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Legal Updates

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1. Navigating China's Extra Tariffs on Aviation Deals

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On 2 April 2025, the U.S. government announced the tariff hikes of up to 34% on Chinese exports. In response, the Chinese government successively unveiled a series of countermeasures on 4 April 2025, including tariffs, export controls and the Unreliable Entity List.

Among these measures, the *Announcement on Imposing Additional Tariffs on Imported Goods Originating from the United States* (Announcement No.4 of 2025 by the Customs Tariff Commission of the State Council, the "**Announcement No.4**"), released on the same day, stipulates that starting from 12:01 on 10 April 2025, all imported goods originating from the United States will be subject to an additional 34% tariff on top of the current applicable tariff rates.

This article will provide a preliminary analysis of the potential impact of the aforementioned tariff countermeasures on the trade and leasing transactions of aircraft, engines and aviation spare parts originating from the United States in the Chinese market, as well as suggestions for response measures.

Given that the relevant policies have just been released and that both China and the United States may still engage in consultations on tariff issues in the future, we will continue to closely monitor the developments and update the analysis in a timely manner.

Overview of China's imports of U.S.-origin aircraft, engines and aviation materials

China's imports of U.S.-origin aircraft, engines and aviation materials primarily consist of large commercial aircraft, business jets, aero-engines and related materials.

Boeing is a key supplier of commercial aircraft to China's civil aviation market, with its 737, 777, and 787 models having been the choices for most of the Chinese airlines. Gulfstream business jets also play a significant role in the high-end business aviation sector.

In terms of engines, U.S. companies such as GE Aerospace, Pratt & Whitney and Honeywell maintain substantial market shares in China.

Additionally, China imports critical aviation materials from the U.S. annually, including high-temperature alloy blades, avionics equipment and composite structural components for aircraft maintenance and repairs.

According to the statistical data released by the General Administration of Customs of the PRC[1], from January to December 2024, the total import value of helicopters, aircraft and parts in China was

[1] On the General Administration of Customs Statistics Data Online Inquiry Platform (http://stats.customs.gov.cn/), we have respectively inquired about the total import amount of China from January to December 2024 and the amount imported from the United States for the two categories of goods with codes 8802 (other aircraft (e.g., helicopters, airplanes), excluding unmanned aerial vehicles of heading 88.06; spacecraft (including satellites) and their launching vehicles, suborbital launch vehicles) and 8807 (parts of goods listed in headings 88.01, 88.02, or 88.06).

approximately USD 12.167 billion, of which the amount imported from the United States was about USD 6.208 billion, accounting for more than 50%.

Timeline for application of China's tariff countermeasures

Announcement No.4 stipulates that for goods which were dispatched from the place of shipment before 12:01 on 10 April 2025, and imported between 12:01 on 10 April 2025 and 24:00 on 13 May 2025, the additional tariffs shall not be levied.

Therefore, the aircraft, engines and aviation spare parts originating from the United States shall be subject to the additional tariffs under Announcement No.4 if they meet either of the following conditions:

1. they were not dispatched from the United States before 12:01 on 10 April 2025; or
2. they were dispatched before 12:01 on 10 April 2025, but not imported into China before 24:00 on 13 May 2025.

Current tariff rates for aircraft, engines and aviation materials imported to China

The applicable tariff categories and tariff rates for the aviation-related imports shall be determined in accordance with the *Customs Import and Export Tariff of the PRC*. The actual rates may vary depending on factors such as HS code classification, rules of origin, provisional or preferential tariff rates and retaliatory tariff policies.

Under the current *Customs Import and Export Tariff of the PRC (2025 Edition)*, the most-favoured-nation (MFN) tariff rates for certain aircraft, engines, and aviation materials[2]are as follows:

I. Current MFN tariff rates for aircraft (Including helicopters)

HS code	Product description	Current MFN tariff rate (%)
88021100	Helicopters with an empty weight≤2 tons	2
88021210	Helicopters with an empty weight > 2 tons but≤7 tons	2
88021220	Helicopters with an empty weight > 7 tons	2
88022000	Small aircraft and other aircraft (aircraft and other aircraft with an empty weight≤2 tons)	5
88023000	Medium aircraft and other aircraft (aircraft and other aircraft with an empty weight>2 tons but≤15 tons)	4
88024010	Large aircraft and other aircraft (aircraft and other aircraft with an empty weight>15 tons but≤45 tons)	5

[2] The Most-Favored-Nation (MFN) tariff rate refers to the preferential duty rate applied by China to imported goods originating from World Trade Organization (WTO) member states or countries/regions that have mutually established reciprocal MFN treatment clauses with China, in accordance with its accession to international trade agreements such as the WTO agreements. This rate applies to WTO member states as well as non-WTO countries/regions that have bilateral MFN agreements with China.

