

**By E-mail**

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27 March 2023

Dear Sirs

**Response to Consultation Paper on Rule Amendments Following Mainland China Regulation Updates and Other Proposed Rule Amendments Relating to PRC Issuers**

**Introduction**

1. We refer to the Consultation Paper dated 24 February 2023 from The Stock Exchange of Hong Kong Limited (the "**Stock Exchange**") seeking public feedback on the proposed modification on requirements specific to PRC issuers in response to the New PRC Regulations recently introduced by the CSRC (the "**Consultation Paper**"). Unless otherwise defined in this letter, capitalized terms used herein shall have the respective meanings as ascribed to them in the Consultation Paper.
2. We appreciate the Stock Exchange's initiative and effort to review and modify the Rules in light of the recent PRC regulation changes and welcome the opportunity to comment on the Consultation Paper.

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*Our specific comments / observations*

*Proposed amendments set forth under Chapter 2 of the Consultation Paper*

We welcome the changes proposed by the Stock Exchange under this chapter. We suggest the Stock Exchange considers clarifying the following matters in connection with the proposed amendments:

- With respect to amendments that relate to the removal of the class distinction between domestic shares and H shares of PRC issuers, would the Stock Exchange prescribe a deadline requiring the PRC issuers to amend its articles of associations to be consistent with the proposed amendments to the Rules and the PRC Guidelines on AoA?
- In cases such as a spin-off by a PRC issuer whose H shares are listed on the Stock Exchange (the "parentco") of its subsidiary (the "spinco") for a separate listing on the Stock Exchange or overseas securities exchange, we understand the current practice of the Stock Exchange is that if the shares of the spinco could not be distributed or offered to holders of the domestic shares because of restrictions under applicable laws in the PRC, so long the parentco obtains shareholders' approval in a domestic shares class meeting to only provide the "assured entitlements" to H shareholders of the parentco, the parentco would not be required to distribute or offer the spinco's shares to the holders of the domestic shares notwithstanding the requirements under Practice Note 15 of the Rules. We suggest the Stock Exchange clarifies its intended requirement or practice in such matter after the Rule changes proposed in the Consultation Paper.

***Question 1: Do you agree with the proposal to set the limit on general mandate for issuance of new shares at 20% of the total issued shares of a PRC issuer, instead of 20% of each of domestic shares and H shares? Please provide reasons for your views.***

Yes. We agree that given the price differential between the two markets, it is often a commercial decision on the market in which the PRC issuer would like to issue new shares to raise funding.

***Question 2: Do you have a concern that given fund raisings through the issuance of A shares may result in an increase in the number of A shares over H shares, the market size and liquidity of the H share market may reduce relative to the A share market? Do you think there should be other provisions to promote the long term development of the H share market, if so please provide reasons for your views and any suggestions.***

Not in general, because (1) the absolute number of H shares that can be traded on the Stock Exchange remain unchanged, (2) the requirement that A share shareholder has to be PRC domestic investors suggest that investors in the A share market are different from those in the H share market. In addition, overtime, given the expansion of the stock connect scheme and the initiative with the RMB dual trading counter, this should add to the liquidity in the trading of H shares on the Stock Exchange and balance out the negative impact (if any) on the liquidity

of the H shares if the H shares do account for a small percentage of the total issued shares of a PRC issuer due to material size of A share issuances.

***Question 3: Do you agree with the proposal to set the limit on scheme mandate for share schemes at 10% of the total issued shares of a PRC issuer, instead of 10% of each of domestic shares and H shares? Please provide reasons for your views***

Yes, same reasoning as in Question 1 above.

***Question 4: Do you agree with the proposal to remove the requirements for directors, officers and supervisors to provide undertakings to the PRC issuers and their shareholders? Please provide reasons for your views.***

Yes. Shareholders should seek protection under the PRC issuer's constitutional documents and applicable PRC laws and regulations, in the same way as other overseas issuers listed on the Stock Exchange.

***Question 8: Do you agree with the proposal to remove the requirements relating to disclosure of material differences between the laws and regulations in the PRC and Hong Kong in listing documents of new applicants that are PRC issuers? Please provide reasons for your views.***

Yes. A majority of issuers on the Stock Exchange have some PRC-lexis, as such investors are already accustomed to and more educated about PRC regulatory environment and the rules and regulations compared to decades ago when H share companies were new to the Hong Kong market. In any case, disclosures on risk factors and laws and regulations that apply to an issuer and its business should be assessed on a case-by-case basis by reference to the operating scope and environment of the issuer (and its industry) and the prevailing market conditions and environment at the time of listing.

Yours faithfully

**Clifford Chance**