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# Stock Exchange and SFC Issue Updated Joint Policy Statement Regarding the Listing of Overseas Companies

## Introduction

The Stock Exchange of Hong Kong (the **Exchange**) and the Securities and Futures Commission (**SFC**) have updated their joint policy statement regarding the listing of overseas companies (**Joint Statement**). The [updated Joint Statement](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/Documents/new_jps_0927.pdf) ([see archive](new_jps_0927.pdf)) replaces the previous version and the guidance set out in the Exchange’s guidance letter [GL12-09](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/documents/gl12-09.pdf) ([see archive](gl12-09.pdf)), and is available on the Exchange’s website.

First issued in March 2007, the Joint Statement was created to assist overseas companies that are not incorporated in one of the four **Recognised Jurisdictions**[[1]](#footnote-28) by setting out the shareholder protection standards that an overseas company’s home jurisdiction must meet in order for the company to be acceptable for listing on the Exchange (as is required by the Listing Rules).[[2]](#footnote-29) If a company cannot demonstrate that these standards exist in its home jurisdiction, it may alter its constitutional documents to achieve the same standards.

The Exchange has approved twenty-one jurisdictions as acceptable places of incorporation (**Acceptable Jurisdictions**) as [listed on its website](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/list_of_aoj.htm) ([see archive](list_of_acceptable_overseas_jurisdictions.pdf)) and proposes to issue Country Guides for each of those jurisdictions before the end of 2013. These will set out guidance on how companies incorporated in relevant jurisdictions can meet the Listing Rules’ requirement for equivalent shareholder protection standards and will replace existing Exchange listing decisions for relevant jurisdictions.

The revised Joint Statement consolidates in one document relevant issues relating to the listing of overseas companies. The principal changes made in the revised version relate to:

* **Shareholder protection standards** (Section 1) - these have been refined by removing those already provided for by the Listing Rules. Noting that companies incorporated in jurisdictions whose companies law is based on the UK Companies Act find it easier to comply with the 2007 Joint Statement than those incorporated in jurisdictions with completely different company law regimes (such as Brazil, France, Germany, Italy and Japan), some standards have been revised to accommodate practices in other jurisdictions. For example, the revised Joint Statement allows an overseas company to approve certain matters by a “super-majority” vote rather than meet Hong Kong’s specific threshold requirements (see paragraphs 31 to 33 of the Joint Statement).
* **Regulatory cooperation arrangements** (Section 2) - these have been extended to require the statutory securities regulator in both an overseas company’s jurisdiction of incorporation and place of central management and control (if different) to either: (i) be a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (**IOSCO MMOU**); or (ii) to have entered an appropriate bi-lateral agreement with the SFC for mutual assistance and exchange of information (see paragraphs 42 to 45 of the Joint Statement). Previously, this was required only in respect of the jurisdiction of incorporation.
* **Accounting and auditing related and other disclosure requirements** (Section 3) - the revised Joint Statement gives guidance on acceptable overseas accounting and auditing standards (see paragraphs 46 to 62 of the Joint Statement). Guidance is also given on the additional disclosure requirements for overseas companies’ prospectuses and Company Information Sheets (see paragraphs 63 to 66 of the Joint Statement);
* **Practical and operational matters** (Section 4) – highlighting some of the practical difficulties overseas companies face when listing in Hong Kong (e.g. those with scripless securities);
* **Suitability for secondary listing** (Section 5) – the revised Joint Statement clarifies the regulators’ approach to the suitability of companies seeking a secondary listing on the Exchange. Since these companies are listed and primarily regulated outside Hong Kong, they apply for extensive waivers from the Listing Rules. To be suitable for these waivers, a company seeking a secondary listing must: (i) normally have a large market capitalisation and a long track record of regulatory compliance on its primary market; (ii) be primarily listed on an exchange recognised by the Hong Kong regulators as having a strong reputation for requiring high standards of shareholder protection and corporate governance; and (iii) have a “centre of gravity” outside Greater China; and
* **Waivers** – the Appendix to the revised Joint Statement sets out the common waivers the Exchange is prepared to grant an overseas company on application and the automatic waivers granted (i.e. without application) to companies seeking a secondary listing if they meet the criteria set out in the revised Joint Statement.

