

## **The Hong Kong Chartered Governance Institute**

### **Online Submission**

### **The Stock Exchange of Hong Kong Limited's (Exchange)**

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

20 March 2023

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

*[Unless the context requires otherwise, the terms and expressions used in this submission shall have the meanings set out under the Consultation Paper.]*

### **About HKCGI**

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries, is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with more than 40,000 members and students worldwide. The Institute is one of the fastest growing divisions of CGI, with a current membership of over 7,000, 300 graduates and 2,600 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

### **Overall support**

Our Institute supports the need for consequential amendments to the Listing Rules to reflect changes in PRC regulations announced by the State Council and the CSRC as part of applied governance and Hong Kong's role as an intermediary for connecting the Mainland and the international capital market as an International Financial Centre.

Specifically, we support the consequential amendments to the Listing Rules to:

- (a) amend Chapter 19A to remove: (i) the class meeting and related requirements for the issuance of new shares and repurchase of existing shares by PRC issuers; and (ii) the requirements for disputes involving H shareholders to be resolved through arbitration;
- (b) repeal Appendix 13D, which requires PRC issuers' articles of association to include the Mandatory Provisions and other ancillary requirements; and

- (c) amend the documentary requirements for new listing applications in Chapters 9 and 19A to reflect the PRC's new filing requirements for overseas listings of Mainland companies.

Accordingly, from the applied governance perspective, we have no issue with the proposals to remove or modify certain additional shareholder protection requirements specific to PRC issuers that are no longer necessary in light of developments in PRC law and the Mainland financial market, namely to:

- (a) modify the Rules to allow the limits on the general mandate for issuing 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);
- (b) remove the requirements for directors, officers and supervisors of PRC issuers to provide undertakings to the issuers and their shareholders to comply with the PRC Company Law and the articles of association;
- (c) 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. Also, 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;
- (d) 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 Hong Kong in the listing documents of PRC new applicants; and
- (e) housekeeping Rule amendments to remove provisions in Chapter 19A which duplicate other Rules or are outdated.

We note the useful explanations under paragraphs 40 and 41 regarding public float and other additional requirements. Please prepare and update the Exchange's FAQs on these and other practical issues under Consultation Paper, Chapter 3.

### **Questions raised**

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

Yes.

We agree. From the governance point of view, it is best practice to align the requirements applicable to non-PRC issuers dually listed on the Exchange and an overseas Exchange, as the market should operate as a unified whole which is in investors' interest.

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.

No.

We are not unduly concerned as Rule 8.08 requires that there must be an open market in the H-shares. As identified under paragraph 66 of the Consultation Paper, it is a commercial decision to invest in A or H shares and in this connection, Hong Kong should focus on market integrity, and yet, at the same time, its connect functions to capture opportunities in both areas to the extent possible.

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.

We have no issue with this proposed level for scheme mandate because of the removal of the class distinction and the dilution effect within an acceptable range to incentivise the beneficiary of the scheme, which has been through much reform recently to ensure that there is the proper balance from the governance perspective as part of investor protection.

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.

Concerning a dispute under the constitutional documents, etc., the appropriate forum is the Mainland. It will be helpful under the Consultation Conclusions to highlight whether there have been any cases of direct enforcement against directors, officers and supervisors of their contractual undertaking for transparency of information.

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.

Yes.

From the governance perspective, it is best practice to streamline the Listing Rules, and we have no issue with broadly equivalent Rules under Chapter 3A being leveraged for such a purpose.

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.

Yes.

From the governance perspective, it is best practice to streamline the Listing Rules, and we have no issue with broadly equivalent Rules under Chapter 3A being leveraged for such a purpose.

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.

Yes.

As explained in paragraph 80, the information is accessible, and we suggest that this should be explained under the Exchange's relevant FAQs. For example, the latest annual return of a PRC issuer can be located on the National Enterprise Credit Information Publicity System website.

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.

Unanswered.

We believe that there should still be a warning. For example, there are differences in the legal and regulatory frameworks and risk factors as disclosures are important from the governance perspective. However, we are not opposed to some unified HKEX webpage to identify some of the usual risks and for the issuer's specific disclosures only to highlight certain material risk factors.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or [research@hkcgi.org.hk](mailto:research@hkcgi.org.hk).

Yours sincerely,

For and on behalf of  
The Hong Kong Chartered Governance Institute

A handwritten signature in black ink, appearing to read 'Ernest Lee', written in a cursive style.

**Ernest Lee FCG HKFCG(PE)**  
President