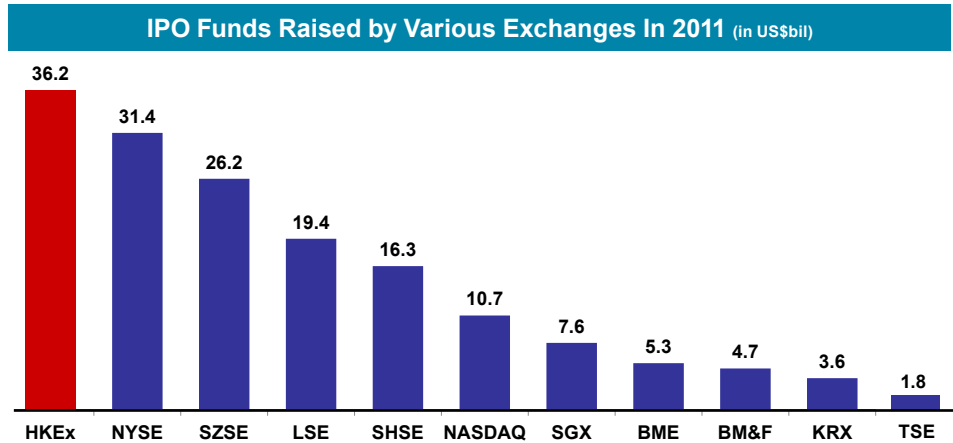


# JAPANESE LISTINGS IN HONG KONG

August 2012

As an international financial center, Hong Kong is one of the world’s leading capital markets, with the Stock Exchange of Hong Kong (the “SEHK”) being a favored venue for IPO fundraising activities. In 2011, total IPO funds raised in Hong Kong amounted to approximately US\$36.1 billion, making Hong Kong the world’s largest IPO center for a third consecutive year.

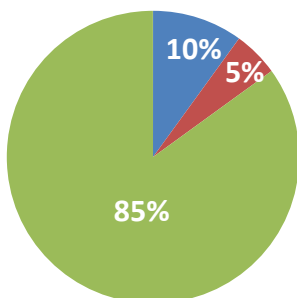
A Hong Kong listing offers Japanese companies access to a deep capital pool, with active participation of both local and overseas institutional and retail investors, both at the time of listing and at later stages.



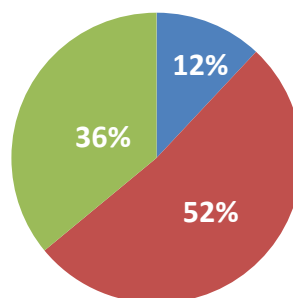
While Hong Kong has long been a preferred listing venue for Chinese companies seeking to tap the international capital markets, it is increasingly becoming a popular listing venue for companies outside of Hong Kong and China looking to access the region’s capital pools and seeking to raise brand awareness

in China and throughout Asia. The year ended 2011 saw a dramatic increase in the number of overseas companies seeking a listing on the SEHK, including Swiss mining firm Glencore International, Italian fashion house Prada, U.S. luggage maker Samsonite and Japanese online financial services firm SBI Holdings.

2007 IPO Funds Raised



2011 IPO Funds Raised



- HK Listings
- International Listings
- Mainland Listings

Although the global IPO market has seen a pullback in 2012, Hong Kong has still raised over US\$5.5 billion in IPO funds through July 2012, and the IPO pipeline in Hong Kong remains robust with almost 60 active applications.

## ACCEPTANCE OF OVERSEAS JURISDICTIONS

The Hong Kong listing regime is open to both local and overseas issuers.<sup>1</sup> Under the SEHK Listing Rules, companies incorporated in one of four jurisdictions (i.e., Hong Kong, the PRC, the Cayman Islands and Bermuda) are eligible for listing. The SEHK also accepts listings from companies incorporated in other jurisdictions, provided they can demonstrate shareholder protections equivalent to those provided in Hong Kong. In addition to the four jurisdictions recognized under the Listing Rules, there are currently 21 jurisdictions, including Japan, which are acceptable for listing on the SEHK.

