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Redefining the game: HKEX Listing Rule amendments remove class meeting requirements for PRC issuers in share issuance and repurchase

转折点: 联交所《上市规则》修订——删除与中国发行人发行和回购股份有关的类别股东会议规定



Introduction 引言

The Hong Kong Stock Exchange (the "**Exchange**") has amended certain Listing Rules relating to PRC incorporated issuers, which came into effect on 1 August 2023. The major amendments include:

香港联合交易所有限公司（“**联交所**”）已修订若干有关于中国成立发行人的《上市规则》条文，有关条文于 2023 年 8 月 1 日生效。主要修订内容包括：

- removing the class meeting and related requirements for the issuance and repurchase of shares by PRC issuers;
删除与中国发行人发行和回购股份有关的类别股东会议规定及其他相关规定；

- removing the requirement for disputes involving H shareholders to be resolved through arbitration; 删除涉及 H 股股东的争议须以仲裁方式解决的规定;
- amending the documentary requirements for new listing applications to reflect the PRC's new filing requirements for overseas listings of Mainland-based companies; and 修订有关新上市申请提交文件的规定, 以反映适用于内地公司境外上市的中国备案新规; 及
- allowing the limits on general mandate for issuance of new shares and scheme mandate for share schemes to be calculated with reference to a PRC issuer's total issued shares (instead of referencing to each of domestic shares and H shares).

对于发行新股的一般性授权限额和股份计划的授权限额, 容许中国发行人参照其已发行股份总数 (而不是分别参照内资股和 H 股) 计算。

Background 背景

The Exchange published its [consultation paper](#) on 24 February 2023 to seek views and comments on proposed changes to the Rules Governing the Listing of Securities on the Exchange (the "**Rules**") following updates to PRC regulations and other proposed Rules amendments relating to PRC issuers.

2023 年 2 月 24 日, 联交所刊发[咨询文件](#)就因应中国法规变动而作出的《香港联合交易所有限公司证券上市规则》(“《**上市规则**》”) 建议修订, 以及其他有关中国发行人的《上市规则》建议修订征询意见。

In the [consultation conclusions](#) published on 21 July 2023, The Exchange announced the adoption of the proposed amendments, with minor adjustments. These amendments officially took effect on 1 August 2023. 2023 年 7 月 21 日, 联交所刊发的[咨询总结](#)中, 联交所公布采纳相关建议修订并稍作调整。有关修订已于 2023 年 8 月 1 日正式生效。

The driving force behind these changes was the introduction of a new regulatory framework in the PRC for the overseas listing of PRC enterprises including:

于中国内地实施的有关内地企业于境外上市的全新监管结构是推进此次修订的重要因素, 相关监管文件包括:

- the "Decision of the State Council to Repeal Certain Administrative Regulations and Documents" issued by the State Council of the PRC on 17 February 2023; and 中国国务院于 2023 年 2 月 17 日发布的《国务院关于废止部分行政法规和文件的决定》; 及
- the "Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies" and related guidelines issued by the China Securities Regulatory Commission ("**CSRC**") on 17 February 2023 中国证券监督管理委员会 ("**中国证监会**") 于 2023 年 2 月 17 日发布的《境内企业境外发行证券和上市管理试行办法》及相关指引

(collectively, the "New PRC Regulations")¹.
(合称, “中国新法规”)¹。

The New PRC Regulations came into effect on 31 March 2023.
中国新法规已于 2023 年 3 月 31 日生效。

Major amendments to the Rules 《上市规则》的主要修订内容

The major amendments to the Rules are summarised in the tables below:
《上市规则》主要修订概述载于下表:

