



# Han Kun Newsletter

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# 1. A Glance at the New Rules on Overseas Listing Filings

Author: Transaction Department

On February 17, 2023, China Securities Regulatory Commission (“**CSRC**”), as approved by the State Council, released new rules for the filing-based administration of overseas securities offerings and listings by Chinese domestic companies (“**New Filing Rules**”). The New Filing Rules signal a new era of unified filing system for overseas offerings and listings by Chinese companies.

We have summarized below five key points of the New Filing Rules for your quick reference.

## Six sets of rules on the filing system

The New Filing Rules are not a stand-alone document, but consist of six sets of rules, including one Trial Measure and five guidelines:

New filing rules	Key points
Trial Measures for Administration of the Overseas Securities Offerings and Listings by Domestic Enterprises (“ <b>Trial Measures</b> ”)	It stipulates the systematical rules regarding the overseas securities offerings and listings by domestic companies, covering the following key points: <ul style="list-style-type: none"> <li>■ Regulatory system</li> <li>■ Filing requirements</li> <li>■ Regulatory collaboration</li> <li>■ Legal liabilities</li> <li>■ System inclusiveness</li> </ul>
Guideline No.1 on the Application of Regulatory Rules on Overseas Securities Offerings and Listings	The Guideline covers the following key points: <ul style="list-style-type: none"> <li>■ Negative list</li> <li>■ Filing procedures</li> <li>■ Target of issuance</li> <li>■ Filing scope</li> <li>■ Transaction of assets of domestic entities</li> <li>■ Definition of Control</li> <li>■ Corporate governance</li> </ul>
Guideline No.2 on the Application of Regulatory Rules on Overseas Securities Offerings and Listings: Content and Format of Filing Materials	It provides detailed guidance on the preparation and submission of filing materials: <ul style="list-style-type: none"> <li>■ It provides detailed lists of filing materials and specific documentation requirements for different types of transactions;</li> <li>■ Exhibits of this Guideline provide relevant templates and guidance on the content of filing materials; and</li> </ul>

New filing rules	Key points
	<ul style="list-style-type: none"> <li>■ For issuers adopting a variable interest entity (i.e., VIE) structure, it provides key-point guidance on the examination and verification requirements imposed on the issuers' PRC counsels.</li> </ul>
Guideline No.3 on the Application of Regulatory Rules on Overseas Securities Offerings and Listings: Content of the Report	It stipulates clear guidelines on the reporting requirements for overseas securities offerings and listings by domestic companies, including the reporting requirements for issuers who have completed overseas offerings and listings and the reporting requirements on follow-on securities offerings by overseas listed companies.
Guideline No.4 on the Application of Regulatory Rules on Overseas Securities Offerings and Listings: Communication regarding the Filing	It provides clear guidelines on how issuers and securities companies or service providers that provide services to issuers may communicate with the CSRC's filing administration departments with regard to an overseas listing filing prior to and during the filing process.
Guideline No.5 on the Application of Regulatory Rules on Overseas Securities Offerings and Listings: Filing by Overseas Securities Companies	It stipulates guidelines on the filing by overseas securities companies. The CSRC particularly emphasizes that the acceptance of filings by overseas securities companies who engage in relevant sponsoring or underwriting business for overseas offering and listing business by domestic companies does not constitute the CSRC's recognition or endorsement of the capability or competence of such overseas securities companies.

### The effective date of the new filing rules

The New Filing Rules will come into effect on March 31, 2023, and the CSRC will start to accept filing applications from March 31, 2023.

### Transitional period for direct overseas listings

From February 17, 2023, the CSRC will cease to accept applications for administrative approval of the overseas public offerings and listings (including follow-on offerings) (“**Direct Listings**”) by joint-stock companies. Meanwhile, the CSRC will begin to accept applications for communication on overseas listing filings. For those applications for administrative approval of Direct Listings already accepted by the CSRC, the CSRC will continue the examination and approval process in accordance with the original rules. Starting from March 31, 2023, domestic enterprises wanting to list overseas directly that have not obtained approval from the CSRC shall file with the CSRC according to the New Filing Rules.

### **Transitional period for indirect overseas listings**

From March 31, 2023, enterprises that have been listed overseas or fall under the following circumstances shall be deemed as “Existing Issuers” and are not required to conduct the overseas listing filing procedure immediately, but shall carry out filing procedures as required if they conduct refinancing or are involved in other circumstances that require filing with the CSRC:

*(i) The application for indirect overseas offering or listing shall have been approved by the overseas regulatory authorities or the overseas stock exchanges (for example, a contemplated offering and/or listing in Hong Kong has passed the hearing of the Hong Kong Stock Exchange (“HKEX”), or a contemplated offering and/or listing in the United States that has obtained approval for its registration statements from the US Securities and Exchange Commission (“SEC”)) prior to the effective date of the Trial Measures, (ii) it is not required to re-perform the regulatory procedures with the relevant overseas regulatory authority or the overseas stock exchange (for example, no need for a second hearing by the HKEX), and (iii) such overseas securities offering or listing shall be completed before September 30, 2023.*

### **Filing requirements for companies seeking to list overseas indirectly**

From March 31, 2023, domestic enterprises that have submitted valid applications for overseas offerings and listings but have not obtained the approval from overseas regulatory authorities or overseas stock exchanges shall complete the filing procedures with the CSRC prior to their overseas offerings and listings.

