

HKEx LISTING DECISION
HKEx-LD99-5 (July 2010)

Parties	Company A - a PRC issuer, listed on the Main Board and on a PRC stock exchange
Issue	Whether the Exchange would waive the class meeting requirement under Rule 19A.38 on Company A's bonus issue of shares
Listing Rules	Main Board Rule 19A.38
Decision	The Exchange waived the requirement

FACTS

1. Company A proposed a bonus issue of shares to its shareholders.
2. Under its articles of association, Company A had to obtain shareholder approval for the bonus issue by a special resolution at a general meeting.
3. Rule 19A.38 required the bonus issue to be approved by (i) shareholders at a general meeting and (ii) holders of A shares and H shares at separate class meetings. Company A asked the Exchange to waive the class meeting requirement for the proposed bonus issue because:
 - a. According to PRC lawyers' opinion, no separate class meetings were required under the articles, the Mandatory Provisions for Companies Listing Overseas (the **Mandatory Provisions**), the PRC laws and/or the listing rules of the PRC stock exchange.
 - b. The bonus shares would be issued to A and H shareholders pro rata to their shareholdings. No shareholders' rights would be affected or prejudiced by the bonus issue.

APPLICABLE LISTING RULES

4. Rule 19A.38 states that the requirements of rule 13.36(1) and (2) are replaced in their entirety 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:—

(i) authorising, allotting, issuing or granting:—

- (A) shares;
 - (B) securities convertible into shares; or
 - (C) options, warrants or similar rights to subscribe for any shares or such convertible securities; and
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Notes: 1. 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 rules 13.36(2).

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(2) No such approval as is referred to in rule 13.36(1)(a) shall be required in the case of authorising, 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) such shares are part of the PRC issuer's plan at the time of its establishment to issue domestic shares and overseas listed foreign shares and which plan is implemented within fifteen months from the date of approval by the State Council Securities Policy Committee or such other competent state council securities regulatory authority.

ANALYSIS

- 5. For a pro rata issue of shares, Rule 13.36(2)(a) exempts non-PRC issuers from the shareholder approval requirement. Similar exemption is not available to PRC issuers under Rule 19A.38, which requires PRC issuers to obtain shareholder approval by a special resolution at a general meeting and approvals by holders of A and H shares at separate class meetings before any allotment, issue or grant of shares (pro rata or not).
- 6. Rule 19A.38 was drafted to align with the Mandatory Provisions, which govern PRC issuers' articles of association and provide that rights conferred on any class of shareholders in the capacity of shareholders may not be varied or abrogated by the company unless approved in separate class meetings.
- 7. The Exchange considered it appropriate to waive the class meeting requirement because:
 - a. Under the PRC lawyers' legal opinion, the Mandatory Provisions did not require approvals at class meetings for a PRC issuer's bonus or capitalisation issue of shares which did not involve fund raising.
 - b. The legal opinion also confirmed that Company A was not required to obtain approval for the bonus issue at separate class meetings under its articles of association, the PRC laws and/or the listing rules of the PRC stock exchange.
- 8. The Securities and Futures Commission has given consent under Rule 2.04 to the Exchange to grant waivers from compliance with Rule 19A.38 for PRC issuers proposing a bonus or capitalisation issue of shares to all its shareholders (see Listing Committee Annual Report 2008).

CONCLUSION

- 9. The Exchange waived the class meeting requirement.