

Regulating Disclosure in Cross Border Listing between Mainland China and Hong Kong

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Abstract

The last few years have seen a substantial increase in the number of A&H dual listings in Hong Kong and mainland China. These cross-border dual listings bring challenges to issuers and regulators in both Hong Kong and mainland China. One of the biggest concerns that issuers face is to ensure simultaneous and consistent compliance with the continuing disclosure regimes in the two jurisdictions.

These two disclosure regimes differ in several significant aspects, such as their structures, enforcement patterns and regulatory intensity. The most pressing challenges for the regulators seem to have come from two directions: (a) investor concerns about possible unequal treatment of shareholders, and (b) issuers' regulatory arbitrage induced by rule gaps between Hong Kong and the mainland. Both of these challenges are commonly associated with compliance inconsistencies and the disparities in enforcement across borders.

Based on the above observations, this paper presents a close comparison of the continuing disclosure regimes in Hong Kong and mainland China by analyzing critical differences in relevant laws and regulations ("law on the books") as well as in compliance and enforcement patterns between the two markets and their implications for cross border regulatory coordination.

The paper looks at these differences from three perspectives:

- First, the paper examines some general differences between the two disclosure regimes, such as regulatory frameworks and structures, regulatory philosophy, overall frequency and intensity of disclosure, and common methods of disclosure.
- Second, the paper also investigates material differences in four specific areas of continuing disclosure requirements and practices: disclosure of price-sensitive information, periodic financial reporting, disclosure of notifiable transactions and disclosure of connected transactions.
- Third, to corroborate findings on material differences in laws and regulations, this paper also examines differences in enforcement against listing rules breaches in Hong Kong and mainland China.

The paper's findings on differences in both "law on the books" and enforcement are as follows:

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- Although there are material differences in certain substantive and procedural features of the four specific areas examined, the paper finds it difficult to identify any major conflicts between two sets of laws and regulations. To a large extent, the material differences found in these specific areas of disclosure seem primarily to be discrepancies only. In recent years there has been a great deal of regulatory convergence, especially with respect to periodic financial reporting and the disclosure of price-sensitive information. The differences in laws and regulations governing continuing disclosure in the two markets are generally grounded on the fundamental differences in the regulatory frameworks, enforcement philosophy, levels of market liberalisation and market structures.
- Dual-listed issuers do not seem to face any serious difficulties in complying with two sets of regulatory requirements. In practice, issuers tend to comply with the higher reporting and disclosure standards, although doing so usually results in higher compliance costs. Generally, the dual-listed issuers have had a good compliance record.
- Both the Hong Kong and PRC capital markets are retail-driven with a relatively high level of participation by individual investors. The trends in both markets of moving toward tighter disclosure – as reflected in a series of regulatory reforms implemented or proposed by regulators on both sides – can be seen as a direct response to calls for better protection of public investors and higher market transparency, given the high proportion of retail investors.
- As most large state-owned enterprises (SOEs) have now completed their H-share listings, the next wave of PRC issuers likely to come to Hong Kong to list will be primarily smaller state-owned enterprises and private enterprises (*minying qiye*). This might pose new monitoring challenges for Hong Kong regulators due to the generally weaker corporate governance associated with these smaller firms.
- In both Hong Kong and mainland China, most of the breaches of listing rules are disclosure-related. This suggests that stronger future efforts should be made by regulators and listed issuers in both markets in this area to further improve market transparency and investor protection.