HS code	Product description	Current MFN tariff rate (%)
88024020	Extra-large aircraft and other aircraft (aircraft and other aircraft with an empty weight > 45 tons)	1

II. Current MFN tariff rates for turbofan engines and components

HS code	Product description	Current MFN tariff rate (%)
84111110	Turbofan engines with a thrust ≤ 25 kN	1
84111190	Other turbojet engines with a thrust ≤ 25 kN	1
84111210	Turbofan engines with a thrust > 25 kN	1
84111290	Other turbojet engines with a thrust > 25 kN	1
84112100	Turboprop engines with a power ≤ 1100 kW	2
84112210	Turboprop engines with a power of 1100 – 2238 kW	2
84112220	Turboprop engines with a power of 2238 – 3730 kW	2
84112230	Turboprop engines with a power > 3730 kW	2
84118200	Other gas turbines with a power > 5000 kW	3
84119100	Parts for turbojet or turboprop engines	1

III. Current MFN tariff rates for aviation materials

HS code	Product description	Current MFN tariff rate (%)
88071000	Propellers, rotors and parts thereof for aircraft	1
88072000	Landing gear and parts thereof for aircraft	1
88079000	Other unlisted parts for aircraft and spacecraft	0

Analysis of import tariff exemption and reduction policies and applicability to the contemplated tariff increases

I. Current exemption and reduction policies

China currently implements value-added tax exemption policy for the import of aircraft with an empty weight of over 25 tons at the import stage. There are no other tariff exemption or reduction policies.

Regarding aviation spare parts for maintenance, on 31 March 2021, the Ministry of Finance and the General Administration of Customs jointly issued the *Notice on the Import Tax Policy for Aviation Spare Parts for Civil Aviation Maintenance (2021 – 2030)* (Cai Guan Shui [2021] No.15). This policy exempts import tariffs on aviation spare parts for maintenance that cannot be produced domestically or cannot meet the demand, imported by civil aircraft machine design and manufacturing enterprises, domestic airlines, maintenance units and aviation spare parts distributors.

The "aviation spare parts for maintenance" eligible for this tariff exemption policy refer to parts specifically used for the maintenance of civil aircraft and their components, including power plants (engines, auxiliary power units), landing gear, and consumable materials such as standard parts and raw materials. The scope is limited to airborne equipment and its components and raw materials for aircraft, excluding equipment and its components used by ground support systems.

The four ministries (the Ministry of Finance, the Ministry of Industry and Information Technology, the General Administration of Customs and the Civil Aviation Administration of China (CAAC)) have jointly issued supporting management measures and implementation rules for the above-mentioned exemption policy. According to the management measures, CAAC shall regularly update the list of eligible entities and exempted products and submit the latest data to the General Administration of Customs by 10 June and 10 December each year.

II. Applicability of the exemption and reduction policies to the contemplated additional tariff

Announcement No.4 clearly states that "the current bonded and tax exemption policies remain unchanged, and the additional tariffs imposed this time will not be exempted".

In accordance with the above principle, aircraft, engines and aviation spare parts originating from the United States and falling within the scope of Announcement No.4 will face a 34% tariff increase when imported into China, and this increased tariff portion will not be eligible for the tariff exemption and reduction policies mentioned above.

Analysis of impact on aviation-related trade and leasing transactions

I. When will trade and lease transactions be affected by tariff increases?

Pursuant to the Announcement No.4, we understand that the imposition of additional tariffs shall not apply to the following two categories of trade and lease transactions involving aircraft, engine and aviation materials originating from the United States and imported into China:

1. aircraft, engines and aviation materials already imported (either through purchase or leasing) into China before 12:01 on 10 April 2025; and
2. aircraft, engines and aviation materials shipped from the origin before 12:01 on 10 April 2025 and imported into China by 24:00 on 13 May 2025.

The applicability of the additional tariffs is determined based on the actual time of importation of the goods, not the signing time of the transaction contract. Therefore, even if purchase, lease or other trade contracts were signed, the relevant transactions may still be affected by the current round of additional tariffs.

II. What are the criteria for defining "Originating from the U.S."?

It is important to note that "originating from the U.S." does not equate to "exported from the U.S." or "sold by a U.S. company," but rather a legal determination which is centered on the place of substantial manufacturing.

Under the *Customs Import and Export Tariff Regulations of the People's Republic of China* and *the Administrative Measures on Rules of Origin for Import and Export Goods*, it is noted that:

- "Tariffs on imported goods shall be determined based on their country/region of origin".
- "Goods wholly obtained or produced within a single country (region) shall be deemed to originate there".
- "For goods involving production in two or multiple countries or regions, the last substantive processing or manufacturing country or region shall be deemed to be the origin".