In determining whether sufficient shareholder protections are in place, the SEHK assesses listing applicants on a case-by-case basis, and where the SEHK believes that the home jurisdiction of the listing applicant does not provide sufficient shareholder protections, applicants may be allowed to make variations to their constitutional documents to address any such shortcomings. In order to provide a roadmap to assist overseas companies seeking a primary listing in Hong Kong, the SEHK and the Hong Kong Securities and Futures

Australia	ACCEPTABLE OVERSEAS JURISDICTIONS			Brazil
British Virgin Islands	Canada's Alberta, British Columbia and Ontario	Cyprus	France	Germany
Guernsey	Isle of Man	Italy	Japan	Jersey
Luxembourg	Singapore	South Korea	United Kingdom	USA's California, Delaware and Maryland

Commission issued a joint policy statement in 2007 (the “JPS”),<sup>2</sup> which includes a schedule of key shareholder protections to be addressed by applicants, including:

- a corporate structure that clearly protects principal shareholder rights;
- fair proceedings for general meetings to enable shareholders to utilize their rights in full;
- corporate governance measures that ensure the powers of directors are reasonably contained and subject to reasonable scrutiny;
- a corporate structure and corporate actions which enshrine the notion of capital maintenance; and
- arrangements which ensure reasonable regulatory cooperation between the securities regulators of the issuer’s home jurisdiction and those in Hong Kong.

The SEHK has also issued guidance setting out streamlined vetting practices for listing overseas

companies.<sup>3</sup> In particular, the SEHK adopts a purposive interpretation of the shareholder protection equivalence requirements and does not rigidly require issuers to change their constitutional documents.

For example, under Hong Kong law, any change to the constitutional documents of a company requires the approval of shareholders with a three-quarter majority vote in a general meeting. Under Japanese law, in order for a company to amend its articles, the resolution of the shareholders’ meeting must be approved by at least two-thirds of the voting rights of the shareholders present at a meeting where the shareholders holding at least one-third of the voting rights of the shareholders who are entitled to exercise their voting rights are present.

Although it is not strictly equivalent to the Hong Kong requirement, the SEHK regarded the approach under Japanese law as acceptable, subject to disclosure of the differences in the prospectus.

Additionally, the SEHK follows a simpler process for subsequent issuers (*i.e.*, second comers) from jurisdictions that have already been considered and accepted. This means that a second comer does not need to complete a detailed line-by-line comparison of the shareholder protection matters in the JPS. Instead, where a jurisdiction was accepted on the basis that differences in shareholder protection standards were addressed by the previous issuer (*i.e.*, first comer) amending its constitutional documents or by other means, the SEHK will accept the second comer adopting similar arrangements. The second comer should consider its own constitutional documents and circumstances

and decide what amendments to its constitutional documents are necessary or what other means are available to address the shareholder protection differences.

## OVERVIEW OF HONG KONG'S LISTING CRITERIA FOR PRIMARY LISTINGS

### Financial Requirements

A listing applicant must have a trading record of not less than three financial years and meet one of the three financial criteria set forth in the chart below.

### Accounting Standards

A listing applicant's accounts must be prepared in accordance with either HKFRS, IFRS or China

Accounting Standards for Business Enterprises (in the case of PRC issuers). A listing applicant's latest financial period reported on by the reporting accountants must not have ended more than six months before the date of the listing document.

### Suitability for Listing

Both the issuer and its business must, in the opinion of the SEHK, be suitable for listing. An issuer or its group (other than an investment company) whose assets consist wholly or substantially of cash or short-dated securities will not normally be regarded as suitable for listing, except where the issuer or group is solely or mainly engaged in the securities brokerage business.

