



THE
LAW SOCIETY
OF HONG KONG
香港律師會

115th
ANNIVERSARY

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : [REDACTED]
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref : COM/7196346
Your Ref :
Direct Line :

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29 March 2023

Hong Kong Exchanges and Clearing Limited,
8/F, Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong

Dear Sirs,

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

We refer to the captioned consultation, and enclose the Law Society's submissions
on the subject matter for your attention.

We thank you for your time extension for us to reply.

Yours faithfully,



Eileen Tam
Assistant Director, Practitioners Affairs

Encl.

BY EMAIL ONLY

URGENT



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

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "Exchange") in February 2023 issued a consultation paper on "Rule Amendments Following Mainland China Regulation Updates and Other Proposed Rule Amendments Relating to PRC Issuers" ("Consultation Paper")

In response, the Law Society provides the following submissions. The same abbreviations and definitions appearing in the Consultation Paper are used in this submission.

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.

Law Society's response:

Yes, in principle. The removal of separate limits for domestic shares and H shares should be a welcome move for PRC issuers with both A+H share listings, as it allows flexibility for them to determine whether to further issue A shares or H shares (or a combination of both) within the overall 20% limit. However, this may tip the balance of the number of A shares and H shares in issue and affect the liquidity of A shares or H shares, as pointed out in paragraph 66 of the Consultation Paper. While PRC issuers are required to satisfy the "public float" requirement, the liquidity of H shares will be inevitably be affected if PRC issuers determine to issue a larger proportion of A shares over H shares. To ensure the long-term development of the H share market, some protective provisions could be built in to ensure the percentage of H shares does not fall below a minimum percentage threshold of the total number of issued shares.

We also observe that there are other issues which require clarification by the Exchange and/or other regulators. For example, in the context of delisting of H shares:

- the Takeovers Code does not contain an express approval requirement by only the independent H shareholders. A+H share issuers with a large proportion of A-share public float could potentially approve an H share delisting with minimum voice from H shareholders.
- the requirements under Rules 6.12 and 19A.12 are not proposed to be changed under the Consultation Paper. This would mean that an H share delisting resolution will only require H shareholders' approval for the 75% and 10% thresholds (pursuant to Rule 6.12(2) and 6.12(3), respectively).
- the shareholders who must abstain from voting under the Listing Rules (see Rule 6.12(1)) and the Takeovers Code (Note 6 to Rule 2.11) are not aligned.

It is desirable to take this opportunity for the regulators to address and clarify the above issues.

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.

Law Society's response:

See response to Question 1.

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.

Law Society's response:

Yes.

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.

Law Society's response:

Yes, the requirement for directors, supervisors and officers to provide an undertaking is redundant, as there are other legal recourses against them for their non-compliance with PRC laws.

Question 5: *Do you agree with the proposal to move the requirements for compliance advisers set out in Rules 19A.05(2) and 19A.06(3) to Chapter 3A? Please provide reasons for your views.*

Law Society's response:

Yes.

Question 6: *Do you agree with the proposal to remove Rules 19A.05(3), 19A.05(4), 19A.06(1) and 19A.06(4)? Please provide reasons for your views.*

Law Society's response:

Yes.

Question 7: *Do you agree with the proposal to remove the requirements relating to online display and physical inspection of documents under Rules 19A.50 and 19A.50A? Please provide reasons for your views.*

Law Society's response:

Yes.

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.*

Law Society's response:

We partially agree. Specifically, the original paragraphs 64 and 65 of Rule 19A.42 could be deleted, but we should retain paragraph 63 of Rule 19A.42.

While holders of domestic shares and H shares are no longer deemed to be different classes of shareholders, and the substantive rights attached to them are the same, the nature and the listing venues of these shares are different. The legal and regulatory rules relating to these shares (with respect to meeting procedures, calculation of votes, and other administrative proceedings) may have changed, but the *value* of domestic shares and H shares (and how investment analysts in practice conduct a *valuation* of these shares) are still subject to a different set of parameters. These parameters are affected by the differences in the legal, economic and financial systems between the

PRC and Hong Kong under the one-country-two-systems principle, so it is still worthwhile, for the benefit of investors, to highlight in a prominent position of a listing document these key differences.

The Law Society of Hong Kong
29 March 2023