On such basis, whether an imported product is determined to be "originating from the U.S." the customs authorities will primarily review whether the product has undergone the last substantial processing or manufacturing in the U.S. The following scenarios will not alter the determination of the origin as the United States:

- the seller/exporter is not a U.S. entity.
- goods are transshipped via a third country.
- contracts are signed or payments are made outside the U.S.

Therefore, so long as a product is determined to be "originating from the U.S." regardless of whether the exporter is in the United States, whether it is transshipped through a third country, or whether it is sold by a non-U.S. company, it will be subject to the contemplated additional tariffs.

III. What types of trade and leasing transactions will be potentially affected by tariff increases?

Based on the foregoing, transactions directly subject to tariff increase include but not limited to:

1. direct overseas purchases of U.S.-origin aircraft, engines and aviation materials by Chinese airlines or other entities.
2. overseas lessors or entities purchasing and exporting U.S.-origin aircraft, engines and aviation materials to Chinese lessees through trade or lease arrangements.
3. Chinese lessors purchasing and importing U.S.-origin aircraft, engine and aviation materials through bonded zone project companies for onward leasing to Chinese lessees.

IV. What types of trade and leasing transactions may not be subject to tariff increases?

Given that Announcement No.4 explicitly states that the current bonded policy remains unchanged, we anticipate that the following types of transactions involving aircraft, engines and aviation materials originating from the United States may not be subject to the contemplated additional tariff:

1. Existing cross-border aircraft/engine leasing transactions involving U.S.-origin aircraft or engines that were imported prior to 10 April 2025, with the lessee opting to pay all import duties in a lump sum, as well as bonded aircraft/engine leasing transactions.

   For lessees who have opted to pay import duties in installments over the lease term, we tend to

believe that the newly increased tariff rates should not apply. China's newly announced tariff countermeasures are aimed to curb new imports from the United States. Applying these tariffs to existing leases would not achieve the intended policy objective. Instead, it would risk imposing an undue burden on Chinese airlines by significantly increasing their operational costs.

2. Maintenance services for aircraft or engines conducted within the PRC bonded zones without importation into China.

3. For aircraft and engines that were imported through trade or leasing prior to 10 April 2025 and are subsequently delivered overseas for maintenance, the current regulations provide that, where machinery, vehicles or other goods are declared to customs upon exit for maintenance or repair and are re-imported within the prescribed time limit, the dutiable value is determined based on the cost of overseas repair services and parts.

   Accordingly, the original dutiable value and applicable tax rate of the aircraft or engine itself will not be adjusted solely due to the overseas maintenance. However, in respect of the repair services and parts used during the overseas maintenance, if any such parts or materials originate from the United States, the additional tariffs may still apply to that portion.

4. Extensions of the leasing of the existing aircraft, engines and aviation materials, provided the extensions have been declared to the customs authority with the lessee opting to pay all import duties in a lump sum prior to 10 April 2025.

   For lease extension transactions that were declared to the customs authority prior to 10 April 2025, where the lessee has opted to pay import duties in installments, we understand that whether additional tariffs will apply depends on the policy referenced in paragraph (1) above – specifically, whether the remaining lease term of existing lease transactions will be subject to the additional tariffs.

   As for lease extension transactions declared to customs after 10 April 2025, we understand that the applicability of the additional tariffs is still subject to further clarification and confirmation from the customs authorities.

5. Purchase and sale transactions involving aircraft, engines, and aviation materials that are on lease to PRC lessees and were imported into China prior to 10 April 2025, provided no export from and re-import to China is involved.

   In practice, such transactions may include portfolio asset transfers between offshore buyers and sellers, between offshore sellers and buyers located within China's tax bonded areas, or between lessors within the same tax bonded area. These three types of transactions involve different sets of customs procedures in China. The latter two, in particular, require additional steps such as re-entry into the tax bonded area and filing import/export declarations. However, there is no substantive difference among the three in the underlying transaction nature and their impact on the lessee in terms of possession and use of the aircraft. Therefore, we are of the view that the applicability of the newly imposed tariffs should not vary based solely on differences in customs procedures, and the same tariff treatment should apply across all three transaction types.

6. Restructuring of existing leases involving aircraft, engines and aviation materials that are on lease to PRC lessees and were imported into China prior to 10 April 2025, provided no export from and re-import to China is involved.

7. Offshore lease transactions where domestic leasing companies purchase directly from overseas through bonded zone project companies and lease to lessees outside of China, without involving export from and re-import to China.

V. How to handle affected transactions: tax allocation, force majeure and change of circumstances?

In the context of China's current imposition of additional tariffs on U.S.-origin aircraft, engines and aviation materials, this policy will have a direct impact on the aviation trade and leasing transaction agreements.

Tax allocation provisions in the existing sales and leasing agreements will become a focal point. If the agreements include "net delivery" or "net rent" arrangements, the additional tariffs will generally fall on buyers or lessees[3]. However, if contracts lack explicit allocation mechanisms for new tax burdens, disputes over performance obligations may arise, potentially triggering re-negotiations. For transactions pending delivery or importation, parties should urgently review contractual terms to clarify liability for additional taxes and address the situation through supplemental agreements where necessary.