	PROFIT TEST	MARKET CAP/ REVENUE TEST	MARKET CAP/ REVENUE/ CASHFLOW TEST
<b>PROFIT ATTRIBUTABLE TO SHARE-HOLDERS</b>	At least HK\$50 million in the last three financial years (with profits of at least HK\$20 million recorded in the most recent year, and aggregate profits of at least HK\$30 million recorded in the two years before that)	—	—
<b>MARKET CAP</b>	At least HK\$200 million at the time of listing	At least HK\$4 billion at the time of listing	At least HK\$2 billion at the time of listing
<b>REVENUE</b>	—	At least HK\$500 million for the most recent audited financial year	At least HK\$500 million for the most recent audited financial year
<b>CASHFLOW</b>	—	—	Positive cashflow from operating activities of at least HK\$100 million in aggregate for the three preceding financial years

**Note:** The SEHK may accept a shorter trading record period and/or may vary or waive the above profit or other financial standards requirement.

## Operating History and Management

A listing applicant must have a trading record period of at least three financial years with:

- management continuity for at least the three preceding financial years; and
- ownership continuity and control for at least the most recent audited financial year.

However, under the Market Cap/Revenue test set forth above, the SEHK may accept a shorter trading record period under substantially the same management if the listing applicant can demonstrate that:

- its directors and management have sufficient and satisfactory experience of at least three years in the line of business and industry of the listing applicant; and
- management continuity for the most recent audited financial year.

Mineral companies relying on this provision must comply with more onerous requirements under Listing Rule 18.04.

## Market Capitalization of Public Float

The expected market capitalization of the securities of a listing applicant that are held by the public must be at

least HK\$50 million at the time of listing.

## Public Float

At least 25% of the issuer's total issued share capital must at all times be held by the public.

Where the issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public at the time of listing must be at least 25% of the issuer's total issued share capital. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, having an expected market capitalization at the time of listing of not less than HK\$50 million.

The SEHK may, at its discretion, accept a lower percentage of public float of between 15% and 25% in the case of issuers with an expected market capitalization at the time of listing of more than HK\$10 billion. In addition, having conducted a public consultation in 2008,<sup>4</sup> the SEHK has in some cases granted a waiver for an IPO applicant having a public float of not less than 10% where its market capitalization exceeds HK\$40 billion (approximately US\$5.1 billion).

## Spread of Shareholders

The SEHK has a minimum shareholder requirement of 300 shareholders. In addition, not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.

## Offering Mechanism and Underwriting

A listing applicant may not list only by way of placing if there is likely to be significant public demand for its securities. A listing applicant must also have a sponsor for its listing, and its public tranche must be fully underwritten.

## New Issue Price

The SEHK does not impose conditions on the new issue price for a Main Board listing.

## Secondary Listings

A secondary listing on the Main Board in Hong Kong is available to overseas issuers (excluding Greater China issuers) with a primary listing on another stock exchange, provided that the issuer has sufficient connections with a foreign market.

In determining whether an issuer has sufficient connections with a foreign market to warrant a secondary listing, the SEHK will not only consider the issuer's place of incorporation

but will also look at other factors to determine its center of gravity, including:

- the number of Hong Kong shareholders;
- the extent of its equity securities trading on the SEHK;
- the location of its head office and place of central management;
- the location of its business and assets with reference to its corporate and tax registration; and
- the protection available to Hong Kong investors under any foreign laws or regulations.

In practice, secondary-listed issuers are granted more Listing Rules waivers. All waivers are considered on their individual merits to balance the legitimate expectations of investors who trade through the SEHK against the burden of the issuers having to comply with two sets of rules where trading in the related securities is predominantly overseas and listing is primarily on a foreign stock exchange that has acceptable shareholder protection standards.

