



June 13, 2012

Capital Market Law

Shanghai and Shenzhen Stock Exchanges Promulgate Pilot Measures for Issuance of Private Placement Bonds by SMEs

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On May 22, 2012, Shanghai Stock Exchange (“**SSE**”) and Shenzhen Stock Exchange (“**SZSE**”) promulgated their respective *Pilot Measures for the Issuance of Private Placement Bonds by Small and Medium-sized Enterprises* (collectively, the “**Pilot Measures**”), which stipulate that small, medium and micro enterprises not listed on SSE or SZSE (“**SMEs**”, excluding real estate enterprises and financial enterprises) and meeting the standards of small, medium and micro enterprises published by the Ministry of Industry and Information Technology (“**MIIT**”) are qualified to issue private placement bonds.

SMEs private placement bonds (“**Private Bonds**” or “**Bonds**”) are corporate bonds non-publicly issued and transferred by SMEs in China, with an agreement reached on repayment of principal amount and payment of interests within a given period of time. According to the *Notice on Publishing the Regulations on Criteria to Identify Small and Medium-sized Enterprises* issued by MIIT, MIIT divides the small, medium and micro enterprises based on the indicators such as the number of employees, the amount of revenues and total assets of such enterprises and in combination with the industry characteristics. For example, for software service and catering industries, enterprises with less than 300 employees or operating revenue of less than RMB 100 million shall be identified as small and medium-sized enterprises; for leasing and commercial business services, enterprises with less than 300 employees or total assets of less than RMB 1.2 billion shall be identified as small and medium-sized enterprises.

The Pilot Measures of SSE and SZSE are basically the same except for requirements on eligible investors. Concretely speaking, the Pilot Measures set forth the following matters.

Record-filing and Issuance of Private Bonds

Private Bonds shall be underwritten by security companies on a record-filing basis. Private Bonds shall meet the following conditions, (1) the issuer shall be a limited liability company or a company limited by shares incorporated in China; (2) the interest rate shall not exceed three times of the benchmark debt interest rate applicable to the same period; (3) the repayment period shall be not less than one year; and (4) other conditions prescribed by the relevant stock exchange.

Underwriters shall submit the issuance materials to the competent stock exchange for record-filing prior to the issuance. Except for regular materials, the materials for record-filing shall include the underwriting agreement and the prospectus for issuance of Private Bonds, the due diligence report issued by the underwriter, the trustee management agreement and the rules on meetings of the bond holders, the audit report of the issuer's financial statements in latest two complete fiscal years, legal opinions and so on.

Upon the examination and confirmation of the completeness of the record-filing materials, the stock exchange shall issue a Notice on Acceptance of Filing Application within ten (10) working days after receipt of the materials. The issuer shall complete the issuance within six (6) months after the issue of the aforesaid Notice, otherwise it shall re-file the materials.

Besides, pursuant to the Pilot Measures, two or more issuers may issue the Private Bonds jointly. Issuers may also grant warrants or convertible rights with the Private Bonds to the extent of applicable laws and regulations.

Administration of Investor Eligibility

In accordance with the Pilot Measures, the total number of investors for each issuance of Private Bonds shall not exceed 200. Eligible investors for the subscription and transfer of Private Bonds shall meet the following requirements:

- 1) Financial institutions established with approvals of relevant financial supervision departments;
- 2) Financial products issued to investors by the abovementioned financial institutions;
- 3) Legal person enterprises with a registered capital of no less than RMB 10 million;
- 4) Partnership enterprises of which the total amount of capital subscribed by partners is not less than RMB 50 million, and the total amount of paid-up capital is not less than RMB 10 million; and
- 5) Other eligible investors recognized by the stock exchange.

Besides, SSE sets forth the requirements for an eligible individual investor, including: (1) the total amount of assets in the investor's personal securities accounts, fund accounts and assets management accounts is not less than RMB 5 million; (2) the investor has at least two years' experience in securities trading; and (3) the investor shall be fully aware of the risks of Private Bond. However, SZSE has not set forth the specific requirements for an eligible individual investor. This is the sole significant difference between the Pilot Measures of two stock exchanges.

In addition to the abovementioned eligible investors, the issuer's directors, supervisors, senior managers and shareholders holding more than 5% of the issuers' equity interests may also participate in the subscription and transfer of Private Bonds of such issuer. Underwriters may engage in the subscription and transfer of Private Bonds underwritten by them.

