p> <ul style="list-style-type: none"> <li>(a) confirm to the Exchange that they meet the criteria for these waivers set out in Section 5 of the Revised JPS;</li> <li>(b) comply with the limitations and restrictions described for an “automatic waiver” in the Rule Application Table; and</li> <li>(c) disclose the details of the “automatic waiver” in the relevant section of their Company Information Sheets submitted through HKEx-ESS for publication on the HKEx website (see Question 5)</li> </ul> <p><b>“Common Waivers”</b></p> <p>An overseas company that was listed before 27 September 2013 may apply for the “common waivers” set</p>

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			<p>out in the Rule Application Table.</p> <p>The Exchange will consider such waiver applications on their individual merits and in light of all relevant facts and circumstances. The waiver applicant must meet all the conditions of the waiver.</p> <p>An overseas company should not apply for a “common waiver” if it has previously made an unsuccessful application for the same waiver and its circumstances have not materially changed.</p> <p>As a condition of granting the waiver, the overseas company must submit through HKEx-ESS for publication on the HKEx website an up-to-date Company Information Sheet that meets the requirement of paragraph 65 of the Revised JPS and includes a description of the waiver (see Question 5).</p>
<b>Company Information Sheets</b>			
5.	Revised JPS, paragraphs 63 to 66.	Do overseas companies that were listed before 27 September 2013 need to publish a Company Information Sheet?	<p>The Exchange encourages all overseas companies that were listed before 27 September 2013 to submit a Company Information Sheet (that complies with paragraph 65 of the Revised JPS) through HKEx-ESS for publication on the HKEx website at their earliest convenience.</p> <p>If an overseas company has not already done so, the Exchange will require an overseas company to submit a Company Information Sheet through HKEx-ESS for</p>

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			<p>publication on the HKEx website when:</p> <ul style="list-style-type: none"> <li>(a) it requests a waiver from the Rules or another Exchange requirement (see Revised JPS, paragraph 63(a) and Question 4);</li> <li>(b) there is a material change to the laws and regulations in its home jurisdiction or primary market (see Revised JPS, paragraph 63(b));</li> <li>(c) there is a material change to the overseas taxes applicable to its Hong Kong shareholders (see Revised JPS paragraph 63(c)); or</li> <li>(d) for Hong Kong Depositary Receipt issuers, there is a material change to the terms and conditions of its depositary agreement or deed poll (see Revised JPS paragraph 63(d)).</li> </ul>
6.	Revised JPS, paragraph 65.	How often does an overseas company need to update its Company Information Sheet?	<p>An overseas company must submit an updated Company Information Sheet through HKEx-ESS for publication on the HKEx website after any material change to the information disclosed in the document.</p> <p>This requirement supersedes any previous undertaking given by an overseas company to publish its Company Information Sheet on a yearly basis.</p>

## DESTINATION TABLE

	2007 JPS	REVISED JPS
<b>Shareholder Protection Matters</b>		
1.	<p><b>2007 JPS Schedule Item 1(a)</b></p> <p>For any change to an overseas company's constitutional document, however framed, there should be a general requirement for the company to obtain the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).</p>	<p><b>Revised JPS paragraphs 31 to 33</b></p> <p>A super-majority vote of members is required to approve:</p> <ul style="list-style-type: none"> <li>(a) changes to the rights attached to any class of shares of an overseas company (vote by members of that class);</li> <li>(b) material changes to an overseas company's constitutive documents, however framed; and</li> <li>(c) voluntary winding up of an overseas company.</li> </ul> <p>Some jurisdictions have a super-majority threshold of a three-quarter or a two-third majority of votes by members present at the general meeting with no special requirement as to the quorum. Others impose a higher quorum requirement with a lower majority, such as, a quorum of 50% of share capital plus a majority of more than 50% of share capital, or a quorum of two-thirds of share capital plus a simple majority approval by those members present.</p> <p>We require a super-majority vote to mean at least a two-thirds majority where an overseas company has a low quorum requirement (e.g. two members). When an overseas company's threshold for deciding the matters set out above is a simple majority only (50% plus 1 vote), these matters must be decided by a significantly higher quorum.</p>

