

## HKEX Listing Rule Changes for PRC Issuers Effective 1 August 2023

The Hong Kong Stock Exchange's (**HKEX**) revised Listing Rules for PRC-incorporated issuers<sup>1</sup> (**PRC issuers**) reflect PRC regulatory changes for PRC issuers' offshore listings and new filing requirements for PRC issuers and overseas-incorporated issuers with their principal operations in the PRC (including red chips and VIE-structured companies). The HKEX Listing Rule changes took effect on 1 August 2023 following the HKEX's publication of its [Consultation Conclusions](#) on 21 July 2023 on proposals set out in its February 2023 [Consultation Paper](#) published after PRC regulatory changes were announced by the State Council and China Securities Regulatory Commission (**CSRC**). For a summary of the Consultation Paper's proposals, please see [Charltons' March 2023 newsletter](#).

Having received 41 non-duplicate responses to the Consultation Paper, the HKEX adopted all its proposals with minor amendments reflecting respondents' comments.

The key amendments to the HKEX Listing Rules have:

- amended 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;
- repealed Appendix 13D which required PRC issuers' articles of association to include the Mandatory Provisions<sup>2</sup> and other ancillary requirements;
- revised 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 PRC companies;
- allowed 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 its domestic shares and H shares);
- removed the requirements for directors, officers and supervisors of PRC issuers to provide undertakings to issuers and their shareholders to comply with the PRC Company Law and their articles of association;

- aligned minor requirements for compliance advisers under Chapter 19A (for PRC issuers) with those in Chapter 3A (for all issuers); and
- removed certain Chapter 19A requirements relating to online display or physical inspection of documents and disclosure in new applicants' listing documents.

## **New PRC Regulations for Overseas Listings by Domestic Companies**

On 17 February 2023, the State Council issued the [Decision of the State Council to Repeal Certain Administrative Regulations and Documents](#) and the CSRC announced the [Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies and its related guidelines](#) (together, the **New PRC Regulations**). The New PRC Regulations took effect on 31 March 2023.

The New PRC Regulations repealed the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies (**Special Regulations**) and the Mandatory Provisions. PRC issuers are now 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**). Under the New PRC Regulations, domestic shares and H shares are no longer deemed to be different classes of shares which means that PRC issuers proposing to vary the rights of one class of shareholders are no longer required to hold separate class meetings of holders of domestic shares and H shares. The requirement for disputes involving PRC issuers to be resolved by arbitration has also been removed.

### **New filing regime for direct and indirect overseas listings by PRC companies**

The CSRC also introduced a new filing regime for all direct and indirect overseas listings and securities offerings by PRC companies to replace the former approval system. The new filing regime applies to H share issuers as well as overseas-incorporated issuers whose principal operations are in the PRC, including red chips and companies with VIE structures. Under the new filing regime, PRC companies are required 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 HKEX has made the following changes to the HKEX Listing Rules which are consequential on the PRC regulatory changes.

### **Removal of separate class meeting requirements for PRC issuers and related provisions**

Given the repeal of the Special Regulations and Mandatory Provisions, the HKEX has removed the requirement for separate class meetings for PRC issuers issuing or repurchasing shares. However, the HKEX has retained the requirements for PRC issuers to obtain H shareholders' approval for matters affecting the listing or trading of H shares on the HKEX, including a withdrawal of the listing of H shares from the HKEX.

Responding to comments that the removal of separate class meetings might remove shareholders' ability to veto proposals which could result in different economic outcomes for the holders of A and H shares, the HKEX commented that the HKEX Listing Rules are not intended to protect certain minority shareholder groups by giving them the power to veto differences in their economic exposure resulting from issuers' proposals. Thus while the HKEX Listing Rules previously required separate class meetings for matters such as the issue or repurchase of securities involving the variation or abrogation of class rights, they did not require separate class meetings for issuers' spin-offs, acquisitions and disposals potentially having different economic outcomes for H and A shareholders.

The HKEX also reminded PRC issuers listed on the HKEX that they must continue to comply with both the previous 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 to remove the requirements for separate class meetings. If PRC issuers intend to remove the class meeting requirements by amending their articles of association, they normally need to obtain the approvals of the holders of their domestic shares and their H shares at separate class meetings in accordance with their existing articles of association.

The HKEX has also removed other additional requirements that reflect the Mandatory Provisions to align with the requirements for other overseas issuers. Accordingly, the requirement for special resolutions for approving share

issuance or repurchase by PRC issuers has been removed. Under the amended HKEX Listing Rules, PRC issuers' issue or repurchase of shares only requires shareholders' approval by ordinary resolution in general meeting, and pre-emptive share issues are exempted from that requirement.

The HKEX has also removed 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 reflected a provision of the Mandatory Provisions.

