

Client Alert

Corporate Finance

3 March 2023

Exchange proposes Listing Rule amendments relating to PRC issuers in light of recent changes to Mainland China regulations

On 24 February 2023, The Stock Exchange of Hong Kong Limited (**Exchange**) published a [consultation paper](#) on the amendments to the Rules Governing the Listing of Securities on the Exchange (**Listing Rules**) following recent updates and changes to Mainland China regulations and other proposed Listing Rule amendments relating to issuers incorporated in Mainland China as joint stock limited companies (**PRC issuers**).

Recent changes to Mainland China regulations

On 17 February 2023, the State Council issued “Decision of the State Council to Repeal Certain Administrative Regulations and Documents” (《国务院关于废止部分行政法规和文件的决定》), and the China Securities Regulatory Commission (**CSRC**) issued the “Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies” (《境内企业境外发行证券和上市管理试行办法》) and five supporting guidelines (all such new regulations are referred to as **New PRC Regulations** below). Pursuant to the New PRC Regulations, which will take effect on 31 March 2023 (**New PRC Regulations Effective Date**), the “Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies” (《国务院关于股份有限公司境外募集股份及上市的特别规定》) (**Special Regulations**) and the Mandatory Provisions for Companies Listing Overseas (《到境外上市公司章程必备条款》) (**Mandatory Provisions**) will be repealed with effect from the New PRC Regulations Effective Date, and **PRC issuers shall formulate their articles of association in line with the “Guidelines for the Articles of Association of Listed Companies” (《上市公司章程指引》) (PRC Guidelines on AoA) issued by the CSRC in place of the existing Mandatory Provisions.**

Following the repeal of the Special Regulations and the Mandatory Provisions:

- holders of domestic shares and H shares (both being ordinary shares) are no longer deemed as different classes of shareholders of the PRC issuers; and the class meeting requirement now applicable to holders of domestic and H shares are no longer necessary; and
- the use of arbitration to resolve disputes between H shareholders and directors or officers of the PRC issuer is no longer required.

In addition, the New PRC Regulations introduce a new filing regime for all direct and indirect overseas listings and securities offerings by Mainland companies (including PRC issuers and overseas-incorporated issuers with principal operations in the Mainland (i.e. red-chip companies)), which regime replaces the existing approval system that requires direct overseas listings of Mainland companies to be approved by the CSRC.

Consequential amendments to the Listing Rules

Following the implementation of the New PRC Regulations, the Exchange will make consequential amendments to the Listing Rules as follows:

- (a) amending Chapter 19A to remove:
 - (i) the class meeting and related requirements for issuance of new shares and repurchase of existing shares by PRC issuers; and
 - (ii) the requirements for disputes involving H shareholders to be resolved through arbitration;
- (b) repealing Appendix 13D which requires PRC issuers’ articles of association to include the Mandatory Provisions and other ancillary requirements; and

- (c) amending the documentary requirements for new listing applications in Chapters 9 and 19A to reflect the new filing requirements for overseas listings of PRC companies under the New PRC Regulations such that new applicants subject to the PRC new filing requirements (whether incorporated in the PRC or other jurisdictions) will be required to submit, at least four clear business days before the expected hearing date, a notification issued by the CSRC confirming their completion of the PRC filing procedures.

Implementation date

The above consequential Listing Rule amendments will become effective on a date to be announced, subject to the necessary regulatory approvals.

Listed issuers - PRC issuers listed on the Exchange must still adhere to their existing articles concerning class meetings for certain resolutions and other provisions required under the Mandatory Provisions where applicable, until they amend their articles of association. They should also comply with the Listing Rules (or the amended Listing Rules after the effective date of the amendments) at all times.

New listing applicants - New listing applicants incorporated in the PRC are expected to follow the PRC Guidelines on AoA in preparing their articles of association. The Exchange will allow these applicants to comply with the Listing Rules taking into account the consequential amendments if they are listed on the Exchange during the period between the repeal of the Mandatory Provisions and the effective date of the Listing Rule amendments.

Other proposed amendments to the Listing Rules

The Exchange also proposed to modify the Listing Rules that address issues arising from domestic shares and H shares being treated as different classes, and to remove or modify certain additional shareholder protection requirements specific to PRC issuers that are no longer necessary in light of developments in PRC law and the Mainland financial market, including:

- (a) modifying the Listing Rules to allow the limits on general mandate for issuing new shares and scheme mandate for share schemes to be calculated with reference to a PRC issuer's total issued shares (instead of referencing to each of domestic shares and H shares);
- (b) removing the requirements for directors, officers and supervisors of PRC issuers to provide undertakings to the issuers and their shareholders to comply with the PRC Company Law and the articles of association (to align with the Listing Rules applicable to overseas issuers which do not have similar undertaking requirements);
- (c) moving certain requirements on compliance advisers from Chapter 19A (for PRC issuers) to Chapter 3A (for all issuers); and removing other requirements in Chapter 19A relating to the role of sponsors and compliance advisers and their termination and replacement as Chapter 3A contains similar requirements;
- (d) removing the requirements in Chapter 19A relating to (1) online display of (i) a report showing the state of the issued share capital; (ii) the audited financial statements and the directors', auditors' and supervisors' reports; (iii) special resolutions; (iv) securities repurchase reports; and (v) annual returns; and (2) physical inspection of copies of (i) a complete duplicate register of shareholders; and (ii) the minutes of shareholder meetings at a place in Hong Kong;
- (e) removing the requirements in Chapter 19A relating to disclosure of material differences in laws and regulations between the PRC and Hong Kong in the listing documents of PRC new applicants; and
- (f) housekeeping Listing Rule amendments to remove provisions in Chapter 19A which duplicate other Listing Rules or are outdated.

The Exchange invites public comments on the proposed amendments to the Listing Rules in respect of (a) - (e) on or before **24 March 2023**.

Want to know more?

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