	2007 JPS	REVISED JPS
2.	<p><b>2007 JPS Schedule Item 1(b)</b></p> <p>Rights attached to any class of shares of an overseas company may only be varied with the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required, subject to rights of members holding not less than 10% of the nominal value of the issued shares of that class to make a petition to the court to have the variation cancelled).</p>	See Item 1.
3.	<p><b>JPS Schedule Item 1(c)</b></p> <p>Notwithstanding anything in the constitutional document of an overseas company, any alteration in the constitutional document to increase an existing member's liability to the company is not binding unless such liability increase is agreed by such member in writing.</p>	<p><b>Revised JPS paragraph 34</b></p> <p>There should not be any alteration in an overseas company's constitutional document to increase an existing member's liability to the company unless such increase is agreed by such member in writing.</p>
4.	<p><b>JPS Schedule Item 1(d)</b></p> <p>Voluntary winding up of an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).</p>	See Item 1.
5.	<p><b>JPS Schedule Item 1(e)</b></p> <p>Appointment, removal and remuneration of auditors must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).</p>	<p><b>Revised JPS paragraph 35</b></p> <p>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, for example the supervisory board in systems that have a two tier board structure.</p>

	2007 JPS	REVISED JPS
6.	<p><b>JPS Schedule Item 1(f)</b></p> <p>An overseas issuer must ensure that its branch register of members in Hong Kong shall be open to inspection by members. Closure of the register on terms comparable to the current provisions of Hong Kong law will be allowed.</p>	<p><b>Revised JPS paragraph 70(d)</b></p> <p>An applicant is encouraged to notify the SEHK at an early stage of the nature of the securities it plans to issue and list, particularly as to how its branch register of members in Hong Kong is maintained and when the register is open to inspection by members. The overseas company must also inform members of the conditions for inspection.</p>
7.	<p><b>JPS Schedule Item 1(g)</b></p> <p>The circumstances under which the minority shareholders of an overseas company may be bought out or may require an offeror to buyout their interests after a successful takeover or share repurchase must be clearly stated.</p>	Not retained.
8.	<p><b>JPS Schedule Item 2(a)</b></p> <p>Overseas companies are required to hold a general meeting each year as its annual general meeting. Not more than 15 months shall elapse between the date of one annual general meeting of the company and the next.</p>	<p><b>Revised JPS paragraph 36</b></p> <p>An overseas company is required to hold a general meeting each year as its annual general meeting. Generally not more than 15 months should elapse between the date of one annual general meeting of the overseas company and the next.</p>
9.	<p><b>JPS Schedule Item 2(b)</b></p> <p>Members holding not less than 5% of the paid up capital of the overseas company may require the company to convene an extraordinary general meeting and may request the company to circulate a resolution proposed by the requisitionists to members entitled to receive notice of that meeting.</p>	<p><b>Revised JPS paragraph 39</b></p> <p>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. The minimum level of members' support required to convene a meeting must be no higher than 10%.</p>
10.	<p><b>JPS Schedule Item 2(c)</b></p> <p>Overseas companies must ensure that any annual general meeting or any extraordinary general meeting at which a resolution that requires the approval of members by three-</p>	<p><b>Revised JPS paragraph 37</b></p> <p>An overseas company must give its members reasonable written notice of its general meetings.</p>



	2007 JPS	REVISED JPS
	quarter majority vote will be proposed shall be convened on at least 21 days' written notice; and that any other general meeting shall be convened on at least 14 days' notice.	
11.	<p><b>JPS Schedule Item 2(d)</b></p> <p>Overseas companies must adopt general provisions as to meetings and votes on terms that are comparable to those required of a Hong Kong incorporated public company.</p>	Not retained.
12	<p><b>JPS Schedule Item 2(e)</b></p> <p>Proxies/corporate representatives may be appointed by any recognised clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) for attending general meetings and creditors meetings on terms comparable to those permitted under Hong Kong law; and such proxies/corporate representatives should enjoy statutory rights, including the right to speak in such meetings, comparable to those appointed with respect to a Hong Kong incorporated public company.</p>	<p><b>Revised JPS paragraphs 40 and 41</b></p> <p>A recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings. These proxies/corporate representatives should enjoy statutory rights comparable to those of other shareholders, including the right to speak and vote.</p> <p>Where the laws of an overseas jurisdiction prohibit a recognised clearing house from appointing proxies/corporate representatives, the overseas company must make the necessary arrangements with Hong Kong Securities Clearing Company Nominees Limited ("HKSCC Nominees") to ensure that Hong Kong investors holding shares through HKSCC Nominees enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.</p>
13.	<p><b>JPS Schedule Item 2(f)</b></p> <p>The right of members of an overseas company to demand a poll must be comparable to that available to members of a Hong Kong incorporated public company.</p>	Not retained.