This article serves as a quick summary of the New Filing Rules. In the following days, we will continue to issue detailed interpretations of the New Filing Rules and keep you updated.

## 2. Filing-based System for Overseas Listing (II) – Indirect Listing

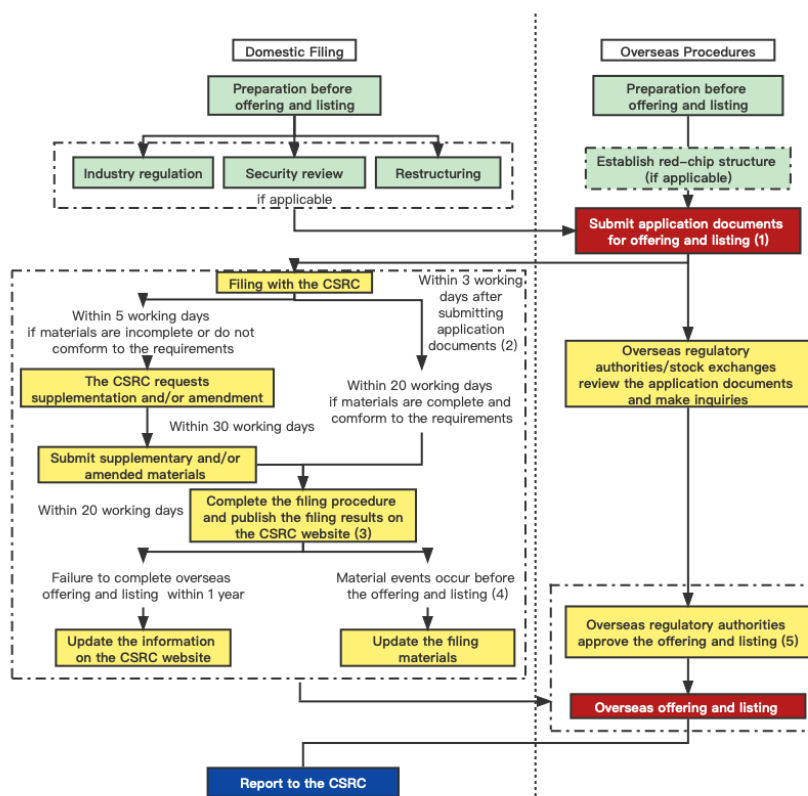
Author: Transaction Department

On February 17, 2023, the New Filing Rules was released by the China Securities Regulatory Commission (“CSRC”), which will come into force on March 31, 2023. In the meantime, the *Notice of the State Council on Further Strengthening the Administration of Overseas Stock Issuance and Listing (State Council Announcement [1997] No. 21)* (the “97 Red Chip Guidelines”) will be repealed on the effective date of the New Filing Rules. The New Filing Rules remove the distinction between overseas listings with a large red-chip structure and overseas listings with a small red-chip structure, as well as the distinction between Chinese authorities’ regulatory administration over overseas listings with a red-chip structure and over direct overseas listings of Domestic Enterprises (such as H shares). This will unfold a new era of unified filing-based regulatory system for the overseas offerings and listings by Domestic Enterprises (as defined below).

As the second episode of the series of *New Era of Filing-based System for Overseas Offerings and Listings*, this article will sort out the key points of filing for the indirect overseas initial offerings and listings by Domestic Enterprises from the perspective of issuers.

### Flow chart of filing procedures for overseas offering and listing

The chart below briefly summarizes the filing procedures and steps required for the indirect overseas offering and listing by a Domestic Enterprise after the implementation of the New Filing Rules:



Note 1: Including the initial submission of the application documents for offering and listing to the Hong Kong Stock Exchange, the New York Stock Exchange, the NASDAQ Stock Market and other overseas stock exchanges; if the issuers apply for confidential filing, an explanation may be submitted at the time of filing to apply for deferred disclosure of the filing information. See below for more details.

Note 2: In particular, where a Domestic Enterprise intends to achieve overseas listing through an overseas special purpose acquisition company, it shall submit the filing materials within three (3) working days after the announcement by the overseas special purpose acquisition company of the specific arrangements for the M&A transaction.

Note 3: During the filing procedures, if the issuer falls under any circumstances specified in Article 8 of the Trial Measures, the CSRC may seek opinions from the relevant competent authority of the State Council. The time spent on submitting supplementary materials and seeking opinions shall not be counted in the time limit of filing.

