

# COUNTRY GUIDE – INDIA

(November 2015)

**Important notes:** *This guide does not override the Main Board Listing Rules (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 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 our understanding of them as of the date of issue of this guide. This guide may not be updated to reflect changes in the law after the date of issue. 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 India must confirm to the Exchange, with its initial application for listing, that the Indian 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 Indian 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 India can apply for one or more “common waivers” and those seeking secondary listings<sup>2</sup> and satisfy the conditions set out in paragraph 88 of the JPS 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 India incorporated companies meeting the conditions set out in this guide, we do not consider Indian shareholder protection standards on matters set out in paragraphs 31 to 41 of the JPS to be materially different to our own.

We will consider a listing of depositary receipts on the Exchange for India incorporated issuers.

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

Tax matters are not covered in the current analysis. We expect an India incorporated issuer to prominently and fully disclose in its listing document details of the Indian taxation regime and how it is applicable to Hong Kong shareholders.

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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. Overview of the Indian regime**

- 1.1 Under Indian law, an Indian company can generally only be listed outside India by way of a depositary receipt (“**DR**”) listing. Therefore, this guide is drafted on the assumption that an Indian applicant would apply for a DR listing rather than a listing of shares. Under Indian law, the listing entity may be a public company listed in India or an unlisted private or public company.
- 1.2 The general permission for companies to list on non-Indian stock exchanges without requiring a pre-existing or simultaneous listing in India was re-introduced in October 2013 and confirmed in the Depository Receipts Scheme, 2014 which became effective from 15 December 2014. There are currently no disclosure requirements set out in the Depository Receipts Scheme, 2014 in relation to an Indian issuer listing DRs on a non-Indian exchange without a corresponding listing in India.
- 1.3 As at 16 November 2015, there are no India incorporated companies listed on the Exchange.

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

- 2.1 This guide applies to primary and secondary Main Board listing applicants incorporated in India. We do not accept applications for DR listing on Growth Enterprise Market (“**GEM**”).

## **3. International Regulatory Co-operation Measures**

- 3.1 The 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 India as the Securities and Exchange Board of India (“**SEBI**”) is a full signatory of the IOSCO MMOU<sup>5</sup>.
- 3.2 If an issuer is incorporated in India 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 jurisdiction.

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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 (“**IOSCO MMOU**”).

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

## 4. JPS Shareholder Protection Standards

- 4.1 Subject to India incorporated issuers demonstrating<sup>7</sup> how the matters set out below conform to the JPS requirements, we do not consider Indian shareholder protection standards on matters set out in paragraphs 31 to 41 of the JPS to be materially different to our own<sup>8</sup>. We have set out below details of the differences between Indian standards and the JPS requirement.

### *Matters requiring a super majority vote*

- 4.2 Voluntary winding up of an Indian issuer: Under the JPS, a super-majority vote of members is required to approve a voluntary winding up of an Indian issuer. Under Indian law, an ordinary resolution of the shareholders of a company is required to approve the voluntary winding up of a company if the articles of association provide for dissolution of the company upon the occurrence of specified events.

### Our Approach

- 4.3 An Indian issuer's constitutional documents should be amended such that a special resolution of the shareholders is required to approve a voluntary winding up of the company.

### *Proceedings at general meetings and creditor meetings*

- 4.4 Right of a recognised Hong Kong clearing house to appoint proxies or corporate representatives: Under the JPS, 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<sup>9</sup>. Under Indian law, a shareholder of an Indian company is only able to appoint one corporate representative to speak and vote at a meeting for all the shares it holds, and while it is possible to appoint multiple proxies, a proxy cannot speak at a meeting and can only vote where voting is conducted by a poll.

### Our Approach

- 4.5 We consider the inability of a proxy to speak at general meetings and creditor meetings can be addressed taking into account the ability of a DR holder to convert his DRs into shares to exercise his right to speak and vote at general meetings, and the amount of time and costs involved in processing the

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<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 Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28.

<sup>9</sup> JPS, paragraph 40.

conversion must be reasonable under the deposit agreement acceptable to the Exchange. Further, an Indian issuer's constitutional documents and the deposit agreement<sup>10</sup> must ensure that HKSCC Nominees Limited shall be entitled to appoint holders of depositary receipts (or persons nominated by them) as proxies with the power to attend and vote on a poll at general meetings and creditor meetings of the issuer. In addition, the restriction on the ability of depositary receipt holders to speak at general meetings and creditor meetings must be set out in the listing document.

## **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. Issuers are encouraged to notify the Listing Department if they envisage difficulties in complying with such matters, where applicable.