Consequential amendments to the Rules 《上市规则》相应修订

Subject 事项	Amendments 修订内容
Class meeting and other requirements relating to the issuance and repurchase of shares by PRC issuers 与中国发行人发行和回购股份有关的类别股东会议规定及其他相关规定	Class meeting requirements 类别股东会议规定
	- Remove the class meeting requirement relating to the issuance and repurchase of shares by PRC issuers following the repeal of the Special Regulations and the Mandatory Provisions 因应《特别规定》及《必备条款》的废除, 删除与中国发行人发行和回购股份有关的类别股东会议规定 - Retain the requirements for H shareholders’ approval for matters affecting the listing or trading of H shares on the Exchange 保留影响 H 股在联交所上市或买卖的事宜须经 H 股股东批准的规定
	Other additional requirements 其他相关规定
	- Require the issuance or repurchase of shares to be approved by ordinary resolution (rather than special resolution) in general meetings 发行或回购股份须于股东大会上经普通决议案 (而非特别决议案) 批准 - Exempt the shareholders’ approval requirement for pre-emptive issuance of shares 废除有关优先发行股份须经股东批准的规定

¹ The Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies (國務院關於股份有限公司境外募集股份及上市的特別規定) issued by the State Council of the PRC on 4 August 1994 (the "Special Regulations") and 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 (the "Mandatory Provisions") were repealed, following the implementation of the New PRC Regulations.
因应中国新法规的实施, 中国国务院于 1994 年 8 月 4 日发布的《国务院关于股份有限公司境外募集股份及上市的特别规定》(“《特别规定》”)及国务院证券委员会及国家经济体制改革委员会于 1994 年 8 月 27 日发布的《到境外上市公司章程必备条款》(证委发(1994) 21 号文件)(“《必备条款》”)已被废除。

Subject 事项	Amendments 修订内容
	Remove the exemption for the issuance of shares under a PRC issuer's plan adopted at the time of its establishment and implemented within 15 months from the date of the approval by the CSRC, which is specified in the Mandatory Provisions and not the New PRC Regulation 删除在《必备条款》中规定但中国新法规中未规定的, 有关中国发行人根据其成立时采纳并于中国证监会批准日期起计 15 个月内实施的计划而发行股份可获的豁免
Arbitration clause and related requirements 仲裁条款及相关规定	- Remove the relevant Rules requiring the use of arbitration to settle disputes involving H shareholders and arising from the articles of association or the PRC Company Law 删除有关 H 股持有人因公司章程或中国《公司法》引起发生的争议须通过仲裁解决的相关规定 - Shareholders of a PRC issuer may now enforce their rights under the articles of association in the same approach as shareholders of other overseas issuers 中国发行人的股东现可行使其于公司章程下的权利, 一如其他海外发行人的股东
Definitions of "domestic shares" and "H shares" and references to "classes" of shares “内资股”与“H 股”的定义及股份“类别”的提述	- Amend the definition of "H shares" under Rule 19A.04 to refer to the shares of a PRC issuer which are listed on the Exchange 修订第 19A.04 条中“H 股”的定义为: 中国发行人在本交易所上市的股份 - Remove Rule 13.26(2), which provides that a PRC issuer shall not apply for the listing of any foreign shares on a PRC stock exchange unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected 删除第 13.26(2)条: 中国发行人不得申请将其任何外资股在中国证券交易所以上市, 除非联交所信纳其境外上市外资股的持有人的相对权利获得充分保障
Requirements relating to articles of association 有关公司章程的规定	Remove the requirement for PRC issuers' articles of association to include the Mandatory Provisions and the ancillary provisions 删除中国发行人的公司章程须载列《必备条款》及附带条文的规定
Other Rule amendments consequential on the repeal of the Special Regulations and the Mandatory Provisions	Remove the description of the differences between PRC and Hong Kong legal systems and market practices and simplify the preamble of Chapter 19A 删除有关中港两地法律制度及市场惯例差异的说明, 并简化第十九 A 章的前言

Subject 事项	Amendments 修订内容
因应《特别规定》及《必备条款》的废除而作出的《上市规则》其他相应修订	- Align the timing requirement for PRC issuers to despatch circulars and listing documents with requirements applicable to other issuers 将中国发行人与其他发行人寄发通函及上市文件的时间要求划一 - Remove references to the Special Regulations and the Mandatory Provisions 删除《特别规定》及《必备条款》的提述
Consequential Rule amendments to reflect the PRC new filing requirements for overseas listings of Mainland companies 同步中国对内地公司海外上市的新要求的相应修订	Require new applicants (whether incorporated in the PRC 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 PRC filing procedures, where the new applicant's application for listing on the Exchange is required to be filed with the CSRC 如新申请人的联交所上市申请须向中国证监会备案，要求该新申请人（不论是在中国还是在其他司法管辖区成立的公司）须在预期聆讯审批日期至少足四个营业日前提交由中国证监会发出的确认新申请人完成中国备案程序的通知，确认其已完成中国备案程序。