Besides the above, security companies shall establish complete investor eligibility systems in order to confirm that the investors participating in the subscription and transfer of Private Bonds are qualified, and the security companies shall require the investors to sign a Risk Acknowledgement before the initial subscription or transfer of the Private Bonds.

Transfer of Private Bonds

Private Bonds shall be transferred in spot transaction or such other ways as approved by the stock exchanges, which shall also be approved by the China Securities Regulatory Commission ("CSRC"). Where an issuer applies for a transfer of Private Bond, it shall submit a written application for transfer service, the registration documents of the Private Bonds and shall sign an Agreement for Private Placement Bond Transfer Service with the relevant stock exchange.

Eligible investors may transfer Private Bonds through the trading platforms of the stock exchanges (SSE's Integrated Electronic Platform for Fixed-income Securities Trading or SZSE's Comprehensive Agreement Transactions Platform) or securities companies. Private Bond transfer through security companies shall be declared to the related stock exchange by such security companies and shall become effective upon the confirmation by such stock exchange. Private Bond transfer shall be confirmed in the chronological order of declaration, and that involving more than 200 investors shall not be confirmed.

Private Bonds shall be registered and cleared according to relevant rules of the China Securities Depository and Clearing Corporation Limited.

Information Disclosure

The Pilot Measures regulate that issuers shall designate person(s) to take charge of information disclosure, and the underwriters shall designate persons to guide, supervise and

inspect the issuers' obligation of information disclosure. Information shall be disclosed to eligible investors on the special zone of the stock exchange's website or by other means recognized by the applicable stock exchange.

As specifically prescribed in the Pilot Measures, the issuer shall:

- 1) Within three (3) working days after the completion of Private Bond registration, disclose actual issuance scale, interest rate, period, the prospectus and other relevant documents;
- 2) In a timely manner, disclose major matters that may affect its solvency, including but not limited to, i) the issuer is in default on debt payments due; ii) the issuer's new borrowings or external guarantee amount exceed 20 percent (20%) of its net assets at the end of the previous year; iii) creditor's rights or properties waived by the issuer exceed ten percent (10%) of the net assets at the end of the previous year; iv) claims or assets given up by the issuer exceed 10 percent (10%) of its net assets at the end of the previous year; v) the issuer decides to reduce its capital, merger, split, dissolve or file bankruptcy; vi) the issuer is involved in major litigations or arbitrations or subject to major administrative punishments; vii) the issuer's senior executives are involved in major civil or criminal litigations, or have been under investigations by relevant departments with regard to certain major economic events.
- 3) Disclose matters concerning principal redemption and interest payment according to the rules of relevant stock exchange;
- 4) In the event that an issuer's directors, supervisors, senior executives and shareholders holding more than five percent of the shares transfer their Private Bonds, they shall duly inform the issuer, and the issuer shall disclose such transfer information within three (3) working days after the transfer is completed.

Protection of Investors' Interests

As Private Bonds have solvency risk, the Pilot Measures stipulate protection measures for investors' interests, stating that the issuer shall engage a trustee for the holders of Private Bond. The trustee may be an underwriter or other institution other than the guarantee for the issuance of the Private Bonds. The trustee and issuer shall formulate the rules on meetings of the Private Bond holders together, safeguard interests of the holders and perform duties as agreed during the existence of the Private Bonds.

The Pilot Measures also stipulate that the issuer shall establish a special account for repayment security to collect and manage redeemed interests and funds. The issuer shall promise in the prospectus to fully deposit the interests payable into the special account for repayment security ten (10) working days prior to the date of interest payment of the Private Bonds; the balance of repayment security thirty (30) days prior to the maturity date of principal

amount shall not be lower than 20% of the balance of the Private Bonds. The issuer may take other internal and external measures for credit enhancement and control Private Bond risks, such as restraining the issuer from mortgaging assets to other creditors, third-party guarantee and assets mortgage, pledge and business insurance.

The SMEs Private Bonds provide not only an effective way to solve financing difficulties of SMEs but also new business chances for securities traders as well as more attractive investment opportunities for variable investors. However, securities traders and investors may be much more prudent due to the high risks arising from the low threshold for the Private Bond, thus a higher level of compensation for credit risk and liquidity is required to be formulated. Besides, issuance costs shall also be taken into consideration. Although large-scale issuance is not likely, the issuance costs may reach several millions adding the underwriting fees as of 1%-3% of the gross financing and fees paid to legal counsel and accountants all together.

Important Announcement

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