

# Hong Kong Capital Markets Update

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## HKEX's consultation in relation to Chinese Mainland regulation updates

On 24 February 2023, the Stock Exchange of Hong Kong Limited (the "Exchange") published a [consultation paper](#) ("Consultation") on rule amendments following recent updates and changes to Chinese Mainland regulations and other proposed rule amendments relating to PRC issuers<sup>1</sup>. The deadline for submissions is 24 March 2023.

### Key Amendments/Proposals

#### Consequential Listing Rule amendments

- (1) Remove the class meeting and related requirements for issuance and repurchase of shares by PRC issuers;
- (2) Remove the requirements for disputes involving H shareholders to be resolved through arbitration;
- (3) Remove the requirements for PRC issuers' articles of association ("AoA") to include the Mandatory Provisions<sup>2</sup> and other ancillary provisions; and
- (4) Amend the documentary requirements for new listing applications to reflect Chinese Mainland's new filing requirements for overseas listings of Chinese Mainland companies.

#### Other proposed Listing Rule amendments

- (1) Allow the limits on general mandate for new share issuance and scheme mandate for share schemes to be calculated with reference to a PRC issuer's total issued shares (instead of each of domestic and H shares);
- (2) Remove 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;
- (3) Align minor requirements on compliance advisers for PRC issuers with those for all issuers; and
- (4) Remove certain requirements for PRC issuers relating to (i) online display or physical inspection of documents and (ii) disclosure in listing documents of new applicants.

#### Background

On 17 February 2023, the State Council and China Securities Regulatory Commission ("CSRC") announced the implementation of the New Regulations<sup>3</sup> on overseas listing and the repeal of the Special Regulations<sup>4</sup> and the Mandatory Provisions with effect from 31 March 2023. The New Regulations also introduce a new filing regime, which requires Chinese Mainland companies to register with the CSRC for their direct and indirect<sup>5</sup> overseas listings and securities offerings, to replace the existing CSRC approval system (i.e. the "H-share" model).

Under the New Regulations, PRC issuers shall formulate their AoA in line with the Guidelines for the Articles of Association of Listed Companies issued by the CSRC ("AoA Guidelines") in place of the Mandatory Provisions. Since holders of domestic shares and H shares are no longer deemed as different classes of shareholders, the class meeting requirement now applicable to holders of domestic and H shares are no longer necessary.

<sup>1</sup> an issuer which is duly incorporated in the PRC as a joint stock limited company

<sup>2</sup> 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

<sup>3</sup> the "Decision of the State Council to Repeal Certain Administrative Regulations and Documents" issued by the State Council and the "Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies" and related guidelines issued by the CSRC on 17 February 2023

<sup>4</sup> the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies issued by the State Council on 4 August 1994, as amended, supplemented or otherwise modified from time to time

<sup>5</sup> the new filing regime applies to overseas issuers with principal operations in Chinese Mainland such as red-chips and companies with VIE structures

## Consequential Listing Rule amendments

Following the implementation of New Regulations, consequential amendments will be made to Chapter 9, Chapter 19A and Appendix 13D of the Main Board Listing Rules (and the equivalent GEM Listing Rules). The Exchange considers these consequential amendments would not compromise protection of H shareholders of PRC issuers. The key amendments are set out on page 1.

### *Implementation date and transitional arrangements*

Given the above amendments are consequential to the changes in Chinese Mainland regulations, market consultation is not required. They will become effective on a date to be announced, subject to the necessary regulatory approvals.

PRC issuers listed on the Exchange are bound by both the Listing Rules and the provisions in their AoA. Therefore, they 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 AoA under the New Regulations.

For new listing application, applicants incorporated in Chinese Mainland are expected to follow the AoA Guidelines in preparing their AoA and therefore 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. Also, the Exchange will require the new applicants (whether incorporated in the Chinese Mainland or other jurisdictions) to submit, at least four clear business days before the expected hearing date, a notification issued by the CSRC confirming their completion of the Chinese Mainland filing procedures, where the new applicant's application for listing on the Exchange is required to be filed with the CSRC.

## Other proposed Listing Rule amendments

As PRC issuers are no longer required by the Mandatory Provisions to deem holders of their domestic and H shares to be different classes of shareholders, the Exchange proposes to modify the Listing Rules that address issues arising from domestic 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 Chinese Mainland law and the Chinese Mainland financial market. The key proposals are set out on page 1.

The Exchange has also taken this opportunity to review the Listing Rules and proposes housekeeping amendments to remove provisions in Chapter 19A of Main Board Listing Rules (and the equivalent GEM Listing Rules) which are duplicated or outdated. The proposed housekeeping rule amendments are set out in Appendix I to the Consultation.

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If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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