



THE STOCK EXCHANGE OF HONG KONG LIMITED
香港聯合交易所有限公司

HKEX Consults on Listing Rule Amendments for PRC Issuers

On 24 February 2023, the Hong Kong Stock Exchange (**HKEX**) published a [Consultation Paper](#) setting out amendments to its Listing Rules for issuers incorporated in the PRC as a joint stock limited company (**PRC issuer**) to reflect recently announced changes to China's regulation of overseas listings by domestic companies. The proposed Listing Rule amendments will also reflect the introduction of new filing requirements that will apply to PRC issuers and overseas-incorporated issuers whose principal operations are located in Mainland China (including red chips and companies with VIE structures). The consultation paper also proposes to remove or modify certain additional shareholder protection requirements specific to PRC issuers that are no longer necessary, as well as Housekeeping Rule Amendments to remove duplicate or outdated provisions in Chapter 19A of the HKEX Listing Rules. The proposed Listing Rule amendments would also apply to the GEM Rules.

The deadline for responding to the Consultation Paper is 24 March 2023. The key amendments to the HKEX Listing Rules include:

- amending Chapter 19A by removing the class meeting and related requirements for issuance of new shares and repurchase of existing shares by PRC issuers and the requirement for disputes involving H shareholders to be resolved through arbitration;
- repealing Appendix 13D which requires PRC issuers' articles of association to include the Mandatory Provisions and other ancillary requirements;
- amending the documentary requirements for new listing applications in Chapters 9 and 19A to align with the PRC's new filing requirements for overseas listings of Mainland companies; and
- allowing the limits on the general mandate for issuing new shares and scheme mandate for share schemes to be calculated based on a PRC issuer's total issued shares (instead of referencing to each of domestic shares and H shares).

Current Legal Framework and Regulatory Requirements for PRC Issuers Listing Overseas

The existing legal framework for PRC issuers to list shares overseas was established in the early 1990s and included the PRC Company Law, the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies (**Special Regulations**) and the Mandatory Provisions for Companies Listing Overseas (**Mandatory Provisions**). The Mandatory Provisions set out the standard provisions that must be included in PRC issuers' articles of association. They also establish that holders of domestic shares and H shares, despite both being ordinary shares, are classified as distinct classes of shareholders. Consequently, PRC issuers must pass special resolutions at a shareholder meeting and separate class meetings of holders of domestic shares and H shares in

order to modify or abrogate the rights of one class of shareholders. In addition, the Mandatory Provisions and Special Regulations require that H shareholders be paid dividends in foreign currency, settle disputes between H shareholders and directors or officers of PRC issuers through arbitration, receive meeting notices and financial statements via mail, and have their names recorded on a separate Hong Kong shareholders' register.

To reflect specific shareholder protection provisions set out in the Special Regulations and the Mandatory Provisions, and address the issue of domestic shares and H shares being treated as different classes of shares, the HKEX introduced Chapter 19A and Appendix 13D in 1993 to set out additional and modified requirements for listing PRC issuers and require the articles of association of PRC issuers to include the Mandatory Provisions.

However, there have been significant developments in PRC law and the Mainland financial market over the past two decades, which have reduced the distinctions between the Mainland and Hong Kong markets. Notable developments include the launch of Shanghai Connect and Shenzhen Connect, the implementation of the H share full circulation scheme, and the dual listings of non-PRC issuers on the Hong Kong Stock Exchange and the Shanghai Stock Exchange.

New PRC Regulations for Overseas Listings by Domestic Companies

On 17 February 2023, the State Council and the China Securities Regulatory Commission (**CSRC**) made two significant regulatory announcements. The State Council issued the [Decision of the State Council to Repeal Certain Administrative Regulations and Documents](#), while the CSRC announced the [Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies and its related guidelines](#). These two announcements, collectively referred to as the New PRC Regulations, will come into effect on 31 March 2023.

Under the New PRC Regulations, the Special Regulations and the Mandatory Provisions will be repealed. PRC issuers will be required to align their articles of association with the Guidelines for the Articles of Association of Listed Companies issued by the CSRC (**PRC Guidelines on AoA**). Since holders of domestic shares and H shares will no longer be regarded as different classes of shareholders, the requirement for separate class meetings of holders of domestic shares and H shares will be removed. In addition, arbitration will no longer be required for dispute resolution.

New filing regime for direct and indirect overseas listings by Mainland companies

The CSRC is also introducing a new filing regime for all direct and indirect overseas listings and securities offerings by Mainland companies to replace the existing approval system. The new filing regime will apply to H share issuers as well as overseas-incorporated issuers whose principal operations are in Mainland China, including red chips and companies with VIE structures. Under the new filing regime, Mainland companies will have to register their overseas listings and securities offerings with the CSRC by filing materials on key compliance issues.