## **LISTING OF JAPANESE COMPANIES ON THE SEHK**

### **Japan as an Acceptable Jurisdiction**

In October 2010, the SEHK accepted Japan as an overseas jurisdiction for listings in Hong Kong, provided that Japanese-incorporated listing applicants make certain revisions to their constitutive documents.<sup>5</sup>

In approving Japan, the SEHK acknowledged that there are certain immaterial differences between the Japanese Companies Act (the “JCA”) and the Hong Kong Companies Ordinance (the “HKCO”), including:

- 1) under the JCA, only shareholders that have held for the last six consecutive months not less than 3% of the votes in the company may petition the court for a shareholders meeting; whereas under the HKCO, any shareholder can apply to the court to call a general meeting;
- 2) it is common and a recommended practice for Japanese companies to restrict the identity of proxies (*e.g.*, to another shareholder) for orderly conduct of shareholders’ meetings, whereas the HKCO has no such restriction; and

- 3) the JCA does not require court confirmation of a share capital reduction, unlike the HKCO.

The SEHK accepted that a Japanese company can have constitutional documents which allow inspection of the register of shareholders by its creditors, governmental authorities and regulatory bodies free of charge, but not by other persons, unlike the position under the HKCO. Under the HKCO, the register of a company’s shareholders must be open for inspection by shareholders free of charge, or by other persons on payment of an appropriate fee.

The SEHK also accepted that a Japanese company can include new provisions in its board of directors’ regulations to ensure that the votes of shareholders restricted from voting under the Listing Rules would not be counted, on the ground that the JCA prohibits a Japanese company from amending its constitutive document to restrain or restrict its shareholders from voting on any particular resolution.

### **Use of Japanese GAAP**

In March 2011, the SEHK published a Listing Decision<sup>6</sup> accepting Japanese Generally Accepted Accounting Principles (“JGAAP”) to be adopted in the accountants’

report and post-listing financial reports for a Japanese-listed issuer seeking a secondary listing on the SEHK, subject to the conditions that:

- 1) the Japanese company would include in its accountants' report and subsequent financial reports relevant IFRS reconciliations and would also include in its accountants' report a summary of the material differences and a statement of the quantified financial effects of all material differences between JGAAP and IFRS on certain key captions of the financial statements;
- 2) the Japanese company would fully commit to IFRS reconciliation for the next financial year end and present full IFRS-compliant financial statements in the near future as proposed; and

- 3) the Japanese company must revert to HKFRS or IFRS if it was no longer listed on Japan's stock exchanges.

### Japanese companies listed on the SEHK

Two Japanese companies have listed on the SEHK since Japan was recognized as an acceptable overseas jurisdiction.

SBI Holdings, Inc., listed in April 2011 in Hong Kong by way of a secondary listing of its Hong Kong depositary receipts ("HDRs"), was the first Japanese company to obtain a listing in Hong Kong, and the first Hong Kong listing of HDRs. The successful secondary listing of SBI also signifies the acceptance of JGAAP in Hong Kong.

Hong Kong listings of two Japanese companies have set the scene for Japanese companies tapping into the Hong Kong capital markets.

By listing in Hong Kong, Japanese companies can gain access to a deep capital pool, both at the time of IPO and in post-listing offerings. It is expected that, following the successful listing of these companies, more Japanese companies will seek to list on the SEHK.

1. Chapter 19 of the Listing Rules provides the general framework applicable to all overseas companies seeking a listing on the Main Board of the SEHK, and Rule 19.05(1)(b) sets out the shareholder protection standards.
2. Joint Policy Statement Regarding the Listing of Overseas Companies, March 7, 2007 ([http://www.hkex.com.hk/eng/newsconsul/hkexnews/2007/documents/044\\_joint\\_statement\\_e.pdf](http://www.hkex.com.hk/eng/newsconsul/hkexnews/2007/documents/044_joint_statement_e.pdf)).
3. Guidance Letter GL12-09, September 2009 (<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/documents/gl12-09.pdf>).
4. Combined consultation paper on proposed changes to the Listing Rules, January 2008 ([http://www.hkex.com.hk/eng/newsconsul/mkt-consul/documents/cp200801\\_e.pdf](http://www.hkex.com.hk/eng/newsconsul/mkt-consul/documents/cp200801_e.pdf)).
5. Listing Decision HKEx-LD110-1 (October 2010) (<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld110-1.pdf>).
6. Listing Decision HKEx-LD3-2011 (March 2011) (<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld3-2011.pdf>).

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