Note 4: If any material event occurs to the issuer after the filing with the CSRC and before the overseas offering and listing, the issuer shall report to the CSRC in a timely manner and shall update the filing materials within three (3) working days of the occurrence of such event.

Note 5: Such as the hearing for the Hong Kong market, the declaration of registration statement effective for the U.S. market, etc. This depends on whether the overseas regulatory authority considers the issuance of the filing notice from the CSRC as a precondition.

## Requirements on documents for filing of overseas offering and listing

Prior to the implementation of the New Filing Rules, small red-chip structures for overseas offering and listing are not heavily supervised by Chinese domestic authorities directly. The implementation of the New Filing Rules will strengthen the insufficiency of the original overseas offering and listing system and promote a “full-coverage supervision”. After the implementation of the New Filing Rules, a Domestic Enterprise shall submit a series of filing materials to the CSRC for an indirect overseas initial offering and listing, which are briefly summarized in the table below. Please refer to the Guideline No.2 for details.

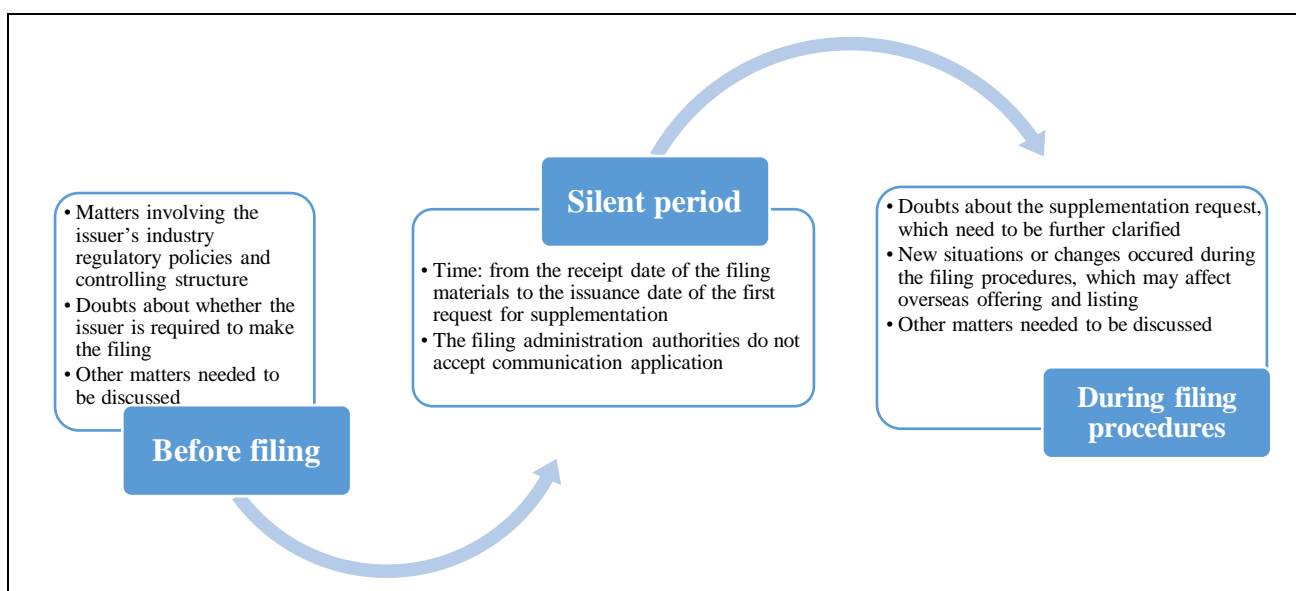
	Filing materials	Key points
1.	Filing report	<ul style="list-style-type: none"> <li>■ The filing report shall include the information on the issuer’s main subsidiaries, domestic operating entities as well as control relationships. For other subsidiaries or domestic operating entities, classified summary may be provided in the filing materials.</li> <li>■ When determining the main subsidiaries or domestic operating entities, the issuer shall take into account the proportion of its financial data such as operating income, total profit, total assets and net assets in the relevant financial data in the issuer’s consolidated financial statements, as well as the impact of its business, future development strategies, qualifications or licenses on the issuer and other factors.</li> <li>■ The filing materials shall specify the basis for determining the main subsidiaries or domestic operating entities, and such</li> </ul>