Certain agreements include transaction restructuring mechanisms permitting adjustments to transaction structures due to legal or tax environment changes. Moreover, although some contracts contain force majeure clauses, these clauses typically do not explicitly cover changes in tax policies. Whether the imposition of additional tariffs can directly constitute force majeure needs to be carefully analyzed based on the contract and the circumstances at the time of contract formation, to discuss whether there is room for exemption from liability.

Under PRC law, affected parties may attempt to invoke Article 533 of the *PRC Civil Code* regarding the doctrine of change of circumstances arguing that the sudden increase in tariffs has led to manifest unfairness in performance and requesting the court or arbitration institution to amend the contract terms or terminate the contract. However, assessment by the courts of the applicability of doctrine of change of circumstances will involve considering factors such as foreseeability of tariff changes, transaction stage as well as commercial rationality and there is still considerable uncertainty in its application.

Next steps

I. Review existing contracts to assess taxes and fees allocation

For existing transaction projects that have been signed but not yet delivered, whether they are

[3] For instance: In the majority of sales and purchase contracts with mainstream aircraft and engine manufacturers, it is stipulated that, except for the seller's income tax, the buyer assumes all taxes arising from or related to the performance of the contract, as well as the purchase, delivery, and transfer of the aircraft/engines. In leasing contracts, import customs duties are typically borne by the lessee.

purchase contracts (such as aircraft or engine procurement agreements, aviation materials supply contracts) or financing or operating lease contracts, it is essential to promptly review the price adjustment mechanisms in the existing contracts. This includes clauses related to tax changes, force majeure and change of circumstances, to clarify the allocation of the burden for new tariffs and other tax costs, as well as the adjustment pathways. If the contract does not make explicit provisions for these matters, it is recommended that the relevant parties negotiate supplementary agreements with their transaction counterparts as early as possible to reasonably allocate the new tax burden, thereby reducing the uncertainty and performance risks brought about by the China-U.S. trade friction.

II. Learn and utilize the exclusion rules for additional tariffs

The Tariff Commission of the State Council issued the *Announcement on the Pilot Program of Excluding Certain Eligible Products from Tariff Hikes against the United States* in 2019, establishing an exclusion mechanism for goods subject to additional tariffs from the United States. Under this mechanism, eligible goods may apply for exemption from the additional tariffs, which specifically includes measures such as "temporary non-application of additional tariffs" or "for those that meet the conditions for refund, the already imposed tariffs will be refunded".

We understand that whether the current round of additional tariffs can apply the same or similar exclusion mechanism is still pending further policies or announcements from the relevant authorities. Entities involved in the purchase and lease transactions of aircraft, engines and aviation materials, including airlines, leasing companies, maintenance enterprises and other service providers, should all pay attention to the release of subsequent policies. They should also focus on the scope of application and application procedures of the relevant exclusion mechanisms. By combining the actual impact of the contemplated additional tariffs on their operations, cost structures and performance arrangements, they should comprehensively assess whether they meet the application conditions. If there is any possibility of obtaining any exclusion, it is recommended to prepare and submit application materials as early as possible to reasonably reduce potential tax burdens and mitigate the business risks brought about by uncertainty.

III. Conduct customs planning based on the compliance with rules of origin

In practice, when it comes to the importation in the trade and lease transactions of aviation products such as aircraft, engines and aviation materials, the application of the rules of origin should be given particular attention.

Aviation trade and leasing entities, including airlines, leasing companies and maintenance enterprises in China, should confirm whether the imported aviation products (such as aviation materials and spare parts) originating from the United States meet the Chinese customs' criteria for determining "originating from the United States". When using transshipment trade arrangements (for example, via third countries such as Singapore or EU member states), it is crucial to ensure that the certificates of origin issued by the transshipment countries are genuine, complete and acceptable to Chinese customs.

If a product is determined to originate from the United States, it may be subject to the contemplated additional tariffs, even if the exporter is not located in the United States. Therefore, all parties to the

transaction should consider the compliance risks associated with the compliance with rules of origin simultaneously in contract design, document preparation and logistics arrangements.

IV. Monitor policy changes and respond promptly

Since the U.S. initiated the Section 301 investigation and imposed additional tariffs in 2018, China had announced plans to impose reciprocal tariffs on U.S.-origin aircraft, some of which were not implemented for certain reasons. After the additional tariffs were imposed again in 2019, although there were responsive measures, China subsequently suspended the originally planned tariffs as the trade consultations progressed. In 2020, the two sides reached the Phase One Economic and Trade Agreement, under which the U.S. committed to gradually remove the additional tariffs, while China agreed to purchase $200 billion worth of U.S. products, including aircraft, over the next two years.

