



Hong Kong

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HKEX APPROVES INDIA AS ACCEPTABLE JURISDICTION OF INCORPORATION FOR LISTING APPLICANTS

The Hong Kong Stock Exchange (the **Exchange**) has accepted India as an acceptable jurisdiction of incorporation for listing applicants and has issued a Country Guide for India (**India Guide**) setting out guidance on how companies incorporated in India can meet the Listing Rules' requirements for equivalent shareholder protection standards¹, and the position with respect to other requirements of the Joint Policy Statement Regarding the Listing of Overseas Companies (**the Joint Policy Statement**) issued by the Securities and Futures Commission (**SFC**) and the Exchange.

Companies incorporated outside of Hong Kong, the People's Republic of China, Bermuda and the Cayman Islands that are seeking to list on the Exchange need to satisfy the Exchange that the key shareholder protection standards set out in the Joint Policy Statement² are provided for by the laws of its home jurisdiction. If the laws of the home jurisdiction do not provide the required shareholder protection standards, a company can amend its constitutional documents to achieve the same standards. Once a jurisdiction has been accepted, it is included in the Exchange's list on its website of the jurisdictions approved as acceptable places of incorporation (**Acceptable Jurisdictions**) and a country guide is issued for that jurisdiction.

New Indian listing applicants will be able to follow the guidance given in the India Guide for meeting the key shareholder protection standards. However, on submission of their listing applications, they will be required to confirm to the Exchange that the Indian laws, regulations and market practices set out in the India Guide remain applicable, or provide details of any changes. They must also inform the Exchange of any other Indian laws, regulations and market practices that are relevant to their particular circumstances.

The following provides a summary of the key provisions of the India Guide.

Overview of India's Regime

Indian companies are not permitted to list their shares outside India without the prior approval of the Government, which has not historically been granted. However, this restriction does not apply to depositary receipts (**DRs**). The Depositary Receipts Scheme, 2014 that came into effect in December 2014 authorised India incorporated companies to list on non-Indian stock exchanges without a pre-existing or simultaneous listing in India. Furthermore, the scheme does not impose a disclosure requirement on an Indian issuer listing DRs outside India without being listed in India.

Accordingly, an Indian company can generally only list outside the country by way of a DR listing, and the India Guide is therefore drafted on the basis that Indian listing applicants will list DRs rather than shares. Under Indian law, the listing applicant may be a public company listed in India or an unlisted private or public company.

¹ Main Board Rule 19.05(1)(b) and GEM Rule 24.05(1)(b)

² The key shareholder protection standards are set out at paragraphs 31 to 41.

Applicability of the Guide

Indian companies can only apply for a primary or secondary listing on the Main Board of the Exchange. The Growth Enterprise Market (**GEM**) does not accept listings of DRs.

Where a listing applicant is incorporated in India, but its place of central management and control is outside India, there must also be adequate arrangements for regulatory co-operation between the statutory securities regulator of that other jurisdiction and the SFC.³

International Regulatory Co-operation Measures

The Joint Policy Statement requires the statutory securities regulator of an overseas company's jurisdiction of incorporation to have made adequate arrangements for regulatory co-operation with Hong Kong's SFC. This can be achieved by the statutory securities regulator either being a full signatory of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (**IOSCO MMOU**) or having a bilateral agreement with the SFC. This requirement is met for Indian companies as the Securities and Exchange Board of India is a full signatory of the IOSCO MMOU.

Conformity with Joint Policy Statement Shareholder Protection Standards

Subject to India incorporated issuers demonstrating how the matters set out below conform to the Joint Policy Statement requirements, the Exchange considers that India's shareholder protection standards are not materially different from those set out in paragraphs 31 to 41 of the Joint Policy Statement. The differences between Indian standards and the Joint Policy Statement's requirements are set out below:

Matters requiring a super majority vote		
	Indian Law	The Joint Policy Statement
Voluntary winding up	An ordinary resolution of a company's shareholders is required to approve the voluntary winding up of the company if the articles of association provide for dissolution of the company upon the occurrence of specified events.	A super-majority vote is required to approve a voluntary winding up of an overseas company.
Solution	Amend the company's constitutional documents to require a special resolution of the shareholders to approve a voluntary winding up of the company.	

