

Revisions to HKEx Listing Rules: How these revisions impact Offshore Issuers / 香港交易所上市规则的修订：这些修订对离岸发行人有何影响

Service area 服务范围 / Corporate 公司

Legal jurisdictions 司法管辖 / Hong Kong SAR 香港特别行政区

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From 1 January 2022, amendments to the Hong Kong Stock Exchange Main Board Listing Rules came into effect. These amendments will impact Bermuda, British Virgin Islands and Cayman Islands companies contemplating a listing in Hong Kong as well as existing issuers.

自 2022 年 1 月 1 日起，《香港联合交易所主板上市规则》的修正案正式生效。这些修正案将对百慕大群岛、英属维尔京群岛和开曼群岛公司在香港上市的考量以及现有发行人产生影响。

Under the revised listing regime, a unified approach is now adopted in terms of shareholder protection irrespective of the jurisdiction of incorporation of the issuer. The following highlight the key features of the new listing regime which are relevant to Bermuda, British Virgin Islands and Cayman Islands issuers:

根据上市制度的修正规定，无论发行人注册成立所在的司法管辖区为何地，其在保护股东方面均采用统一的做法。以下将重点介绍与百慕大、英属维尔京群岛和开曼群岛发行人相关的新上市制度的主要特点：

- Appendix 3 to both the Main Board and GEM Listing Rules is amended to set out the Core Shareholder Protection Standards which all issuers are required to observe. Shareholders of all issuers must be afforded with such minimum level of shareholder protection standards including:
- 《主板上市规则》和《创业板上市规则》的附录 3 均已修订，规定了所有发行人均须遵守的核心股东保护标准。必须向所有发行人的股东提供此等最低限度的股东保护标准，包括：

- general meetings:** an issuer must hold an annual general meeting for each financial year, not calendar year with reasonable written notice (usually at least 21 days for an AGM and at least 14 days for an EGM) to be given to members for each such general meeting; members have the right to speak and vote at general meetings unless members are required to abstain from voting by the Listing Rules; the threshold for the right of members to requisition an EGM or to add resolutions to a meeting agenda cannot be set higher than 10% of the issuer's voting rights, on a one vote per share basis;
- a. 股东大会：发行人必须在每个财政年度，而非日历年度，举行年度股东大会，并就此向股东发出合理的书面通知（通常，年度股东大会至少提前 21 天通知，而临时股东大会至少提前 14 天通知）；除非上市规则要求股东放弃投票，否则股东有权在股东大会上发言和投票；以每股一票为基础，股东要求召开临时股东大会或在会议议程中增加决议的权利门槛不得高于发行人投票权的 10%；
- b. **voting rights:** members who are required under the Listing Rules to abstain from voting on any particular resolution or restricted to voting only in respect of any particular resolution must not cast any vote in contravention of this requirement or restriction;
- b. 表决权：《上市规则》要求对任何特定决议放弃投票或仅限于就任何特定决议投票的股东不得在违反该要求或限制的情况下参与表决；

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- c. **appointment of directors:** directors (whether appointed to fill a casual vacancy on or as an addition to the board of directors) shall hold office until the first annual general meeting of the issuer after his/her appointment, and shall then retire and be subject to re-election;
- c. 董事的任命：董事（无论是被任命填补董事会的临时空缺还是作为新增的董事会成员）应任职至任命后发行人召开的第一次年度股东大会，而后退休并可接受连任；
- d. **variation of shareholder rights:** any proposed changes to the rights of a class of shareholders with “super-majority vote”¹ must be approved by such class of shareholders;
- d. 股东权利变更：对享有“绝对多数表决”¹的某一类别股东权利的任何拟议变更 必须获得该类别股东的批准；
- e. **amendments of constitutional documents:** a “super-majority vote” of members in general meeting is required to approve any changes to the issuer’s constitutional documents;
- e. 章程文件的修订：发行人章程文件的任何变更均须经过股东大会的“绝对多数表决” 批准；
- f. **removal of auditors:** the company’s auditors can be removed by ordinary resolution;
- f. 审计人员的罢免：可通过普通决议罢免公司的审计人员；
- g. **voluntary winding-up:** a “super-majority vote” of members in general meeting is required to approve a voluntary winding-up of an issuer.
- g. 自愿停业：发行人的自愿停业须经股东大会的“绝对多数表决” 批准。