## The Revised Joint Statement – Overview

There are several ways a company may list on the Exchange:

* Primary listing: a company that is primarily listed on the Exchange is required to comply fully with the Listing Rules.
* Secondary listing: a company that is primarily listed on another exchange would be principally regulated by the rules of that exchange and may apply for a secondary listing on the Exchange in Hong Kong. It is expected that the dominant market in the company’s securities would be on the overseas exchange.
* Dual-primary listing: a company that has a dual-primary listing would have to meet the full requirements of both the Exchange and the foreign exchange.

Depending on whether the overseas company applies to list on the Exchange’s Main Board or Growth Enterprise Market (**GEM**), and whether the listing would be a primary or secondary listing, each of the five sections of the Joint Statement may or may not apply. The following tables summarise the application of the Joint Statement in different situations:

**Overseas companies incorporated outside of a Recognised Jurisdiction**

**Primary Listing**

**Secondary Listing**

Main Board

Sections 1 to 4

Sections 1 to 5

GEM

*Not applicable*

**Overseas companies incorporated in a Recognised Jurisdiction**

**Primary Listing**

**Secondary Listing**

Main Board

*Not applicable*

Sections 3 to 5

GEM

*Not applicable*

The Appendix to the Joint Statement is a Main Board Rule Application Table for Overseas Issuers of Equity Securities, which sets out how each Main Board Rule applies to overseas companies with a primary, secondary and dual-primary listing. It also sets out the waivers from compliance with certain Main Board Listing Rules that are commonly applied for, and granted to, overseas companies (**Common Waivers**). Other waivers are granted by the Exchange automatically (**Automatic Waivers**), subject to certain criteria set out in section 5 of the Joint Statement.

## The Takeovers Code

The SFC’s Codes on Takeovers and Mergers and Share Repurchases (the **Takeovers Code**) is applicable to Hong Kong public companies and companies and REITs with a primary or dual-primary listing on the Exchange. The Takeovers Code does not apply to a company with a secondary listing on the Exchange unless that company is a “public company in Hong Kong” within the meaning of section 4 of the [Introduction to the Takeovers Code](http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_1489_VER11.pdf) ([see archive](HKSFC3527_1489_VER11.pdf)). Overseas companies that seek a secondary listing on the Exchange must confirm with the Takeovers Executive that it should not be considered a “public company in Hong Kong” for the purposes of the Takeovers Code. The SFC maintains a [list](http://www.sfc.hk/web/EN/regulatory-functions/listings-and-takeovers/takeovers-and-mergers/secondary-listed-companies-not-subject-to-the-codes.html) ([see archive](secondary_listed_companies_not_subject_to_the_Codes.pdf)) of companies with a secondary listing on the Exchange that are not subject to the Takeovers Code.

## Revised Joint Statement - Section 1: Shareholder Protection Standards

Overseas applicants are required to demonstrate to the Exchange that key shareholder protection standards (as set out in paragraphs 31 to 41 of the Joint Statement) are met by a combination of their constitutional documents and the laws, rules and regulations of their home jurisdiction. For this purpose, it may be necessary to amend the applicant’s constitutional documents. An applicant may avoid providing a detailed explanation of its compliance with key shareholder protection standards by adopting the arrangements set out in the applicable Country Guide published by the Exchange[[3]](#footnote-39). The Exchange reserves the right to request further information to be provided.