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

The distinction between domestic and H shares for PRC issuers has been removed. The revised HKEX Listing Rules changes have:

- amended the definition of "H shares" to refer to shares of a PRC issuer which are listed on the HKEX;
- removed the definitions of "domestic shares", "foreign shares" and "overseas listed foreign shares";
- removed 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; and
- added rules clarifying 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 previously required the articles of incorporation of PRC issuers to state that disputes involving H shareholders had to be resolved by arbitration in Hong Kong or the PRC. The HKEX has removed from Chapter 19A the Listing Rules requiring the use of arbitration to settle disputes and aligned Chapter 19A with the Listing Rules applicable to other overseas issuers. Shareholders of PRC issuers will therefore 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 has been removed.

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

The HKEX has made consequential amendments 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 apply to both PRC issuers and overseas-incorporated issuers whose principal operations are in the PRC, replace the previous approval-based system. To align with the new filing requirements, the HKEX has amended the documentary requirements for PRC new listing applicants in Chapter 9 of the Listing Rules. As a result:

- Main Board Listing Rule 19A.22A (GEM Listing Rule 25.17A) which required a new PRC listing applicant to submit a copy of the CSRC's approval of its listing when submitting Form A1 has been removed; and

- new Main Board Listing Rule 9.11(23(b)) (GEM Listing Rule 12.23BB) has been added and requires new applicants whose application to list on the HKEX needs to be filed with the CSRC to submit to the HKEX a copy of the CSRC notification confirming their completion of the PRC filing procedures, at least four clear business days before the expected hearing date.

## Other HKEX Listing Rule Amendments

Additionally, the HKEX has modified or removed the following shareholder protection requirements specific to PRC issuers which are no longer necessary.

### Mandate limits on share issuance

Under the previous Listing Rules, a PRC issuer could seek prior shareholders' approval to:

- issue securities of up to 20% of each of its issued domestic shares and H shares (the **general mandate**); and
- 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).

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

Responding to questions about what constitutes an "open market" in H shares traded on the HKEX, and the criteria the HKEX takes into account in assessing whether an open market exists, the HKEX said that it will consider factors such as the number and spread of shareholders, and the market capitalisation and percentage of public float.

Main Board Listing Rule 19A.17 states that where a listing application is made in respect of a class of shares, if some of that class are already listed, the listing application must relate to all further shares of that class. The HKEX has clarified that the listing application requirement under Main Board Listing Rule 8.19(2) only applies to a PRC issuer's H shares.

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

The HKEX has removed the requirements for:

- PRC issuers' directors, officers and supervisors to provide undertakings to the issuer to comply with the PRC Company Law, the Special Regulations, their articles of association, and the Takeovers Code and Share Buy-backs Code and provide remedies for non-compliance; and
- PRC issuers to include in their listing documents and share certificates a statement that acquirers of its shares authorise the issuer to enter into a contract on their behalf with each director and officer with respect to the above undertaking.

### Sponsors and compliance advisers

The HKEX has harmonised the HKEX Listing Rules on compliance advisers and sponsors for all issuers by moving the separate requirements for PRC issuers in Chapter 19A to Chapter 3A, which contains the general requirements for issuers. The Chapter 19A requirements moved to Chapter 3A include the obligation on 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. Various redundant provisions have been removed from Chapter 19A to achieve consistency, including rules that required sponsors to ensure that PRC issuers were suitable for listing and that their directors understood 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

HKEX Listing Rule 19A.50 has been removed: this required PRC issuers to publish on their own website and the HKEX website:

- a report showing the state of the issued share capital;
- their audited financial statements and directors', auditors' and supervisors' reports;
- special resolutions;
- securities repurchase reports; and
- annual returns.

The reason 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 has also removed HKEX Listing Rule 19A.50A which required PRC issuers to allow physical inspection in Hong Kong of a complete duplicate register of shareholders and the minutes of shareholder meetings. 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 information regarding the results of shareholder meetings.

## Listing document requirements for new listing applicants on HKEX

Under the previous Listing Rules, PRC listing applicants listing documents had to comply with additional content requirements. These included: (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. These requirements have been removed given that listing applicants are expected to conduct their own assessment, and must disclose pertinent material matters and risk factors that are specific to their individual circumstances. However, the HKEX clarified in the Consultation Conclusions that PRC issuers must still comply with the disclosure requirements that apply to listing applicants incorporated overseas. Accordingly, PRC issuers must include in their listing documents:

- a summary of all provisions of their constitutional documents that may affect shareholders' rights and protections and directors' powers<sup>3</sup> which are in line with the disclosure requirements for listing applicants incorporated in other overseas jurisdictions;<sup>4</sup> and
- a summary of the relevant PRC law in a form agreed by the HKEX on a case by case basis.

## Housekeeping Listing Rule Amendments

The Housekeeping Listing Rule Amendments removed certain overlapping provisions and outdated references to "the Securities Trading Automated Quotation System" which no longer operates, and amended various incorrect Listing Rule references.

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[1] These are H share issuers (i.e. issuers incorporated in the PRC as joint stock limited companies) that list under Chapter 19A of the Main Board Listing Rules (GEM Chapter 25)

[2] The Mandatory Provisions for Companies Listing Overseas set out 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**)

[3] HKEX Listing Rules 19A.27(2) and (3)

[4] HKEX Listing Rules 19.10(2) and (3)

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