Proceedings at general meetings and creditor meetings		
	Indian Law	The Joint Policy Statement
Proxies or corporate representatives	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. Multiple proxies can be appointed; however, proxies cannot speak at a meeting and can only vote if voting is conducted by poll.	A recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings. They should enjoy statutory rights comparable to those of other shareholders, including the right to speak and vote.
Solution	The company's constitutional documents and the deposit agreement must guarantee that HKSCC Nominees Limited will be entitled to appoint holders of DRs (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.	

³ Joint Policy Statement, paragraph 45.

	<p>The Exchange considers that a proxy's inability to speak at general meetings and creditor meetings can be dealt with by 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. The amount of time and costs involved in facilitating this conversion must be considered reasonable⁴ under the deposit agreement.</p> <p>The restriction on the ability of DR holders to speak at general meetings and creditor meetings must be included in the listing document.</p>
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Practical and Operational Matters

Non-Indian Shareholders

The Exchange has been advised that there are no restrictions on non-Indians holding shares in an Indian company on 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 opening a securities account in India, obtaining tax registration and complying with certain procedural requirements.

Registers of Securities		
	Indian Law	Exchange Listing Rules
Depository Shares and domestic and overseas depository	<p>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 depository⁵ as the owner of the Depository Shares. Unless otherwise approved by a special resolution of the company's shareholders, the register of members must be maintained at the Indian issuer's registered office.</p> <p>The domestic depository will maintain a register and index of beneficial owners which will record 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 in India.</p> <p>An overseas depository is allowed to maintain a separate register of the DR holders. This register may be maintained outside India. The 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.</p>	<p>The Hong Kong depository must be a duly authorised and regulated financial institution acceptable to the Exchange. When assessing suitability, the Exchange will take the depository's jurisdiction of incorporation into account. On a similar note, if the governing law of the deposit agreement is not Hong Kong, it must be another jurisdiction that is generally accepted by international practice.</p> <p>The listing document should include full particulars of (i) the associated risks to the Indian issuer and its DR holders; (ii) 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; and (iii) full particulars 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.</p> <p>An Indian issuer should consult the Exchange early on the terms of the deposit agreement given the requirement that it must be in a form acceptable to the Exchange.</p>

⁴ The reasonable standard is set by the Exchange.

⁵ A domestic depository is a public company incorporated under the Indian Companies Act 1956 and which had been granted a certificate of registration as a depository by SEBI. There are currently two domestic depositories in India, namely, National Securities Depository Limited and Central Depository Service Limited.

Constitutional Documents		
	Indian Law	The Joint Statement
Disclosure of interests	A monetary penalty may be imposed if the beneficial owners of shares held in the name of another person as nominee fail to make a declaration to the company detailing 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.	Appendix 3 Paragraph 12 of the Main Board Listing Rules requires a listed issuer's constitutional documents to provide that no powers will be taken to freeze or otherwise impair any of the rights attaching to any share by reason only that the person/ persons who are interested (directly/indirectly) therein have failed to disclose their interests to the issuer.
Solution	The Exchange is prepared to grant a waiver from strict compliance with Appendix 3 Paragraph 12 to the extent it would contravene Indian Law.	

Accounting and Auditing Related Requirements		
	Indian Law	Listing Rules and Joint Policy Statement
Accounting Practices	No thorough comparison has been conducted as to the acceptability of Indian generally accepted accounting practices or auditing standards.	The accountants' reports and financial statements of overseas issuers seeking a Hong Kong listing are normally required to conform to the International Financial Reporting Standards or the Hong Kong Financial Reporting Standards, or for a secondary listing, the generally accepted accounting principles of the United States.
Solution	In order to use Indian generally accepted accounting practices and auditing standards, an Indian issuer will need to demonstrate that they are comparable to those required in Hong Kong.	

Taxation		
	Indian Law	The Joint Statement
Tax	No analysis was done on taxation matters	
Solution	The Exchange expects an Indian issuer to disclose the following matters in its listing document: ⁶ <ol style="list-style-type: none"> 1. details of any treaty between India and Hong Kong that may affect any taxes payable; 2. 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; 3. the effect of holding DRs through CCASS or outside CCASS on any tax payable; and 4. the procedures for claiming any tax relief or exemptions. 	

⁶ Appropriate disclosure of these matters should be in the "Summary" and "Risk Factors" sections of the listing document and any sections summarising Indian laws and regulations.

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