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14.	<p><b>JPS Schedule Item 3(a)</b></p> <p>Appointment of a director is required to be voted on individually.</p> <p>Unanimous approval of members is required to pass a resolution permitting appointment of two or more directors by a single resolution.</p>	Not retained.
15.	<p><b>JPS Schedule Item 3(b)</b></p> <p>A director is required to declare any material interest in any contract with the overseas company at the earliest meeting of the board of directors of the company.</p>	Not retained.
16.	<p><b>JPS Schedule Item 3(c)</b></p> <p>An overseas company is required to include in notices of its intention to move a resolution at a general meeting or class meeting, particulars of the relevant interests of directors in the matter dealt with by the resolution.</p>	Not retained.
17.	<p><b>JPS Schedule Item 3(d)</b></p> <p>The circumstances under which an overseas company may make loans, including quasi loans and credit transactions, to a director must be confined to circumstances no less stringent than those permitted for a Hong Kong incorporated public company.</p>	Not retained.
18.	<p><b>JPS Schedule Item 3(e)</b></p> <p>Any payment to a director or past director of an overseas company as compensation for loss of office or retirement from office is required to be approved by members of the company on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).</p>	Not retained.

	2007 JPS	REVISED JPS
19.	<p><b>JPS Schedule Item 4(a)</b></p> <p>Any alteration of share capital in an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).</p>	Not retained.
20.	<p><b>JPS Schedule Item 4(b)</b></p> <p>Any reduction of share capital in an overseas company must be subject to confirmation by the court and be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).</p>	Not retained.
21.	<p><b>JPS Schedule Item 4(c)</b></p> <p>An overseas company may only redeem its shares out of distributable profits or fresh proceeds from a new issue of shares or under other circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such redemption.</p>	Not retained.
22.	<p><b>JPS Schedule Item 4(d)</b></p> <p>An overseas company may only distribute its assets to its members in circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such distribution, that is, out of realised profits and if out of assets, the remaining net assets must not be less than the share capital plus undistributable reserves.</p>	Not retained.

	2007 JPS	REVISED JPS
23.	<p><b>JPS Schedule Item 4(e)</b></p> <p>The circumstances under which an overseas company may give financial assistance for the acquisition of its own shares must be clearly stated.</p>	Not retained.
24.	<p><b>JPS Schedule Item 5(a)</b></p> <p>An overseas company must state whether the statutory securities regulator of the overseas company's home jurisdiction (i) is a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information; or (ii) has entered into an appropriate bi-lateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong.</p>	<p><b>Revised JPS paragraphs 42 to 45</b></p> <p>The statutory securities regulator in an overseas company's jurisdiction of incorporation and place of central management and control (if different) must:</p> <ul style="list-style-type: none"> <li>(a) be a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("IOSCO MMOU");<sup>1</sup> or</li> <li>(b) have entered into an appropriate bi-lateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong.<sup>2</sup></li> </ul> <p>This will enable the SFC to seek regulatory assistance and information from the overseas statutory securities regulator thereby facilitating the SFC's investigations and enforcement actions where an overseas company has its records, business operations, assets and management outside Hong Kong.</p> <p>The SEHK may make exceptions from the above requirements, in an individual case. The SEHK will not do so without the SFC's explicit consent.</p>

<sup>1</sup> Current signatories to the IOSCO MMOU can be viewed here:  
[http://www.iosco.org/library/index.cfm?section=mou\\_siglist](http://www.iosco.org/library/index.cfm?section=mou_siglist)

<sup>2</sup> Details of the SFC's cooperative arrangements with overseas regulators can be viewed here:  
<http://www.sfc.hk/web/EN/about-the-sfc/collaboration/overseas/>

	2007 JPS	REVISED JPS
		<p>The SEHK will consider the following factors to determine an overseas company's place of central management and control:</p> <ul style="list-style-type: none"> <li>(a) the location from where the company's senior management direct, control, and coordinate the company's activities;</li> <li>(b) the location of the company's principal books and records; and</li> <li>(c) the location of the company's business operations or assets.</li> </ul>
25.	<p><b>JPS Schedule Item 5(b)</b></p> <p>If neither (i) or (ii) applies, the overseas company must explain what other regulatory cooperation exists between its home securities regulator and the Hong Kong securities regulator.</p>	See Item 24.
<b>"Nexus Test"</b>		
26.	<p>Applicants should demonstrate a nexus between its place of incorporation and place of principal business operations.</p> <p>(2007 JPS, "Factors Affecting Eligibility for Listing Particular to Overseas Companies", second paragraph, page 5)</p>	Not retained.