	Filing materials	Key points
		basis shall not be changed arbitrarily.
	Commitments of the issuer	See the Guideline No.2
	Commitments of the securities company	Where any relevant securities company acts as a joint sponsor or joint lead underwriter, the securities company shall submit its commitments as part of the filing materials.
	Resolutions of the issuer's general meeting of the shareholders and board of directors	
	Chart of the complete shareholding structure and control structure of the issuer	The chart shall include the information on the issuer's main shareholders, ultimate controlling persons, holding subsidiaries and main domestic operating entities, etc.
	List and contact information of the issuer's and the intermediaries' project team members	The issuer shall submit a complete list of the members of the intermediaries' project team. The list of the members of the issuer shall include the ultimate controlling persons, chairman, general manager and person in charge of securities affairs.
2.	Regulatory opinions, filing or approval documents issued by the competent authorities of the industry concerned (if applicable)	If not applicable, explanations in writing shall be submitted.
3.	Opinions on the security assessment and review issued by the relevant competent department of the State Council (if applicable)	If not applicable, explanations in writing shall be submitted.
4.	Legal opinions and commitments issued by PRC law firm(s)	<p>The legal opinions include the legal opinion (the “<b>Main Legal Opinion</b>”) and special legal opinion.</p> <p>The main contents of the Main Legal Opinion shall include: (1) basic information of the issuer; (2) information of the domestic enterprises' assets and equities acquired by the issuer; (3) information of the domestic operating entities of the issuer (including information on each major operating entity); (4) overall conclusive opinions.</p> <p>Special legal opinion shall be issued in respect of the review points for this offering and listing, confidentiality and archive management, shareholding structure and control structure, and other specific applicable matters, etc.</p>
5.	Prospectus or listing	<ul style="list-style-type: none"> <li>■ If any asset transactions of Domestic Enterprises are</li> </ul>



	Filing materials	Key points
	documents	involved in the offering and listing, relevant published transaction documents shall be submitted. <ul style="list-style-type: none"> <li>■ The appendices to the application documents submitted to the overseas regulatory authorities shall also be submitted.</li> <li>■ English documents shall be translated into simplified Chinese and the Chinese translation shall be submitted together with the English documents.</li> </ul>

After the implementation of the New Filing Rules, issuers and their securities service providers are allowed to communicate with the filing administration authorities by means of written communication, telephone calls, video conferences, on-site communication, etc. In particular:



## Key points of the New Filing Rules from the perspective of issuers

### I. The principle of “Substance over Form” in the determination of a domestic enterprise

Compared with the *Provisions of the State Council on the Administration of Overseas Securities Offerings and Listings by Domestic Enterprises (Draft for Comments)* and the *Administrative Measures for the Filing of Overseas Securities Offerings and Listings by Domestic Enterprises (Draft for Comment)* (collectively, the “**Filing Measures (Draft for Comment)**”) released by the CSRC on December 24, 2021, the determination standard for “Domestic Enterprises” in the context of “indirect overseas offering and listing by Domestic Enterprises” needs to be concluded comprehensively by taking into account the profit percentage of domestic assets, composition of senior management personnel, business operation and other factors. Furthermore, Section 1, Article 15 of the Trial Measures further specifies that to be identified as a Domestic Enterprise, the following criteria shall be met at the same time:

- 50% or more of the issuer’s operating revenue, total profit, total assets or net assets as documented in its audited consolidated financial statements for the most recent accounting year

is accounted for by domestic enterprises; and

- the main parts of the issuer's business activities are conducted in China, or its main places of business are located in China, or the senior managers in charge of its business operation and management are mostly Chinese citizens or domiciled in China.

The Trial Measures also emphasize that the determination of "Domestic Enterprises" shall comply with the principle of "substance over form". The Trial Measures further clarify by the Guideline No. 1 that if the issuer does not fall within the circumstances stipulated in Section 1, Article 15 of the Trial Measures but the risk factors disclosed in the submitted listing application documents pursuant to the relevant overseas market regulations are mainly related to China, the securities companies and the issuer's PRC counsels shall conduct comprehensive demonstration and identification with regard to whether the issuer falls within the scope of filing.

## **II. Scope and mode of overseas offerings and listings**

Whether in the context of direct or indirect overseas offerings and listings by Domestic Enterprises, "Securities" offered and listed overseas under the New Filing Rules not only refer to stocks in the common sense, but also include depository receipts, corporate convertible bonds and other securities with the nature of equity offered and listed overseas directly or indirectly by Domestic Enterprises, which shall also be regulated under the New Filing Rules.

In addition, the New Filing Rules provide that the direct or indirect overseas listings of the assets of Domestic Enterprises through one or more acquisitions, share swaps, transfers or other transaction arrangements shall be subject to filing procedures in accordance with the Trial Measures. This means that various forms of market-oriented offering and listing modes such as IPO, DPO, RTO, SPAC, etc., will all be subject to the supervision of the CSRC under the New Filing Rules.