Existing overseas issuers are required to incorporate the above Core Shareholder Protection Standards into their constitutional documents unless the Stock Exchange is satisfied that the domestic laws, rules and regulations to which the issuer is subject provide for the same protection. Existing overseas

issuers will need to amend their constitutional documents to conform to such standards (if not already incorporated) not later than their second annual general meeting following 1 January 2022.

现有海外发行人必须将上述核心股东保护标准纳入其章程文件，证券交易所确信约束发行人的国内法律、法规和规章提供了相同保护的除外。现有海外发行人需要在 2022 年 1 月 1 日之后的第二次年度股东大会之前修改其章程文件（如果尚未纳入），以符合此类标准。

Any new overseas listing applicant must at the time of submitting its listing application with the Stock Exchange confirm its compliance with the Core Shareholder Protection Standards as set out in the new Appendix 3 with the support of a legal opinion.

任何新的海外上市申请人必须在向证券交易所提交上市申请时，通过法律意见书的支持，确认其符合新附录 3 中规定的核心股东保护标准。

For on-going compliance review (including revisions to constitutional documents) or in preparation of a prospective IPO in Hong Kong, our equity capital markets team in our Hong Kong office has the expertise and experience to provide the necessary legal advice for Bermuda, British Virgin Islands and Cayman Islands domiciled issuers. To find out more, please contact our corporate team members in Hong Kong.

对于持续的合规审查（包括对组织章程文件的修订）或准备在香港进行首次公开募股，我们在香港办事处的股权资本市场团队拥有相关的专业知识和经验，可为在百慕大群岛、英属维京群岛和开曼群岛注册的发行人提供必要的法律咨询。欲了解更多信息，请联系我们在香港的企业团队成员。

¹ A “super-majority vote” means at least three-fourths of the voting rights of the members holding shares in that class present and voting in person or by proxy at a separate general meeting of members of the class where the quorum for such meeting shall be holders of at least one third of the issued shares of the class. This is unless it can be demonstrated that shareholder protection will not be compromised by a lower voting threshold (e.g. simple majority votes in favour of the relevant resolutions with a higher quorum requirement) and in such case a “super-majority vote” is deemed to be achieved.

¹ “绝对多数表决”是指享有该类别股份的股东在该类别的单独股东大会上亲自或通过代理人出席并参与表决的至少四分之三的表决权，而该等股东大会的法定人数为该类别已发行股份的至少三分之一的股东。能够证明较低的表决门槛不会损害对股东的保护（例如，简单多数票赞成法定人数要求较高的相关决议）的情况除外，在此类情况下可视为达成“绝对多数表决”。

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Key contacts 主要联系人

For further information or professional advice, please contact our team below:
有关更多信息或专业意见，请联系以下团队：



彭德贤 Michael Padarin
管理合伙人 - 公司, 投资基金

直线 +852 3628 9006
电邮 michael.padarin@careyolsen.com



还晓彤 Tiffy Wan
资深高级律师 - 公司

直线 +852 3628 9021
电邮 tiffy.wan@careyolsen.com



李典昭 Calvin Lee
律师 - 银行与金融, 公司

直线 +852 3628 9028
电邮 calvin.lee@careyolsen.com



FIND US / 联系我们

Carey Olsen Hong Kong LLP
Suites 3610-13
Jardine House
1 Connaught Place
Central
Hong Kong SAR

T +852 3628 9000
E hongkong@careyolsen.com



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