### Key Shareholder Protection Standards

#### Matters Requiring Shareholder Approval: Matters Requiring a Super Majority Vote

For an overseas company, a super-majority of members’ votes is required to approve: (i) changes to the rights attached to any class of shares; (ii) material changes to the company’s constitutional documents; and (ii) its voluntary winding up. Where there is a low quorum requirement for the vote (e.g. two members), the Exchange defines a super-majority as a two-thirds majority. The Exchange requires a significantly higher quorum requirement in order to allow an overseas company to approve any of the above matters by a simple majority (that is, one vote above 50%).

#### Individual Members to Approve Increase in Member’s Liability

There should be no alteration in an overseas company’s constitutional document to increase an existing member’s liability to the company unless such increase is agreed in writing by the member concerned.

#### General Meetings

Overseas companies must hold an annual general meeting (**AGM**) each year, with no more than fifteen months separating each AGM. Members must receive reasonable written notice of general meetings and must have the right to speak and vote at meeting. In some cases, the Listing Rules may require certain members to abstain from voting, such as if the member has a material interest in the arrangement that is the subject of the vote. If an overseas company is subject to foreign laws or regulations that make it impossible to require members to abstain from speaking or voting, the overseas company may enter into an undertaking with the Exchange to put in place measures that will result in the same effect. Minority members must be allowed to convene extraordinary general meetings (**EGM**s) and to add resolutions to a meeting agenda. EGMs must not require more than 10% of members’ support to be convened.

A Hong Kong clearing house that is recognised by the Exchange must be entitled to appoint proxies or corporate representatives (who will have the same or comparable rights as the shareholders) to attend general meetings and creditors meetings. Where the overseas company is subject to foreign laws that prohibit the appointment of proxies or corporate representatives, special arrangements must be made with Hong Kong Securities Clearing Company Nominees Limited (**HKSCC Nominees**) to ensure that Hong Kong investors holding shares through HKSCC Nominees enjoy the right to vote, attend (personally or by proxy) and speak at general meetings.

#### Appointment of Auditors

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 from the board of directors, for example the supervisory board in systems that have a two tier board structure.

## Revised Joint Statement - Section 2: Regulatory Cooperation

The statutory securities regulator of an overseas company’s jurisdiction of incorporation and place of central management and control (if different) must: (i) be a full signatory of the IOSCO MMOU; or (ii) have entered into a bilateral agreement with the SFC to provide for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of the relevant jurisdiction and Hong Kong. The Exchange may exempt certain companies from this requirement, subject to the SFC’s consent.

Factors which the Exchange takes into account in determining an overseas company’s place of central management and control are:

* where its senior management direct, control and coordinate the company’s activities;
* where its principal books and records are kept; and
* where its business operations or assets are located.

## Revised Joint Statement - Section 3: Accounting and Auditing Related and other Disclosure Requirements

The Exchange may accept accountants’ reports and financial statements even if they are not prepared in accordance with Hong Kong Financial Reporting Standards (**HKFRS**) or International Financial Reporting Standards (**IFRS**), but must comply with the requirements below.

### Auditing Standards

Financial statements in overseas companies’ accountants’ reports must be audited to a standard comparable to that required in Hong Kong (Main Board Listing Rule 19.12). Listed companies’ financial statements must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board of the International Federation of Accountants. The following standards are accepted by the Exchange:

1. the Australian Auditing Standards;
2. the Canadian Generally Accepted Auditing Standards;
3. professional auditing standards applicable in France (Article L.225-235 of the French Commercial Code);
4. the Italian Auditing Standards;
5. the Singapore Standards on Auditing;
6. the Standards for Investment Reporting issued by the Auditing Practice Board in the UK; and
7. the US Public Company Accounting Oversight Board auditing standards.

### Independence and Qualification Requirements

Accountants’ reports must be prepared by certified public accountants that are qualified to be appointed as the company’s auditors under the Professional Accountants Ordinance (Chapter 50 of the Laws of Hong Kong). The Companies Ordinance (Chapter 32 of the Laws of Hong Kong) requires the same for accountants’ reports included in prospectuses. Exemption from these requirements may be granted if the overseas applicant is able to show that they are irrelevant, unduly burdensome, unnecessary or inappropriate.