Although the context of the current round of additional tariffs is different, there is still a possibility that the China-U.S. trade dispute can be resolved through negotiations and a new agreement can be reached. Therefore, the future direction of tariff policies still needs to be closely monitored.

2. New Era of Filing for Overseas Listing Series (XII) – Hong Kong Listing of A-share Listed Companies

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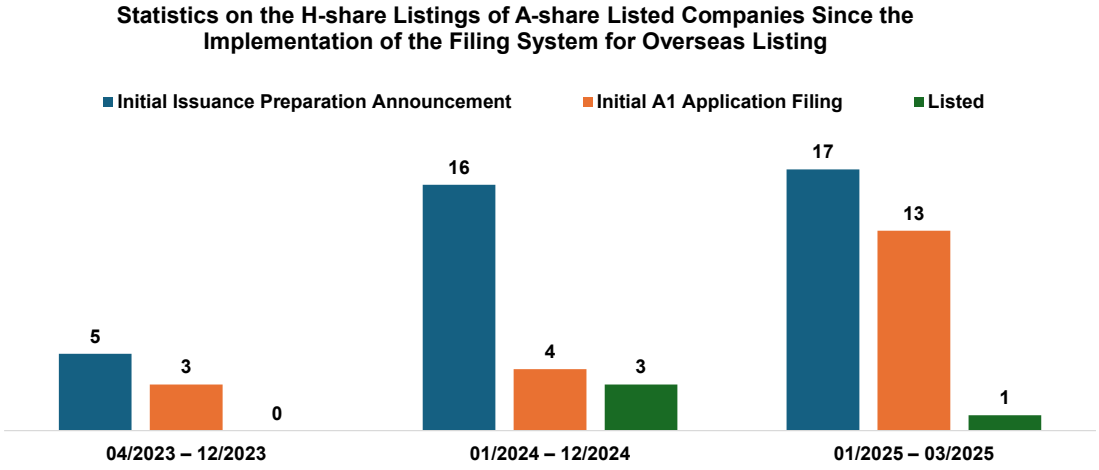
In April 2024, the China Securities Regulatory Commission ("**CSRC**") issued five cooperation measures with Hong Kong regarding the capital markets to support leading mainland companies to list in Hong Kong. In October 2024, the Securities and Futures Commission of Hong Kong ("**SFC**") and the Stock Exchange of Hong Kong Limited ("**SEHK**") issued the *Joint Statement on Optimizing the Timetable of the Examination and Approval Process for New Listing Applications*, which sets up a "fast examination and approval channel" for eligible A-share listed companies whose valuation is above RMB 10 billion. Under the support and guidance of relevant policies, since the second half of 2024, a large number of A-share listed companies have been preparing to issue H shares for listing in Hong Kong. As a special type of direct overseas issuance and listing by domestic enterprises, compared with H-share listing by ordinary domestic enterprises, A-share listed companies who issue H shares for listing are subject to dual A-share and H-share supervision. However, the efficiency and certainty of approval and listing for A-share listed companies is higher due to the fact that A-share listed companies already have a high level of standardization and a public market capitalization that can be referenced. This article focuses on the special legal issues involved in the issuance and listing of H shares in Hong Kong by A-share listed companies (for other articles in this series, please refer to 《*境外上市备案新时代系列（三）— 直接境外上市及全流通篇*》《*境外上市备案新时代系列（十一）— GDR 篇*》).

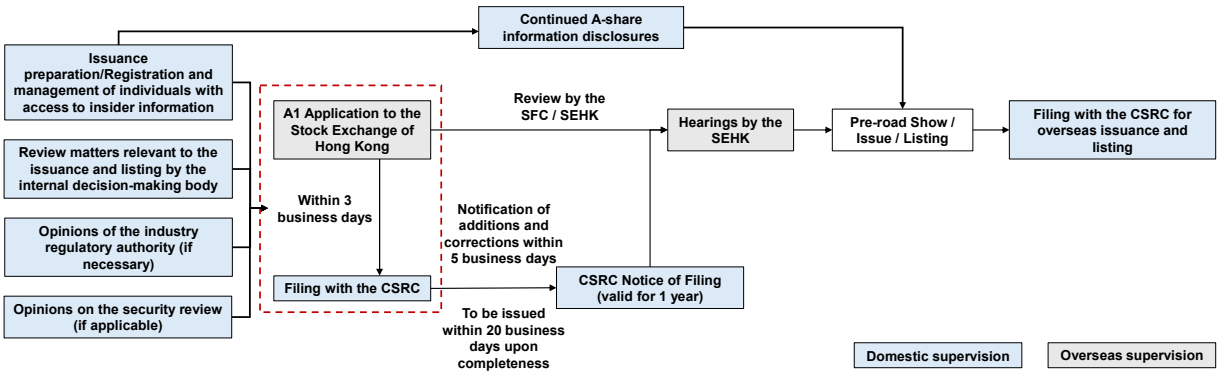
Listing of A-share listed companies in Hong Kong after implementation of the filing system