## **III. Negative list related to the prohibition of offering and listing**

The New Filing Rules adopts the Negative List system. Article 8 of the Trial Measures provides that under the following circumstances, the overseas offering and listing shall be prohibited: (i) if such securities offering and listing is explicitly prohibited by laws, administrative regulations and relevant national rules; (ii) if such securities offering and listing may endanger the national security; (iii) if the issuer has any illegal or criminal acts; (iv) if the issuer is suspected of committing any crimes or serious violations of laws and regulations, and is under investigation according to law, and no conclusion has yet been made thereof, or (v) if there are material disputes with regard to the issuer's ownership. Further, the Guideline No. 1 provides detailed guidelines on the specific circumstances under which such securities offering and listing is explicitly prohibited by provisions in laws, administrative regulations and relevant national rules, the criteria for determining whether the circumstance falls into the Negative List if the acquiree is guilty of a criminal act, the starting point for criminal acts, the determination criteria for serious violations of laws and regulations, and the specific circumstances of material ownership disputes.

#### IV. Coordinated regulatory mechanism

In addition to improving the regulatory system, the New Filing Rules also strengthen the regulation coordination, clarify regulatory responsibilities and implement a coordinated regulatory mechanism. In answering the questions from the media on February 17, 2023 (the “**CSRC Answers to Reporters’ Questions**”), the CSRC official stated that, the security review and industry regulatory procedures refer to procedures explicitly stipulated in rules of relevant industry regulatory authorities, which provide relatively clear scopes and requirements for application standards. The security review and industry regulatory procedures are regulatory steps relatively independent from the filing requirements of overseas offerings and listings. Only when the current systems and rules explicitly require security review and industry regulatory pre-procedures, the issuer shall submit relevant regulatory documents when applying for filing.

As listed in the Guideline No. 2, the documents attached to the filing materials for the overseas securities offerings and listings shall include regulatory opinions, filing or approval documents issued by industry regulatory authorities; if not applicable, a written explanation shall be submitted.

Article 9 of the Trial Measures specifies that, where the security review is involved, the issuer shall perform relevant security review procedures before submitting the application for offering and listing to the overseas securities regulatory authorities or stock exchanges. Consistent with the Trial Measures, the Guideline No. 2 provides that the documents attached to the filing materials for the overseas securities offering and listing shall include security assessment and review opinions issued by relevant authorities of the State Council; if not applicable, a written explanation shall be submitted. This is in line with a series of policies and regulations promulgated by the internet and data security authorities in the past few years, including the Cybersecurity Law, Data Security Law and the Cybersecurity Review Measures, which require that the overseas securities offerings and listings shall not threaten or endanger the national security.

#### V. Connection with the overseas listing system

##### ■ Deferred publication

Where an issuer submits overseas offering and listing application in a confidential or non-public manner, it may submit an explanation at the time of filing for overseas securities offering and listing with the CSRC and apply for deferred disclosure of the filing information, and shall report to the CSRC within three (3) working days after the overseas offering and listing application documents are published.

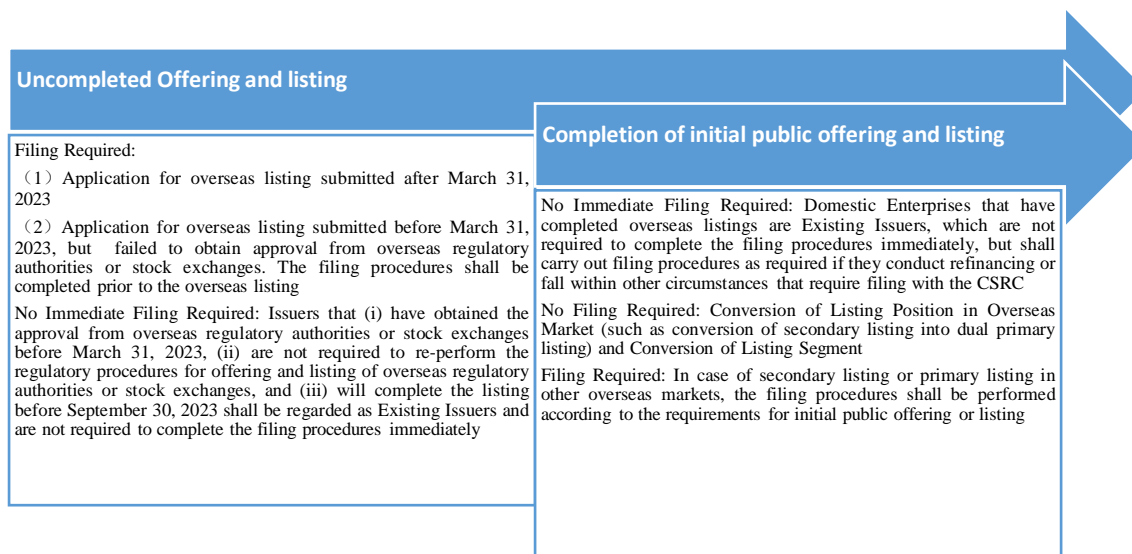
##### ■ Filing mode for shelf offering

Where an issuer issues securities in installments within the authorized scope, it shall file with the CSRC within three (3) working days after the completion of the initial offering and state the total number of securities to be issued. After the completion of all the remaining offerings, it shall submit a report to the CSRC of the consolidated offering information.