The reporting accountants and auditors must be independent from the overseas company to the same extent required of auditors under the Companies Ordinance. Generally, reporting accountants and auditors that are not qualified in Hong Kong are considered to be acceptable if the firm has an international name and reputation, is a member of a recognised accounting body and is subject to independent oversight by a regulatory body of a jurisdiction that is a signatory to the IOSCO MMOU. Provided these requirements are met, the Exchange will grant a Common Waiver in respect of Main Board Rule 4.03 on application by the overseas listing applicant, subject to the SFC granting the overseas company a certificate of exemption from strict compliance with the relevant Companies Ordinance requirements.

### Acceptable Financial Reporting Standards

Accountants’ reports and financial statements must conform with HKFRS, IFRS, China Accounting Standards for Business Enterprises (**CASBE**) (for PRC companies) or Generally Accepted Accounting Principles of the United States of America (**US GAAP**) (for overseas companies seeking a secondary listing on the Exchange). Significant departures from these standards must be disclosed and explained, and the effects of the departure must be quantified.

The acceptability of an alternative financial reporting standard to the Exchange depends on the extent to which it differs from IFRS, and whether there is any concrete proposal to converge or substantially converge the foreign financial reporting standard with IFRS. Currently, the Exchange accepts the following standards for the following types of listings:

**Alternative Financial Reporting Standard**

**Type of Company or Listing**

IFRS as adopted by the European Union

EU company listing on the Exchange

US GAAP

Dual-primary listing in the US and on the Exchange

generally accepted accounting principles of Australia

Dual primary listing in the relevant jurisdiction and on the Exchange OR Secondary listing on the Exchange

generally accepted accounting principles in Canada

Japanese Generally Accepted Accounting Principles

Singapore Financial Reporting Standards

Generally accepted accounting practice in the UK

Financial statements that do not adopt HKFRS, IFRS or CASBE must include a statement that shows the financial effect of any material differences between the financial statements as they are prepared and the financial statements as prepared according to HKFRS or IFRS. If an overseas company with a dual-primary or secondary listing on the Exchange de-lists from the jurisdiction of the alternative financial reporting standard that is used for its financial statements, it must then adopt IFRS, HKFRS or CASBE. Overseas companies should consult with the Exchange if they wish to adopt a financial reporting standard or auditing standard that is not mentioned in the Joint Statement.

### Additional Disclosure Requirements in Prospectuses and Company Information Sheets

In its prospectus or listing document, an overseas company must clearly disclose:

1. a summary of the waivers and exemptions granted to it;
2. a summary of the provisions in the laws and regulations of its home jurisdiction and primary market that are different from Hong Kong law regarding:
i. the rights of the holders of its securities and how they are exercised;
	1. directors’ powers and investor protection; and
	2. the circumstances under which minority shareholders may be bought out (or required to be bought out) after a takeover or share repurchase;
3. details of withholding tax on distributable entitlements, any other tax payable (e.g. capital gains, inheritance or gift taxes) and any tax reporting obligations that its Hong Kong investors may have; and
4. where the company is listing depositary receipts, a summary of the terms and conditions in the depositary agreement and deed poll.

Additionally, a company that is incorporated in a Recognised Jurisdiction that is different from its place of central management and control, and which is seeking a secondary listing on the Exchange, must disclose in its listing document whether the statutory securities regulator of its place of central management and control is a full signatory of the IOSCO MMOU or has entered into a bilateral agreement with the SFC to provide mutual assistance and exchange of information. Overseas companies must also make the disclosures described above in their [Company Information Sheets](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listoc/co_inf.htm) ([see archive](company_information_sheets.pdf)), which must be kept up-to-date to reflect any material changes.