According to statistics, since the implementation of the filing system for overseas listing for domestic enterprises until March 31, 2025, a total of 38 A-share listed companies have announced preparations for initial public offerings of overseas listed foreign capital shares (H shares). Among these, 20 A-share listed companies have submitted applications to the SEHK for issuing and listing H shares and four companies have completed the listing of H shares, as shown in the chart below. In the first quarter of 2025 alone, the number of H-share listed companies announcing their preparation for listing H shares exceeded that of 2024. Judging from the market's response, there will be a new round of A-share listed companies listing in Hong Kong in 2025.



Main procedures

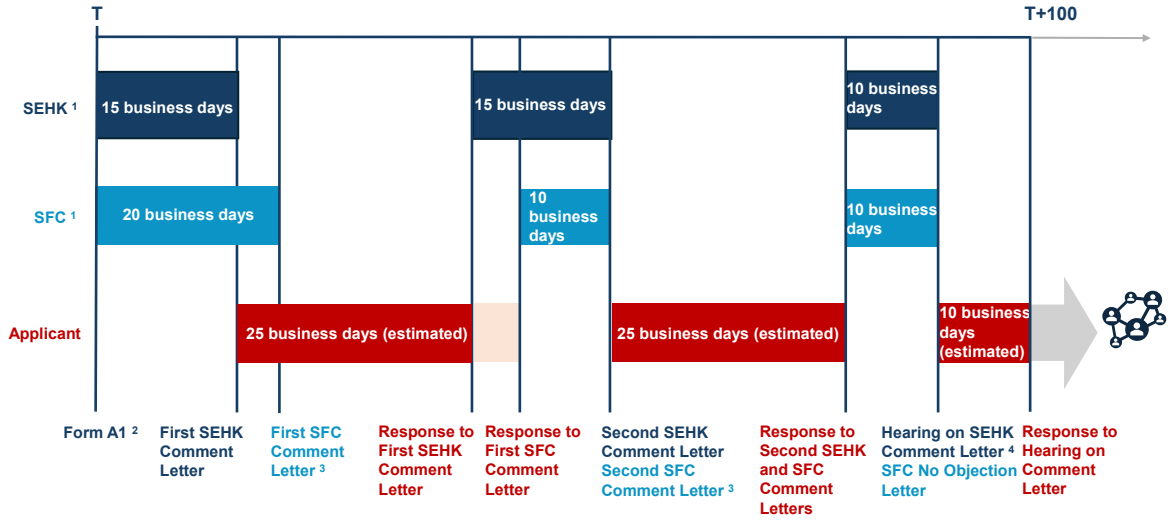
A-share listed companies that apply to issue overseas listed foreign capital shares (H shares) and list on the SEHK are subject to the *Trial Administrative Measures of Overseas Issuance and Listing of Securities by Domestic Companies* and relevant supporting guidelines. CSRC has implemented a filing system for overseas listing of foreign capital shares (H shares). However, A-share listed companies do not issue additional shares as underlying securities as is the case in the issuance of Global Depository Receipts (GDRs); thus, their issuance and listing of H shares are not subject to review by the mainland stock exchange and CSRC registration procedures. In addition, A-share listed companies must also comply with information disclosure regulatory requirements for A-share listed companies during the issuance and listing of H shares. The main procedures for H-share listing of A-share listed companies are as follows.



The H-share listing approval procedures for qualified A-share listed companies have been simplified following an October 2024 joint announcement by the SFC and the SEHK. Specifically, the SFC and the SEHK will undertake only one round of regulatory opinions and will complete their work in no more than 30 business days for those A-share listed company applicants that (1) have an estimated market capitalization of HK $10 billion or more; and (2) confirm, with a legal opinion, material compliance with A-share listing legal and regulatory requirements in the two full financial years prior to submitting the H-share

listing application submission. The SFC and SEHK examination and approval procedures are as follows.

Streamlining the Approval Process Timetable: Illustrative Examples



1. The number of business days for each round of opinions may be subject to minor adjustments but, on balance, the number of business days required for each review by either regulator is expected to be no more than 40 business days.
2. This refers to the acknowledgement of receipt of an A1 Form.
3. If the regulatory concerns proposed to be raised by the SFC are consistent with those set out in the SEHK's Opinions, a letter will be issued through the SEHK to inform the applicant (through its sponsor).
4. After confirming that there are no matters of material regulatory concern, the SEHK will issue a Hearing Letter to set out the matters that the applicant and its sponsor must handle or resolve to carry out the information disclosure in the listing documents. Once the applicant and its sponsor have prepared listing documents sufficient for hearing by the Listing Committee and all necessary approvals (if applicable) from other authorities or regulatory bodies have been obtained, their application may be laid before the Listing Committee for consideration.