##### ■ Diversified filing requirements for issuers at different stages

With March 31, 2023 as an important watershed and the listing stage of an issuer as the benchmark,

the following different filing requirements shall apply:



■ **Filing application for issuers with variable interest entity arrangement**

According to the New Filing Rules, especially the guidelines in the Guideline No. 2 on Variable Interest Agreements (VIE) Structure, and combined with the clarification in the CSRC Answers to Reporters’ Questions that “the CSRC will seek opinions from relevant regulatory authorities and approve the filing for the overseas offerings and listings of enterprises with VIE arrangements that satisfy the compliance requirements”, as well as precedent cases of domestic issuance of CDRs by a red chip company with VIE structure, we understand that under the New Filing Rules, Domestic Enterprises adopting VIE structure are allowed to carry out overseas offerings and listings, but at the same time, the New Filing Rules emphasize the examination and verification requirements for the listing of the Domestic Enterprises with VIE structure.

With respect to filing application of issuers with VIE structure, the Guideline No. 2 requests the issuer’s PRC counsel to issue a special legal opinion, and such special legal opinion shall include verification statements on the status of overseas investors’ participation in the issuer’s operation and management, whether there are circumstances under which controlling the business, licenses and/or qualifications through contractual arrangements is explicitly prohibited by the PRC laws, administrative regulations and relevant provisions, whether the domestic operating entity controlled by contractual arrangements falls within the scope of foreign investment security review, and whether any sector(s) subject to restriction or prohibition for foreign investment are involved.

■ **Legal liabilities**

The Trial Measures specify that the primary responsible party for the compliance of overseas offering and listing is the Domestic Enterprise itself. If the Domestic Enterprise fails to fulfill the filing procedures under the Trial Measures, or conducts overseas securities offering and listing in violation of the Trial Measures, the CSRC shall order rectification, issue warnings to such Domestic Enterprise, and impose a fine ranging from RMB 1,000,000 to RMB 10,000,000. Directly liable persons-in-charge

and other directly liable persons shall be warned and each shall be imposed a fine ranging from RMB 500,000 to RMB 5,000,000. If the materials submitted by the Domestic Enterprise have misrepresentation, misleading statement or material omission, the CSRC shall issue rectification orders or warnings, and impose a fine ranging from RMB 1,000,000 to RMB 10,000,000. Directly liable persons-in-charge and other directly liable persons shall be warned and each shall be imposed a fine ranging from RMB 500,000 to RMB 5,000,000.

If the controlling shareholders or the ultimate controlling persons of the Domestic Enterprise organize or instruct the violations, or indulge the violations by concealing relevant facts, the controlling shareholders or the ultimate controlling persons of the Domestic Enterprise shall be imposed a fine ranging from RMB 1,000,000 to RMB 10,000,000. Directly liable persons-in-charge and other directly liable persons each shall be imposed a fine ranging from RMB 500,000 to RMB 5,000,000.

In addition, the CSRC shall incorporate the compliance status of relevant market participants with the Trial Measures into the Securities Market Integrity Archives and upload the record to the National Credit Information Sharing Platform, with a view to strengthening cross-agency information sharing through concerted efforts with competent authorities, and enforcing punishment and deterrence in accordance with the laws and regulations.

## **Conclusion**

The reform and adjustment of the regulatory system for indirect overseas offerings and listings by Domestic Enterprises, including the repeal of the 97 Red Chip Guidelines and the effectiveness of the New Filing Rules, not only constitutes an update of system design to match and comply with the provisions of the higher-level laws, but also meets the demand for opening-up on a higher standard and the international development of Chinese companies and further pushes forward the institutional high-level opening-up. A new era for overseas listings by Domestic Enterprises has arrived. We will continue to share our interpretation on the New Filing Rules from other perspectives and keep you posted.

### 3. Filing-based System for Overseas Listings (III) – Direct Listings

Author: Transaction Department

The direct overseas offering and listing by domestic entities refers to the overseas offering and listing by joint-stock companies registered and incorporated domestically in China (the “**Direct Overseas Listings**”), which is currently one of the main ways for domestic entities to be listed overseas. Prior to the implementation of the New Filing Rules, the Direct Overseas Listings are subject to the examination and approval by both the CSRC and the overseas securities regulatory authorities. However, under the New Filing Rules, the CSRC changes its administration from approval-based administration to filing-based administration, strengthening its supervision during and after overseas listing, and significantly modifying the original examination and approval mechanism for Direct Overseas Listings. In addition, the New Filing Rules also specify and make breakthroughs with respect to issues highly concerned by the market in the original examination and approval system, aiming to better serve the needs of the current capital market development.

As the third episode of the series of *New Era of Filing-based System for Overseas Offerings and Listings*<sup>1</sup>, this article will start from the distinctions between the original examination and approval system of the CSRC and the New Filing Rules, and will summarize the procedures and requirements for Direct Overseas Listings at the stage of IPO and for the full circulation procedure which effectively supports and supplements the Direct Overseas Listings.