### *Listing of Indian Companies outside India*

- 5.2 Indian companies are not permitted to list their shares on stock exchanges outside India without the approval of the Government of India, which has not historically been granted. However, this restriction does not apply to DRs and Indian companies are allowed to list DRs on stock exchanges outside India. Indian companies seeking listings in Hong Kong can only seek listings of DRs on the Main Board as GEM does not currently accept listings of DRs.
- 5.3 We have been advised that there are no restrictions on non-Indians holding shares in an Indian company upon conversion of the DRs into shares. DR holders can acquire ownership of the shares upon conversion of the DRs according to the terms of the deposit agreement, subject to obtaining tax registration, opening a securities account in India and complying with procedural requirements.

### *Registers of Securities*

- 5.4 Under Indian law, shares issued in relation to DRs ("**Depository Shares**") must be in dematerialised form. The register of members of the Indian company will reflect the name of the domestic depositary<sup>11</sup> as the owner of the Depository

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<sup>10</sup> Meaning a deposit agreement in the form prescribed under Chapter 19B of the Rules. See Rule 19B.16.

<sup>11</sup> A domestic depositary is a public company incorporated under the Indian Companies Act 1956 and which has been granted a certificate of registration as a depositary by SEBI to act as a domestic depositary. Currently there are two domestic depositaries operating in India, namely National Securities Depository Limited and Central Depository Service Limited.

Shares. This register has to be maintained at the Indian issuer's registered office unless otherwise approved by the shareholders by a special resolution.

- 5.5 The domestic depository will maintain a register and index of beneficial owners which will reflect the name of the overseas depository as the beneficial owner of the shares held on its behalf by the domestic custodian. This register and index of beneficial owners is maintained by the domestic custodian onshore in India.
- 5.6 Indian law allows the overseas depository to maintain a separate register of the holders of DRs. This register may be maintained outside India. An Indian issuer listing DRs would recognise the overseas depository as its member but would not recognise a DR holder or HKSCC Nominees Limited as its member.

#### Our Approach

- 5.7 Indian issuers are reminded that the Hong Kong depository must be a suitably authorised and regulated financial institution acceptable to the Exchange<sup>12</sup>. In assessing suitability, the Exchange will also have regard to the jurisdiction of incorporation of the Hong Kong depository. Similarly, the governing law of the deposit agreement should be that of Hong Kong or, if another jurisdiction is chosen, one that is generally used in accordance with international practice<sup>13</sup>.
- 5.8 The listing document should include full details of (i) the rights and obligations of DR holders including how the rights of DR holders may be enforced against the Indian issuer and/or the Hong Kong depository in Hong Kong and India; (ii) the associated risks to the Indian issuer and its DR holders; and (iii) full details of the clearing and settlement arrangements including the mechanism through which Hong Kong investors (through HKSCC Nominees) will hold the DRs and the roles and responsibilities of any domestic depository, the Hong Kong depository and CCASS, including with reference to any applicable Indian rules and regulations.
- 5.9 The deposit agreement must be in a form acceptable to the Exchange<sup>14</sup>. As such, an Indian issuer should early consult the Exchange on the terms of the deposit agreement.

#### ***Constitutional Documents***

- 5.10 Paragraph 12 of Appendix 3 to the Rules requires a listed issuer's constitutional documents to provide that 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

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<sup>12</sup> Rule 19B.15.

<sup>13</sup> Rule 19B.16(t).

<sup>14</sup> Rule 19B.16.

persons who are interested directly or indirectly therein have failed to disclose their interests to the issuer.

- 5.11 This requirement is inconsistent with Indian law, under which the beneficial owners of shares held in the names of the other persons as nominees are required to make a declaration to the company specifying the nature of their interest, particulars of the person in whose names the shares stand registered in the books of the company and such other particulars as may be prescribed, failing which they are subject to a monetary penalty. We would expect to be prepared to grant a waiver from strict compliance with paragraph 12 of Appendix 3 to the Rules to the extent it would contravene Indian law.

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

- 6.1 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 Standards or, for applicants seeking a secondary listing, general accepted accounting principles of the United States of America<sup>15</sup>.

### Our Approach

- 6.2 Section 3 of the JPS sets out the accounting and auditing related requirements<sup>16</sup>. No examination has been made to the acceptability of Indian generally accepted accounting practices or Indian auditing standards. An Indian issuer will need to demonstrate to the Exchange that Indian generally accepted accounting practices and auditing standards are comparable to those required in Hong Kong in order to use such practices and standards.

## **7. Taxation**

- 7.1 No analysis on tax matters is included in this guide.

### Our Approach

- 7.2 We expect an Indian issuer to disclose the following prominently in its listing document:
- (a) details of any Indian withholding tax on distributable entitlements or any other tax, including the applicable rates, which is payable by investors in its securities;

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<sup>15</sup> 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>16</sup> JPS, paragraphs 50 and 59.

- (b) details of any treaty between India and Hong Kong that may affect any taxes payable;
  - (c) the effect of holding DRs through Central Clearing and Automated Settlement System (“CCASS”) or outside CCASS on any tax payable (where applicable); and
  - (d) the procedures for claiming any tax relief or exemptions.
- 7.3 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 Indian laws and regulations.