HKEX Listing Rule Amendments Consequential on the Repeal of the Special Regulations and Mandatory Provisions

The Consultation Paper sets out various HKEX Listing Rule amendments which are consequential to the changes in PRC regulations. These are not subject to public consultation.

Removal of separate class meeting requirement for PRC issuers and related provisions

Following the repeal of the Special Regulations and Mandatory Provisions, the HKEX proposes to remove the requirement for separate class meetings for PRC issuers issuing or repurchasing shares.

It also proposes to remove other additional requirements that reflect the Mandatory Provisions to align with the requirements applicable to overseas issuers. Accordingly, the HKEX proposes to remove the requirement for special resolutions for approving share issuance or repurchase by PRC issuers. Under the amended Listing Rules, the issuance or repurchase of shares by PRC issuers will only require approval by ordinary resolution in general meeting and pre-emptive share issues will be exempt from that requirement.

The HKEX will also remove the exemption for share issuance under a PRC issuer's plan adopted at the time of its establishment and implemented within 15 months from the date of the CSRC's approval since this was included in the Mandatory Provisions.

Definitions of "domestic shares" and "H shares" and references to "classes" of shares

The HKEX is proposing to amend the HKEX Listing Rules to reflect the removal of the distinction between domestic and H shares for PRC issuers. The changes include amending the definition of "H shares" to refer to shares of a PRC issuer which are listed on the HKEX, removing the definitions of "domestic shares", "foreign shares" and

“overseas listed foreign shares” and removing the requirement for PRC issuers to obtain the HKEX’s confirmation as to the protection of overseas listed foreign shareholders’ relative rights before listing foreign shares on a PRC stock exchange. The HKEX will also add rules to clarify that the public float and market capitalisation requirements for listing apply specifically to H shares in the case of PRC issuers.

Removal of arbitration clause

The Mandatory Provisions require the articles of incorporation of PRC issuers to state that disputes involving H shareholders should be resolved by arbitration in Hong Kong or the PRC. Chapter 19A of the HKEX Listing Rules currently includes rules requiring the use of arbitration to settle disputes. The HKEX proposes to remove the relevant Listing Rules to align with the HKEX Listing Rules applicable to overseas issuers. Shareholders of PRC issuers will be able to enforce their rights through legal proceedings in a court of the issuer’s place of incorporation or a Hong Kong court.

Removal of requirements relating to PRC issuers’ articles of association

Appendix 13D to the HKEX Listing Rules requiring PRC issuers’ articles of association to include the Mandatory Provisions and other ancillary provisions will be removed.

Other HKEX Listing Rule Amendments reflecting the repeal of the Special Regulations and Mandatory Provisions

The HKEX is also proposing to make consequential amendments to:

- Listing Rules 19A.01 and 19A.02 to remove the description of the differences between the PRC and Hong Kong legal systems and market practices and simplify the preamble to Chapter 19A; and
- align the timing requirement for PRC issuers to dispatch circulars and listing documents with other issuers.

HKEX Listing Rule Amendments to reflect the new PRC filing requirements for overseas listings of Mainland companies

The new filing rules, which will apply to both PRC issuers and overseas-incorporated issuers whose principal operations are in Mainland China, will replace the current approval-based system. To align with the new filing requirements, the HKEX proposes to amend the documentary requirements for a PRC new applicant in Chapter 9 of the Listing Rules. Consequently, it will:

- repeal Listing Rule 19A.22A which requires a new PRC listing applicant to submit a copy of the CSRC’s approval of its listing when submitting Form A1; and
- add a new Listing Rule in Chapter 9 requiring new applicants whose application to list on the HKEX needs to be filed with the CSRC to submit to the HKEX at least four clear business days prior to the expected hearing date a notification from the CSRC confirming their completion of the PRC filing procedures.

Other Proposed HKEX Listing Rule Amendments

Additionally, the HKEX is proposing to modify or remove certain shareholder protection requirements specific to PRC issuers which are no longer necessary due to recent developments in PRC law and the Mainland financial market. It is inviting public comments on these proposals which include:

- allowing the limits on general mandate for issuing new shares and scheme mandate for share schemes to be calculated based on a PRC issuer’s total issued shares (instead of referencing to each of domestic shares and H shares);
- removing the requirement for directors, officers, and supervisors of PRC issuers to provide undertakings to issuers and their shareholders to comply with PRC Company Law and their articles of association;
- relocating certain compliance adviser requirements from Chapter 19A to Chapter 3A and removing other requirements in Chapter 19A related to the role of sponsors and compliance advisers; and
- removing the requirements in Chapter 19A related to online display or physical inspection of documents and disclosure of material differences in laws and regulations between the PRC and Hong Kong in the listing documents of PRC new applicants.

