

Whether the proposed rights issue by a PRC issuer under general mandate would be subject to the 20 per cent discount limited on issue price

Facts

1. A PRC issuer listed on the Main Board (**Company A**) proposed a rights issue of 1 new H or domestic rights share for every 10 existing H or domestic shares held by its shareholders on the record date. The H rights shares and the domestic rights shares were to be issued at the same price after foreign exchange conversion. This represented a discount of about 40 per cent. to the average closing price of the H shares before the price determination date.
2. Under its articles of association, Company A was required to obtain shareholders' approval by special resolution in general meeting for any issue of new shares, including any pre-emptive issue.
3. Company A proposed to issue the rights shares under a general mandate. The mandate was granted to Company A by a special resolution of its shareholders passed at the annual general meeting held a few months ago. It allowed Company A to issue new shares of not more than 20 per cent. of each of the issued H shares and domestic shares within 12 months, and there was no restriction on the issue price of the new shares. Company A had not issued any new shares under the mandate.
4. It enquired whether the rights issue would be subject to a 20 per cent discount limit on issue price under the Rules.

Relevant Listing Rules

5. Rule 19A.38 states that the requirements of Rule 13.36(1) and (2) are replaced by the following provisions:

- “13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting, and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer’s articles of association, prior to authorising, allotting, issuing or granting:—
- (i) shares;
 - (ii) securities convertible into shares; or
 - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

Note: Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rule 13.36(2).

(b) ...

- (2) No such approval as is referred to in rule 13.36(1)(a) shall be required in the case of authorizing allotting or issuing shares if, but only to the extent that,
- (a) the existing shareholders of the PRC issuer have by special resolution in general meeting given approval, either unconditionally or subject to such terms and conditions as may be specified in the resolution, for the PRC issuer to authorise, allot or issue, either separately or concurrently once every twelve months, not more than twenty per cent. of each of the existing issued domestic shares and overseas listed foreign shares of the PRC issuer; or

(b) ...

Notes: (1) Other than where independent shareholders’ approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 13.36(2) is only permitted in the circumstances set out in rule 14A.92.

...”

(Rule 19A.38 was amended on 1 August 2023. See Note [1](#) below.)

6. Rule 13.36(5) states that:

“In the case of a placing or open offer of securities for cash consideration, the issuer may not issue any securities pursuant to a general mandate given under rule 13.36(2)(b) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmark price being the higher of:

(a) ...; and

(b) ...,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by urgent rescue operation ...”

(Rule 13.36 was amended on 11 June 2024. See Note 2 below.)

Analysis

7. Here Company A had obtained a general mandate from its shareholders that complied with Rule 19A.38. The rights shares proposed to be issued would not exceed the 20% limit on the number of new H and domestic shares issuable under the general mandate. Any issue of rights shares to its shareholders who were connected persons would fall under Rule 14A.92(1) and be exempt from the connected transaction requirements.
8. The 20 per cent discount limit on the issue price under Rule 13.36(5) did not apply to the proposed rights issue. The resolution on general mandate passed by Company A's shareholders did not set any restriction on the price of new shares to be issued under the mandate.

Conclusion

9. Company A could use the existing general mandate to issue the rights shares under Rule 19A.38.

Notes:

1. Rule 19A.38 was amended on 1 August 2023 to, among others, (i) remove the class meeting requirements relating to the share issuance by PRC issuers; (ii) require the share issuance to be approved by ordinary resolution (rather than special resolution) in a general meeting; (iii) remove the shareholders' approval requirement for pre-emptive issuance of shares; and (iv) set the general mandate limit at 20% of a PRC issuer's total issued shares (instead of 20% of each of domestic shares and H shares). The amended Rule requirements for PRC issuers are in line with the Rule requirements applicable to other issuers. The Rule amendments would not change the analysis and conclusion in this case.
2. Rule 13.36 was amended on 11 June 2024 to, among others, (i) apply the existing requirements for an issue of new shares to a resale of treasury shares; and (ii) exclude treasury shares in the calculation of issued shares for the purpose of determining the general mandate limit. The Rule amendments would not change the analysis and conclusion in this case.