#### Changes in procedures and application requirements for Direct Overseas Listings

As described above, the CSRC’s administration over Direct Overseas Listings by domestic entities has changed from the approval-based administration to the filing-based administration, and the supervision over overseas listing will be subject to a “fully unified” system after the implementation of the New Filing Rules. The specific examination and review procedures and application materials for Direct Overseas Listings are generally consistent with those of indirect overseas listings. For details, please refer to the *Filing-based System for Overseas Listing (II) - Indirect Listing*. However, in view of the reform in the administration system of the CSRC, the procedures and application requirements for Direct Overseas Listings are quite different from the prior procedures and requirements.

In terms of listing procedures, compared to the approval-based system, the changes in the CSRC’s procedures under the filing-based system are mainly in the following two aspects (taking a Hong Kong listing as an example):

#	Approval-based system	Filing-based system
Application stage	Obtaining the acceptance letter [commonly known as “ <b>Xiao Lu Tiao (小路条)</b> ”] from the CSRC is a precondition for	Application to the CSRC for filing within three (3) business days after the submission of application for overseas listings

<sup>1</sup> Any terms or attributes used in this article but not defined herein shall have the meaning given to them in the series of *New Era of Filing-based System for Overseas Offerings and Listings*.

#	Approval-based system	Filing-based system
	the submission of application for overseas listings	
<b>Listing examination and review stage</b>	The issuer's obtaining the approval letter [commonly known as "Da Lu Tiao (大路条)"] from the CSRC is a precondition for the HKEX hearing	It is unclear at this point whether HKEX will require issuers to submit its filing with the CSRC as a precondition for the hearing.

In terms of application materials, the filing materials required under the filing-based system have been refined and improved compared to the previous application materials required for examination and approval. For example, issuers are no longer required to submit permits of special industries, tax payment certificates, and the approval/filing documents for financing and investment projects, and documents such as the opinions on security assessment and review and the issuers' complete shareholding and control structure chart are added to the required list according to the requirements of laws and regulations and regulatory experience. The detailed requirements for application materials are as follows:

Approval-based system	Filing-based system	Remarks
Application report	Filing report	The filing report has more detailed requirements than the application report under the old rules.
Resolutions of shareholders' general meeting and board of directors	Resolutions of shareholders' general meeting and board of directors	No difference
/	Complete shareholding and control structure chart of the issuer	This is an additional document added under the filing-based system, which places more emphasis on the examination and verification of shareholding and control structure.
Business license	/	Simplified application materials
Permits of special industries (if applicable)	/	Simplified of application materials
Articles of association	/	Simplified of application materials
Illustration of the key points for examination and approval	/	Although the issuer's application materials no longer need to include such content, the issuer's PRC counsel is still required to comment on the specific key points for examination and verification.

Approval-based system	Filing-based system	Remarks
Undertakings of the company and its directors, supervisors and senior management on the authenticity, accuracy and completeness of the application materials	Issuer's undertakings on authenticity, accuracy and completeness of filing materials, strict compliance with confidentiality requirements, and protection of national security, etc.	Additional contents are added to the issuer's undertakings.
/	Undertakings of the securities companies	Additional contents are added to the securities companies' undertakings.
Contact form of applicant and intermediaries	Name list and contact information of project team of the issuer and intermediaries	No substantial difference
Regulatory opinions issued by the industry regulatory authorities (if applicable)	Regulatory opinions, filing or approval documents issued by the competent industry authorities (if applicable)	No substantial difference
/	Security assessment and review opinions issued by the relevant competent authorities of the State Council (if applicable)	This is an additional content added based on the latest laws and regulations regarding security review on foreign investment, national security, data security, etc.
Examination, approval or filing documents for financing and investment projects (if applicable)	/	The filing materials are simplified, but the use of proceeds shall still be explained in the filing report.
Tax payment certificates issued by the tax authorities in recent three years (for Main Board) or recent two years (for ChiNext)	/	The filing materials are simplified, but it is still required to explain in the application documents the legality and compliance concerning taxation.
Domestic legal opinions and undertaking letters	Domestic legal opinions and undertaking letters	The contents and the focuses of examination and verification of the domestic legal opinions are more explicit.
Prospectus (draft)	Prospectus or listing documents	No substantial difference.

### Key points and breakthroughs of the filing-based system for Direct Overseas Listings

Under the New Filing Rules, in addition to complying with the Company Law of the PRC (the “Company



Law”), the Securities Law of the PRC and other laws and regulations, Direct Overseas Listings are subject to more flexible arrangements compared to the original approval-based administration, as explained below:

**I. Changes in corporate governance and potential adoption of special voting rights for Direct Overseas Listings**

Previously, domestic entities that are directly listed overseas mainly followed *the Notice on the Implementation of Mandatory Provisions for the Articles of Association of Entities Listed Overseas* when formulating its articles of association after the listing. Such Notice will cease to be effective by March 31, 2023. Starting from March 31, 2023, domestic entities that have listed overseas shall formulate their articles of association in accordance with the Company Law, the Accounting Law of the PRC and other laws, regulations and relevant rules as well as the guidelines of the New Filing Rules, with reference to the *Guidelines for Articles of Association of Listed Companies* and other CSRC rules on corporate governance.

