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Hong Kong Proposes Amendments to Listing Rules Following Mainland China Regulation Updates

The proposed amendments reflect changes in PRC regulations recently announced by the State Council and the CSRC.

On 24 February 2023, The Stock Exchange of Hong Kong Limited (the Stock Exchange) published a Consultation Paper on Amendments to the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules) Following Mainland China Regulation Updates and Other Proposed Rule Amendments Relating to PRC Issuers (the [Consultation Paper](#)).

On 17 February 2023, the State Council and the China Securities Regulatory Commission (CSRC) announced the implementation of the “Decision of the State Council to Repeal Certain Administrative Regulations and Documents” and the “Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies” (the New Overseas Listing Regulations) which will be effective from 31 March 2023. The Consultation Paper was published to reflect the new requirements that will apply to PRC issuers under the New Overseas Listing Regulations.

The Stock Exchange’s Consultation Paper aims to remove or modify certain requirements in the Listing Rules which are no longer necessary.

The key changes under the Overseas Listing Regulations include, amongst others:

- The following regulations will be repealed on 31 March 2023 according to the “Decision of the State Council to Repeal Certain Administrative Regulations and Documents” issued by the State Council:
 - 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) issued by the State Council of the PRC on 4 August 1994 (the Special Regulations); and
 - The Mandatory Provisions for Companies Listing Overseas set forth in Zheng Wei Fa (1994) No. 21 issued on 27 August 1994 by the State Council Securities Policy Committee and the State Commission for Restructuring the Economic System (the Mandatory Provisions).
- Requiring PRC incorporated issuers to formulate their articles of association in line with the Guidelines for the Articles of Association of Listed Companies issued by the CSRC (the PRC

Guidelines on AoA). Holders of domestic shares and H shares will therefore no longer be deemed as different classes of shareholders.

- Introducing a new filing regime for all direct and indirect overseas listing by PRC companies:
 - in addition to the H-share structure, the new filing regime also applies to overseas-incorporated issuers whose principal operations are in the PRC, commonly referred to as red-chips, and also companies with VIE structures; and
 - the new filing regime requires PRC companies to register their overseas listings and securities offerings with the CSRC by filing materials on key compliance issues such as compliance with PRC laws and regulations regarding foreign investment, cyberspace security, data security, State-owned asset management and the status of companies completing the relevant security review procedures before applying for overseas listings.

This Client Alert discusses the key amendments that PRC issuers should be aware of if they intend to list in Hong Kong.

Consequential Listing Rules Amendments

The table below sets out the Listing Rule amendments which are consequential to the changes in PRC regulations in which a market consultation is not required. The amendments will be effective on a date to be announced (subject to the necessary regulatory approvals):

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
Class meeting and other requirements relating to issuance and repurchase of shares by PRC issuers	<ul style="list-style-type: none"> • In order to vary or abrogate the rights of one class of shareholders, PRC issuers must obtain special resolution at (i) a shareholder meeting and (ii) a separate class meeting of holders of domestic shares and of H shares 	<ul style="list-style-type: none"> • Removal of class meeting requirement relating to issuance and repurchase of shares by PRC issuers
	<ul style="list-style-type: none"> • Require issuance or repurchase of shares to be approved by special resolution in general meeting 	<ul style="list-style-type: none"> • Issuance or repurchase of shares to be approved by ordinary resolution in general meeting
Definitions of “domestic shares” and “H shares”	<ul style="list-style-type: none"> • “H shares” are defined as overseas listed foreign shares which are listed on the Stock Exchange • “domestic shares”, “foreign shares”, and “overseas listed foreign shares” are defined 	<ul style="list-style-type: none"> • Amend the definition of “H shares” to shares of a PRC issuer which are listed on the Stock Exchange • Remove the definition of “domestic shares”, “foreign shares”, and “overseas listed foreign shares”

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
Public float	<ul style="list-style-type: none"> The public float requirement and the market capitalisation requirement make reference to “class of securities for which listing is sought” 	<ul style="list-style-type: none"> Clarify that “class of securities for which listing is sought” refers to H shares in the case of a PRC issuer by adding a new Listing Rule 19A.13A. That amendment aims to clarify that if a PRC issuer has shares apart from H shares for which listing is sought, the total securities of the issuer held by the public (on all regulated markets, including the Stock Exchange) at the time of listing must be at least 25% of the issuer’s total number of issued shares. However, the issuer’s H shares (for which listing is sought) must represent at least 15% of its total number of issued shares, having an expected market capitalisation at the time of listing of not less than HK\$125 million
Arbitration clause	<ul style="list-style-type: none"> PRC issuer shall enter into a contract in writing with every director, officer, and supervisor containing certain provisions, including an arbitration clause 	<ul style="list-style-type: none"> Remove the relevant arbitration clause requirement
Requirements relating to articles of association	<ul style="list-style-type: none"> Section 1 of Appendix 13D sets out the additional required provisions for articles of association for issuers incorporated in the PRC Section 2 of Appendix 13D sets out a list of matters to be included in listing documents applicable to both PRC issuers and overseas issuers 	<ul style="list-style-type: none"> Repeal Appendix 13D Move the list of matters from Section 2 of Appendix 13D to Appendix 1A (which governs disclosure of listing documents)
Timing requirement to despatch circulars and listing documents	<ul style="list-style-type: none"> PRC issuers are required to despatch circulars and listing documents on or before the deadline for giving notice of the general meeting under the Company Law of PRC 	<ul style="list-style-type: none"> Repeal such requirement to align the timing requirement with other issuers, i.e., at the same time as (or before) the notice of the general meeting