Foreign investment access

When preparing for an H-share listing, an A-share listed company should examine whether the specific businesses in which the company and its subsidiaries engage are within the scope of industries prohibited or restricted for foreign investment as stipulated in the *Special Administrative Measures (Negative List) for Access of Foreign Investment*; and, if so, what impact that an H-share issuance would have on those businesses and possible countermeasures. For example, if an A-share listed company or its subsidiaries operate the value-added telecommunications business, the H-share issuance plan may be determined by taking into account the foreign investment status of the top ten shareholders of the listed company, percentage of H shares to be issued, equity structure, specific business type, and other factors. An A-share listed company must obtain approval from the relevant authorities if it intends to issue H shares and operates within an industry prohibited to foreign investment as stipulated in the *Special Administrative Measures (Negative List) for Access of Foreign Investment*. Foreign investors may not participate in the operation and management of such enterprises, and their shareholding percentage must be determined with reference to the relevant provisions on the administration of domestic securities investment by foreign investors.

We observe that top priority during the H-share filing approval process is given to each applicant's continuous multi-dimensional regulation and supervision of equity, business, operation and management, and compliance, etc., based on our comprehensive analysis of public market cases since the implementation of the overseas listing filing system for domestic enterprises. In practice, operators from

different industries may have different solutions when dealing with specific issues. We have also had meaningful success in our practice by combining different technical solutions in projects in specific industries and look forward to exploring technical solutions with market participants.

Management of insider information

For an A-share listed company, preparing for the issuance and listing of H shares is considered insider information. This requires A-share listed company applicants to observe the following during the preparation and application process:

(1) before publicly disclosing insider information in accordance with the law, the company must, in accordance with the relevant provisions, prepare files of the individuals with access to the company's insider information, timely record the names of those with access to the insider information in the stages of discussion, preparation, debate and consultation, and conclusion of contracts and at the stages of reporting, transmission, compilation, resolution and disclosure, and provide the time, places, evidence, methods and contents of the insider information, and those individuals with access to the insider information must confirm the same;

(2) the listed company must prepare a memorandum on the progress of a material event, the contents of which includes but is not limited to the time of each key point in the course of preparation and decision-making, the names of the individuals who participate in the preparation and decision-making, the manner of preparation and decision-making, etc.

The A-share listed company applicant should urge the relevant people involved in the memorandum for the progress of a material event to sign on the memorandum for confirmation. Meanwhile, the listed company will need to sign a confidentiality agreement with the relevant participants and notify them of prohibition of disclosure of insider information and prohibition of insider trading. In practice, an A-share listed company applicant may first choose the right time to publish an announcement on researching and demonstrating a material event, or convene a board meeting to deliberate and publish an indicative announcement on authorizing the management to initiate the preparatory work for the issuance and listing of H shares, and appropriately avoid the risk of disclosure of insider information and insider trading by disclosing information in a timely manner.

Information disclosure

I. A-share information disclosures during the H-share listing process

An A-share listed company generally makes the following information disclosures when applying to issue and list H shares:

II. Continued information disclosure in both locations after dual listing

After completing the listing of A + H shares, a listed company should continue to meet both A-share and H-share information disclosure requirements, and H-share announcements are required to be prepared in both Chinese and English. Both A-share and H-share listings stipulate simultaneous information disclosure rules, i.e., a listed company releases any information to any stock exchange where its securities are listed and also needs to concurrently disclose relevant information on other stock exchanges.

Corporate governance

During the H-share issuance and listing process, an A-share listed company will formulate internal governance rules such as the draft articles of association, which conform to the SEHK listing rules, the Code of Business Administration, and other matters. In addition to the A-share corporate governance requirements, the main special governance requirements to be noted are:

(1) Determining the role of board members and the composition of the board, which must include

executive directors, non-executive directors and at least three independent non-executive directors (i.e. independent directors), at least one of the independent directors habitually resides in Hong Kong;

(2) The board cannot be composed of members of a single gender;

(3) There must be at least two executive directors who habitually reside in Hong Kong. Subject to certain conditions, the SEHK will generally provide an exemption from this requirement for A-share listed companies without significant business operations in Hong Kong;

(4) The role of board chairman and chief executive officer should be undertaken by two separate individuals, but the dual chairman-chief executive role can be justified by explaining its importance to the company's business (e.g., the founder);

(5) One person (with relevant qualifications or experience required in Hong Kong) must be appointed as the company's secretary in order to assist the listed company and its directors to comply with the SEHK listing rules and other applicable Hong Kong laws and regulations;

(6) The board of directors must set up an audit committee, a nomination committee, and a remuneration and appraisal committee. The nomination committee is chaired by the chairman of the board of directors or an independent director (and at least one member must be of a different gender), while the remuneration and appraisal committee and the audit committee must be chaired by an independent director.

