

Practice Note 25 (PN25) – Guidance Note on the application of the Codes on Takeovers and Mergers and Share Buy-backs (Codes) following the abolition of the Special Regulations and the Mandatory Provisions and other matters relating to offers for A and H shares of a listed issuer

Background

1. On 17 February 2023, the State Council of the PRC and the China Securities Regulatory Commission (**CSRC**) announced the implementation of the New PRC Regulations¹

5. Following the repeal of the Special Regulations and the Mandatory Provisions and the implementation of the New PRC Regulations (**PRC Rule Change**), the Executive believes that the current application of the Codes to PRC issuers will remain largely the same, with certain modifications. The Executive recognises that domestic shares (in particular, A shares) and H shares are traded in separate markets with different regulatory and market environments. Therefore, although H shares and domestic shares are one single class of shares under PRC law, the fact that H shares and domestic shares are not directly fungible with each other warrants a different approach when applying certain provisions of the Codes to PRC H Share Issuers.

Purpose

6. The purpose of this Guidance Note is to provide guidance to PRC H Share Issuers and market practitioners on the application of the Executive's approach towards a number of relevant Codes provisions following the PRC Rule Change. For the purpose of this Guidance Note, a **PRC H Share Issuer** is a company whose H shares are listed on the Hong Kong Stock Exchange (**Stock Exchange**).

Relevant Rules under the Codes

Takeovers Code provisions

Definition of "Associate"

capital of the PRC H Share Issuer. This ensures material and relevant information from dealings by a person holding a substantial stake in H shares are captured and disclosed under Rule 22 of the Takeovers Code. For A shares and unlisted domestic shares, given that the base position under PRC law is that they are the same class of shares, the Executive will treat A shares and unlisted domestic shares as the same class for the purposes of determining any such class (6) associates.

Rules 2.2 and 2.10 – Delistings and privatisations

10. Rule 2.2 of the Takeovers Code provides that “[i]f after a proposed offer the shares of an offeree company are to be delisted from the Stock Exchange, neither the offeror nor any persons acting in concert with the offeror may vote at the meeting, if any, of the offeree company’s shareholders convened in accordance with the Listing Rules. The resolution to approve the delisting must be subject to:–
- (a) approval by at least 75% of the votes attaching to the disinterested shares that are cast either in person or by proxy at a duly convened meeting of the holders of the disinterested shares;
 - (b) the number of votes cast against the resolution being not more than 10% of the votes attaching to all disinterested shares; and
 - (c)

15. This approach with respect to Rules 2.2 and 2.10 will remain after the PRC Rule

apply. In summary, the Executive will simply convert the RMB purchase price for the domestic shares into HK\$ at the applicable PBOC exchange rate.

Rule 23 – Nature of consideration to be offered

23. Rule 23.1 envisages a scenario where a cash offer is required. It provides that “*[e]xcept with the consent of the Executive ..., a cash offer is required where:–*

- (a) *the shares of any class under offer in the offeree company purchased for cash (but see Note 5 to this Rule 23.1) by an offeror, and any person acting in concert with the offeror, during the offer period and within 6 months prior to its commencement carry 10% or more of the **voting rights** (emphasis added) currently exercisable at a class meeting of **that class** (emphasis added) in*

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(b) the share buy-back by general offer must be approved by:–

- (i) at least 75% of the votes attaching to the shares owned by independent shareholders that are cast either in person or by proxy at a duly convened general meeting; and*
- (ii) number of votes cast against the resolution being not more than 10% of the votes attaching to the shares owned by independent shareholders.”*

35. Rule 3.4 provides that “[i]f the offeror has more than one class of equity share capital, the Executive should be consulted as it may require the share buy-back to be made subject to approval by a majority of the votes cast by holders of each class of shares in attendance in person or by proxy at separate class meetings of such shareholders duly convened and held to consider the proposed share buy-back.”

36. Similar to delisting or take-private proposals of H shares for PRC H Share Issuers as illustrated in paragraphs 13 to 15 above, if a PRC H Share Issuer proposes to buy-back all of its H shares by way of a general offer resulting in a delisting of H shares, the rights of holders of H shares will be significantly impacted and their interests are considered to be materially different from the holders of domestic shares (whether unlisted or A shares). In such circumstances, the requirements under Rule 3.3 should be approved at a general meeting by holders of H shares only. This approach will remain after the PRC Rule Change.

Early consultation

37. Finally, if parties are in any doubt about the interpretation and application of any provisions under the Codes following the PRC Rule Change, early consultation with the Executive is strongly recommended so that any issues may be identified and resolved as soon as possible.

17 March 2023