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
Documentary requirement relating to submission of CSRC approval	<ul style="list-style-type: none"> A PRC new applicant is required to submit a copy of the CSRC approval of the listing of the applicant on the Stock Exchange 	<ul style="list-style-type: none"> Repeal the current requirement of submission of a copy of the CSRC approval Add a new rule in Chapter 9 (Equity Securities — Application Procedures and Requirements) to require new applicants (whether incorporated in the PRC or other jurisdictions) to submit, at least four clear business days before the expected hearing date, a notification issued by CSRC confirming completion of the PRC filing procedures (when applicable)

Transitional Arrangement

PRC issuers listed on the Stock Exchange must comply with both the requirements in the Listing Rules and the provisions in their constitutional documents. Therefore, until they amend their articles of association, these PRC issuers must adhere to their existing articles concerning class meetings for certain resolutions and other relevant provisions required under the Mandatory Provisions (which will be repealed by the New Overseas Listing Regulations).

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

Other Proposed Listing Rule Amendments

The Stock Exchange also took this opportunity to review the Listing Rules relating to PRC issuers, as PRC issuers are no longer required to deem holders of domestic shares and H shares to be different classes of shareholders. Therefore, the Stock Exchange proposed, amongst others, the following key amendment to the Listing Rules that address issues arising from domestic shares and H shares being treated as different classes. It also proposed changes to certain requirements specific to PRC issuers that are no longer necessary in light of market developments:

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
Mandate limits on share issuance	<ul style="list-style-type: none"> A PRC issuer may seek prior approvals from shareholders (i) to issue securities of up to 20% of each of its issued domestic shares and H shares (the general mandate); and (ii) to issue securities in respect of options and awards granted under Chapter 17 share schemes of up to 10% of each of its issued domestic shares and H shares (the scheme mandate) 	<ul style="list-style-type: none"> To align this with the requirements applicable to non-PRC issuers dually listed on the Stock Exchange and an overseas exchange, the general mandate and the scheme mandate would be subject to an overall cap of 20% and 10% respectively of a PRC issuer's total issued shares
Limits on issue price	<ul style="list-style-type: none"> New share issuance for cash under the general mandate and the exercise price of share options under a share option scheme are benchmarked to the market price of H shares. Specifically, shares issued under a general mandate for cash are limited to a price discount of not more than 20% of the prevailing market price of H shares, and the exercise price of share options must not be lower than the prevailing market price of H shares For A+H issuers, the CSRC's rules impose price limits on issuances of A shares benchmarked to the market price of A shares 	<ul style="list-style-type: none"> Retain the relevant Listing Rules to benchmark the share price limits to the H share market price. However, the Stock Exchange will consider, on a case by case basis, a request for the issue of A shares under a general mandate to be benchmarked to the market price of A shares
Undertakings by directors, officers, and supervisors to the PRC issuers	<ul style="list-style-type: none"> A PRC issuer shall enter into a contract in writing with every director, officer, and supervisor containing certain provisions, including: <ul style="list-style-type: none"> an undertaking to the PRC issuer to observe and comply with PRC company law, the Regulations (as defined in Chapter 19A), the articles of association, the Takeovers Code and Share Buy-backs Code, and an agreement that 	<ul style="list-style-type: none"> Remove such undertaking requirements

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
	<p>the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment</p> <ul style="list-style-type: none"> - an undertaking to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholder stipulated in the articles of association 	
Online display and physical inspection of documents	<ul style="list-style-type: none"> • A PRC issuer is required to: <ul style="list-style-type: none"> - publish on the Stock Exchange's website and its own 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 - make available copies of (i) a complete duplicate register of shareholders; and (ii) the minutes of shareholder meetings at a place in Hong Kong 	<ul style="list-style-type: none"> • Repeal such requirement
Listing document requirements for new applicants	<ul style="list-style-type: none"> • Additional content requirement for listing documents of new applicants that are PRC issuers <ul style="list-style-type: none"> - a warning statement with regard to the differences in the legal system and regulatory framework between the PRC and Hong Kong - a discussion of risk factors relating to PRC laws and regulations, political and 	<ul style="list-style-type: none"> • Remove such content requirement for listing documents of new applicants that are PRC issuers

	Current Listing Rule Requirement	Proposed Listing Rule Amendment
	<p>economic environments, foreign exchange risks and controls, etc.</p> <ul style="list-style-type: none"> - a description of material differences between company law in the PRC and Hong Kong 	

The Stock Exchange invites comments on the proposed amendment under “Other Proposed Listing Rule Amendment”. The deadline for submission of responses to the Consultation Paper is 24 March 2023.

Conclusion

PRC issuers and new PRC listing applicants should consult with their PRC legal advisers on the required amendments to their articles of associations pursuant to the New Overseas Listing Regulations. New PRC applicants who may be listed on the Stock Exchange during the period between the repeal of the Mandatory Provisions and the effective date of the Listing Rule amendments should consult their legal advisers regarding compliance with the Listing Rules during the transitional period.

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