Other proposed amendments to the Rules 《上市规则》其他修订建议

Subject 事项	Amendments 修订内容
Mandate limits on share issuance 发行新股授权限额	- Amend Rule 19A.38 such that the general mandate and the scheme mandate would be subject to an overall cap of 20% and 10% respectively of a PRC issuer's total issued shares 修订《上市规则》第 19A.38 条, 使一般授权及股份计划授权总上限分别为中国发行人全部已发行股份的 20%和 10% - Retain the current Rules that new share issuance for cash under the general mandate and the exercise price of share options under a share option scheme are benchmarked to the market price of H shares 保留《上市规则》的现有规定, 即根据一般授权以现金发行新股, 以及根据股份期权计划行使股份期权的价格, 均以 H 股市场价格为准
Requirements for directors, officers and supervisors of PRC issuers 关于中国发行人董事、高级管理人员及监事的规定	Remove the requirements for directors, officers and supervisors of PRC issuers to provide undertakings to the issuers and their shareholders to comply with the Company Law of the PRC and the articles of association 删除中国发行人董事、高级管理人员及监事须向发行人及其股东作出承诺遵守中国《公司法》和公司章程的规定
Requirements on compliance advisers and sponsors 关于合规顾问和保荐人的规定	- Move certain requirements on compliance advisers from Chapter 19A (for PRC issuers) to Chapter 3A (for all issuers), being the requirements for issuers to provide access to their compliance advisers at all times and the compliance advisers to inform the issuers on a timely basis of any amendment to the Listing Rules and applicable laws and regulations in Hong Kong 将第十九 A 章 (针对中国发行人) 有关合规顾问的若干规定 (即发行人须确保与其合规顾问可随时联系, 以及合规顾问须及时告知发行人《上市规则》及适用的香港法律及法规的任何修订) 移至第三 A 章 (针对所有发行人) - Other requirements in Chapter 19A relating to the role of sponsors and compliance advisers and their termination and replacement will be removed as Chapter 3A contains similar requirements 由于第三 A 章已包含相似规定, 删除第十九 A 章中关于保荐人和合规顾问职责以及终止聘任和替任保荐人和合规顾问的相关规定
Requirements relating to online display or physical	Remove the requirements in Chapter 19A relating to (i) online display or physical inspection of documents and (ii) disclosure of material differences in laws and regulations between the PRC and

inspection of documents and disclosure in the listing documents 关于网上展示文件或展示实体版本以供查阅和上市文件披露的规定	Hong Kong in the listing documents of PRC new applicants 删除《上市规则》第十九 A 章中有关 (i) 网上展示文件或展示实体版本以供查阅以及 (ii) 在中国新申请人的上市文件中披露中国内地和香港法律法规的主要差异的相关规定
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Key Takeaways 要点速递

With these amendments, the Exchange aims to streamline the listing regime and offer a consistent framework for investor protection, irrespective of the place of incorporation of issuers.
联交所作出上述修订旨在简化上市制度，并提供一致的投资者保障架构，不论发行人在何地注册成立。

PRC issuers are urged to adhere to their current articles of association, particularly with respect to class meetings and other provisions mandated under the previous Mandatory Provisions, until they amend their articles of association to remove such provisions. In general, where PRC issuers propose to amend their articles of association to remove the class meeting requirements, they should obtain approvals of domestic shareholders and H shareholders at separate class meetings based on their existing articles of association.
中国发行人仍须遵守其现有的公司章程，尤其是有关类别股东会议的规定以及其他根据《必备条款》制定的规定，直至其随后修订公司章程删除此类规定。一般而言，如中国发行人建议修订其公司章程以删除类别股东会议的规定，应根据其现有公司章程召开各别类别股东会议，而取得内资股股东及 H 股股东的批准。

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