## Revised Joint Statement - Section 4: Practical and Operational Matters

### Compliance with Hong Kong Rules and Regulations

Overseas companies should consult with the Exchange and the Takeovers Executive if they face practical or operational difficulty with complying with the Listing Rules or the Takeovers Code (such as where their requirements conflict with those set out under the laws and regulations of the overseas company’s home jurisdiction). Alternative methods of compliance may be possible, such as the provision of undertakings to the Exchange to put in place alternative arrangements.

### CCASS Eligibility

Listing applicants must arrange with Hong Kong Securities Clearing Company Limited to ensure that their securities are eligible for deposit, clearance and settlement in the Central Clearing and Settlement System (**CCASS**).

The Joint Statement requires listing applicants to inform the Exchange early on in the application process of the nature of the securities to be issued and listed, including:

1. their form (e.g. physical scrip or scripless);
2. if physical scrip is issued, whether it will be in definitive or global form and whether the certificate will be in registered or bearer form;
3. the holding structure of scripless securities (e.g. how Hong Kong investors will hold the securities);
4. how its branch register of members in Hong Kong is maintained and open to inspection;
5. procedures to replace lost certificates of physical scrip securities and any restrictions on the holding or transfer of new certificates; and
6. any restrictions on Hong Kong investors’ right to attend general meetings or appoint proxies.

### Cross-border Clearing and Settlement

Dual-primary or secondary listed companies must ensure that there are sufficient registered shares on their Hong Kong share registers to ensure liquidity. They are expected to transfer shares from the overseas share register when necessary. An overseas company that is listed on the Exchange and on another stock exchange must take steps to avoid price volatility of its shares on listing and imbalances in demand and supply between the overseas market and Hong Kong, taking into account its shareholding structure and the arbitrage opportunities between Hong Kong and the overseas market. The Joint Statement recommends early consultation with the Exchange on such matters. The Exchange’s guidance letters [GL53-13](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl53-13.pdf) - “Liquidity Arrangements for Issuers Seeking to List by Introduction where the Securities to be Listed are already Listed on another Stock Exchange” ([see archive](gl53-13.pdf)) and [GL39-12](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl39-12.pdf) – “Hong Kong Depositary Receipts – Pre-release and Pre-cancellation” ([see archive](gl39-12.pdf)) may be consulted for further reference.

### Hong Kong Depositary Receipts

Overseas companies may consider listing Hong Kong Depositary Receipts if they face legal or operational difficulties in listing their shares on the Exchange. Listing applicants may refer to the Exchange’s [website](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/listsptop_drf/drf_main_index.htm) and the Exchange’s guidance letter [GL39-12](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl39-12.pdf) ([see archive](gl39-12.pdf)) for guidance.

### Taxation

A listing applicant must inform the Exchange at the earliest opportunity prior to listing of any withholding tax on distributable entitlements or any other tax payable. Details of tax payable and whether Hong Kong investors have any tax reporting obligations must be disclosed in its prospectus or listing document, and in its Company Information Sheet on an on-going basis after listing.

### Stock Name Identification

Stock codes for overseas companies listed on the Exchange must carry the following suffixes for the following situations:

Suffix

Meaning

“S”

Secondary listing

“DR” with a stock code between 6200 and 6399

Listed Hong Kong Depositary Receipts

“RS” with a stock code between 6300 and 6399

Incorporated in the US and have listed Hong Kong Depositary Receipts that are restricted securities under the US federal securities laws

## Revised Joint Statement - Section 5: Entities Suitable for a Secondary Listing

An overseas company may apply for a secondary listing on the Exchange if it is primarily listed on another stock exchange or if it is applying to list in multiple jurisdictions simultaneously. Main Board Listing Rule 2.03 requires:

1. the listing applicant to be suitable for listing;
2. the issue and marketing of the listed securities to be conducted in a fair and orderly manner;
3. investors and the public to be kept fully informed and provided with sufficient information to make informed decisions and information which might have a material effect on market activity and prices of the listed securities;
4. all holders of the listed securities to be treated equally and fairly; and
5. the directors of the listed company to act in the collective interests of the holders of the securities.