Mandate limits on share issuance

Under the existing Listing Rules, a PRC issuer may seek prior approval from shareholders to:

- (i) issue securities of up to 20% of each of its issued domestic shares and H shares (the general mandate); and
- (ii) issue securities of up to 10% of each of its issued domestic shares and H shares for options and awards granted under Chapter 17 share schemes (the scheme mandate)

Following the removal of the class distinction between domestic shares and H shares, the HKEX proposes that the general mandate and the scheme mandate be subject to an overall cap of 20% and 10%, respectively, of a PRC issuer's total issued shares.

Undertakings by directors, officers and supervisors to the PRC issuers and their shareholders

The HKEX proposes to remove the requirements for directors, officers and supervisors of a PRC issuer to provide: (i) undertakings to the issuer to comply with the PRC Company Law, the Special Regulations, their articles of association, the Takeovers Code and Share Buy-backs Code; and (ii) an agreement that the PRC issuer will have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment. The proposed amendments also remove the requirement for an undertaking to the PRC issuer acting as agent for each shareholder to observe and comply with their obligations to shareholders stipulated in the articles of association.

Sponsors and compliance advisers

The HKEX proposes to harmonise the Listing Rules governing compliance advisers and sponsors for all issuers by moving the existing requirements in Chapter 19A that apply to PRC issuers to Chapter 3A, which already contains the obligations applicable to all issuers. The current Chapter 19A requirements for compliance advisers and sponsors predate the Chapter 3A requirements and contain minor differences. The Chapter 19A requirements that will be moved to Chapter 3A include an obligation for issuers to provide access to their compliance adviser at all times and mandating compliance advisers to inform issuers in a timely manner of any amendments to the HKEX Listing Rules and applicable Hong Kong laws and regulations. The HKEX is also proposing to remove certain redundant provisions from Chapter 19A to achieve consistency, including rules that require sponsors to ensure that PRC issuers are suitable for listing and that their directors understand the HKEX Listing Rules and applicable laws, and rules imposing additional roles on compliance advisers engaged by PRC issuers.

Online display and physical inspection of documents

The HKEX is proposing to remove HKEX Listing Rule 19A.50 which requires PRC issuers to publish on their own website and the HKEX website: (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. The rationale for removing the Listing Rule is that the relevant documents are already required to be published online under other HKEX Listing Rules or are accessible in the public domain. The HKEX is also proposing to remove Listing Rule 19A.50A which requires PRC issuers to allow physical inspection in Hong Kong of: (i) a complete duplicate register of shareholders; and (ii) the minutes of shareholder meetings. The HKEX considers that Listing Rule 19A.50A is no longer necessary since the Core Shareholder Protection Standards in Appendix 3 to the HKEX Listing Rules require all listed issuers to open their branch register of members in Hong Kong for inspection and Listing Rule 13.39(5) requires the announcement of the required information regarding the results of shareholder meetings.

Listing document requirements for new listing applicants on HKEX

Under the current Listing Rules, the listing documents of PRC listing applicants must comply with additional content requirements. These include: (i) a warning statement regarding the differences in the legal system and regulatory framework between the PRC and Hong Kong; (ii) a discussion of risk factors relating to PRC laws and regulations, political and economic environments, foreign exchange risks and controls, etc.; and (iii) a description of the material differences between PRC and Hong Kong company law. The HKEX proposes that these requirements be removed, as listing applicants are expected to conduct their own assessment and disclose pertinent material matters and risk factors that are specific to their individual circumstances.

Housekeeping Listing Rule Amendments

The proposed Housekeeping Rule Amendments include removing certain overlapping provisions and outdated references and amending incorrect rule references.

Transitional Provisions

The New PRC Regulations mandate PRC issuers to revise their articles of association in accordance with the PRC Guidelines on AoA. However, PRC issuers listed on the HKEX must continue to comply with both the HKEX Listing Rules and their existing articles of association, including articles reflecting relevant provisions under the Mandatory Provisions, until they amend their articles of association.

New listing applicants incorporated in the PRC are expected to comply with the PRC Guidelines on AoA when preparing their articles of association under the New PRC Regulations. The HKEX will consider these applicants to comply with the revised Listing Rules if they are listed during the transition period between the repeal of the Mandatory Provisions and the effective date of the HKEX Listing Rule amendments.

Responding to the HKEX Consultation

Interested parties can respond to the consultation by completing and submitting the questionnaire available on the HKEX's website at: https://surveys.hkex.com.hk/jfe/form/SV_3eoyLnVdJ99srH0

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