In addition, to implement the revised *PRC Company Law*, the CSRC issued the revised *Guidelines for the Articles of Association of Listed Companies* and other rules on March 28, 2025. In combination with the adjustments and transition period arrangements previously issued by the CSRC, an A-share listed company needs to adjust its corporate governance structure prior to January 1, 2026. The company's articles of association stipulate that an audit committee shall be established in the board of directors, which exercises the functions and powers of the supervisory board as prescribed by the *Company Law* and has no supervisory board or supervisor. An A-share listed company preparing for an H-share issuance and listing may consider amending and adjusting its corporate governance structure, articles of association, other procedural rules and the applicable articles of association after the H-share issuance and listing in accordance with such requirements.

Requirements as to the number of shares held by the public and the scale of issuance

According to the SEHK listing rules, when an A-share listed company issues H shares, the total number of A shares and H shares held by the public must account for at least 25% of the total amount of the issuer's issued shares, and the H shares may not be less than 15% of the total amount of the issuer's issued shares. If the market capitalization of the listed company exceeds HK$ 10 billion, it may apply to the SEHK for an issuance ratio of 15% – 25% of its shares held by the public; if it wishes to issue less than 15% of its shares, it needs to communicate on a case-by-case basis and apply for an exemption. According to statistics, from 2020 to 2023, there were eight A-share listed companies that issue H shares on the SEHK Main Board, among which four A-share listed companies were exempted from the minimum 15% shareholding ratio and were allowed to issue H shares accounting for 5% – 12.5% of their total amount

of issued shares.

The H-share issuance ratio and the number of publicly held shares are proposed to be changed, according to a consultation document published by the SEHK on December 19, 2024. The document provides that H shares to be listed on the SEHK must account for at least 10% of the total number of the category of H shares (i.e., A shares and H shares) at the time of listing, or the expected market value of H shares at the time of listing is at least HK$ 3 billion, and the number of publicly held A shares will no longer be included in calculating the number of publicly held H shares, and the threshold for the number of publicly held shares is the same as the above requirements. The consultation document is open for public comments until March 19, 2025. If this policy is implemented, A-share listed companies with an expected market value of more than HK $30 billion may see a significant reduction in the issuance ratio requirement for their H shares. For other A-share listed companies with an expected market value of less than HK $30 billion, their issue ratio may also be reduced to 10%, which is helpful for A-share listed companies to balance the pressure of the price differential between the SEHK and the mainland exchange on which the A-share listed company is listed.

Notably, during the H-share listing process, the total capital stock of an A-share listed companies may change due to the grant of restricted shares, exercise of stock options, and the repurchase and cancellation of shares, which may also require the listed company to update the disclosure in its prospectus and calculation of the issuance ratio accordingly.

Lock-up period

According to the SEHK listing rules, the person or group of persons who are listed as controlling shareholders of an issuer in the H-share listing documents are not allowed to transfer their shares in the issuer within 6 months from the listing date. And, within 6 months after the expiration of the lock-up period, the person or group of persons who are listed as controlling shareholders of an issuer may not sell any of the issuer's securities to the extent they would lose their status as controlling shareholders. Therefore, A-share listed company shareholders face no additional lock-up period due to the issuance of H shares other than that applicable to the controlling shareholders.

Capital raised

When raising funds by issuing H shares, A-share listed companies are not restricted by issuance ratios, financing intervals, or top-up ratios, and their financing plans may be more flexible. In terms of the use of the raised funds, according to the relevant SAFE regulations and its latest guidance, in principle, listed companies must, handle the overseas listing registration with the competent mainland foreign exchange bureau within 15 business days after the completion of the initial public offering or over-allotment and receive a registration certificate. In principle, the raised funds should be repatriated in a timely manner in RMB or foreign currency, and the use of the raised funds should be consistent with the contents listed in the prospectus, resolutions of the board of directors or the shareholders' general meetings, and other publicly disclosed documents. After communicating with and obtaining the consent of the SAFE, the raised funds may also be retained and invested overseas or be used to carry out relevant business in compliance with the relevant foreign exchange control regulations.

Conclusion

Since the implementation two years ago of the *Trial Administrative Measures of Overseas Issuance and Listing of Securities by Domestic Companies*, positive progress has been made in the record-filing administration for overseas listings. Under the background of the continuous implementation of the "five preferential treatments for Hong Kong" capital markets policy and support given to Hong Kong to consolidate and enhance its status as an international financial center, it is expected that more domestic A-share listed companies will seize the opportunity to make better use of the international capital markets, optimize their capital structure and shareholder composition, diversify financing channels, enhance their global brand awareness and competitiveness, and prepare for their long-term development.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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