Main Board Listing Rule 19.30 requires listed applicants to be primarily listed on an exchange that enforces shareholder protection standards equivalent to those in Hong Kong. The Exchange considers the stock exchanges below (**Recognised Exchanges**) to meet this requirement.

### Recognised Stock Exchanges

The Joint Statement names the following Recognised Exchanges:

* the Amsterdam Stock Exchange (NYSE Euronext – Amsterdam);
* the Australian Securities Exchange (ASX);
* the Brazilian Securities, Commodities and Futures Exchange (BM&FBOVESPA);
* the Frankfurt Stock Exchange (Deutsche Börse);
* the Italian Stock Exchange (Borsa Italiana);
* the London Stock Exchange (premium segment, LSE);
* the Madrid Stock Exchange (Bolsa de Madrid);
* NASDAQ OMX (US)
* the New York Stock Exchange (NYSE Euronext (US));
* the Paris Stock Exchange (NYSE Euronext – Paris);
* the Singapore Exchange (SGX);
* the Stockholm Stock Exchange (NASDAQ OMX –Stockholm);
* the Swiss Exchange (SIX Swiss Exchange);
* the Tokyo Stock Exchange (TSE); and
* the Toronto Stock Exchange (TMX).

### Eligibility for Waivers

Waivers are more likely to be granted if the listing applicant is primarily listed on a Recognised Exchange (that is, a full listing that complies with the highest standards and full rigour of the rules and regulations of that market), provided that it has not received waivers from or is exempt from the laws, rules or regulations that generally apply to companies listed on its primary market. To apply for waivers from the requirements of the Listing Rules, a company that seeks a secondary listing on the Exchange must:

1. have a market capitalisation in excess of USD400 million;
2. have been listed on its primary market for at least five years (unless the listing applicant is well established and has a market capitalisation that is significantly larger than USD400 million); and
3. demonstrate a good compliance record with the rules and regulations of its home jurisdiction and primary market;

Additionally, the Exchange may grant some waivers automatically to a company that:

1. meets the three requirements listed above;
2. has a primary listing on a Recognised Exchange; and
3. has a “centre of gravity” outside of Greater China.

The Exchange considers the following non-exhaustive list of factors to determine whether an overseas company has a “centre of gravity” in Greater China:

1. whether the company is listed in Greater China;
2. the company’s place of incorporation;
3. the company’s history;
4. the location of the company’s headquarters;
5. the location of the company’s central management and control;
6. the location of the company’s main operations and assets;
7. the location of the company’s corporate and tax registration; and
8. the nationality or country of residence of the company’s management and controlling shareholders.

The Exchange will not approve an application for secondary listing from an overseas company that has its “centre of gravity” in Greater China.

Common Waivers and Automatic Waivers from the Main Board Listing Rules’ requirements are set out in the Appendix to the Joint Statement. Waivers granted are conditional upon the listing applicant maintaining its primary listing on the same market that it had when it achieved a secondary listing on the Exchange.

### General Disclosure Obligations

Like any other company listed on the Exchange, a company with a secondary listing is subject to the inside information regime under Part XIVA of the Securities and Futures Ordinance. If the company releases any information to another stock exchange on which its securities are listed, it must announce that information to the Exchange simultaneously under Main Board Rule 13.10B.

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1. Hong Kong, the People’s Republic of China, the Cayman Islands or Bermuda [↑](#footnote-ref-28)
2. Main Board Rule 19.05(1)(b) and GEM Rule 24.05(1)(b) [↑](#footnote-ref-29)
3. Prior to the publication of the Country Guides, listing applicants should refer to published listing decisions for their jurisdiction of incorporation. [↑](#footnote-ref-39)