In fact, the *Mandatory Provisions for the Articles of Association of Entities Listed Overseas* was a document formulated in September 1994. Although it has been revised several times, including revised by the *Official Reply of the State Council on the Adjustment to the Provisions Concerning Matters Including the Notice Period of Convening General Meetings of Shareholders Applicable to Overseas Listed Entities*, some of its contents no longer fit the current needs of corporate governance, including the requirements on the par value of shares to be issued (such as the par value of each share being RMB 1 and RMB-denominated requirement) as well as various procedural matters. This repeal and the explicit requirement that the formulation of articles of association shall refer to the *Guidelines for Articles of Association of Listed Companies* and other relevant regulations enable domestic entities to formulate their articles of association in a more flexible way.

For example, the special voting right system commonly adopted by technology innovation entities is expected to be available for domestic entities directly listed overseas after the implementation of the New Filing Rules. The current Company Law stipulates the principle of “equal rights for equal shares”. It also provides that the State Council may formulate separate regulations on the issuance of other types of shares. Considering that the original domestic laws and regulations governing the Direct Overseas Listings did not provide for the special voting right system, and the *Mandatory Provisions for the Articles of Association of the Entities Listed Overseas* require “equal rights for equal shares”, there is no solid legal basis for domestic entities directly listed overseas to create special voting rights. So far, there is no precedent case of a domestic entity with special voting rights which has successfully listed overseas directly. However, the New Filing Rules cover provisions on the special voting rights. For example, the Guideline No. 2 clarifies the contents required to be explained and verified where an issuer has shares with special voting rights or similar arrangements, and the *Guidelines for Articles of Association of Listed Companies* also specify the matters required to be stipulated in the articles of association of entities having shares with special voting rights. Therefore, we understand the adoption of special voting rights by domestic entities directly listed overseas is expected to be recognized in the filing with the CSRC, subject to the requirements for the special voting rights of the overseas jurisdiction where the issuer is listed.

## II. Breakthrough in targets of issuance in Direct Overseas Listings

In principle, the targets of overseas offerings and listings under the New Filing Rules shall mainly be overseas investors, and qualified domestic investors complying with the laws and regulations, including:

- Overseas investors and investors from Hong Kong, Macao and Taiwan
- Qualified Domestic Institutional Investors (QDII)
- Domestic institutional investors that have completed the Outbound Direct Investment (ODI) filings
- Other domestic entities complying with the relevant national regulations on cross-border investment

The abovementioned provisions on targets of issuance do not differ significantly from those before the effectiveness of the New Filing Rules. However, the New Filing Rules make a further breakthrough by providing that domestic entities directly listed overseas may issue securities overseas to specific domestic targets for the purpose of equity incentives, and such entities are no longer required to issue domestic shares first and then apply for full circulation in order to achieve the circulation of the incentive equities in the overseas capital markets.

With respect to the scope of such specific domestic targets, the New Filing Rules specify that it includes directors, senior management, key technical personnel or key business personnel, as well as other personnel who have direct influence on the entities' operation performance and future development. Meanwhile, the New Filing Rules also specify that the following persons cannot be the incentive targets by prohibitory provisions:

- Those who have been subject to administrative penalties (including market access prohibition measures) imposed by the CSRC or its dispatched agencies due to material violation of laws and regulations within the last 12 months;
- Those who are prohibited by the Company Law from acting as the directors or senior management;
- Those who are prohibited by the laws, administrative regulations or relevant national rules from participating in the equity incentive plans of the entities.

Therefore, if domestic entities directly listed overseas intend to issue securities to specific domestic targets in the future, it shall pay attention to the eligibility of its incentive targets. In addition, the above listed specific domestic targets do not explicitly include supervisors or external advisors. Although such personnel may be construed as and covered in "other personnel who have direct influence on the entities' operation performance and future development", it remains to be clarified in practice whether such personnel can be regarded as specific domestic targets.

## III. Farewell to case-by-case communication for option incentive plans to be implemented after listing

As the original Direct Overseas Listings by domestic entities subject to the approval of the CSRC, the

CSRC usually requires the issuers to have clear and stable shareholding structure by referring to the examination and approval requirements for A shares. Taking the listings of H shares before the issuance of the New Filing Rules as an example, most of the incentive options would be fully exercised or the unexercised options would be cancelled before the listing, and there are only few cases where the unexercised incentive options can be retained or the incentive options can be reserved at the time of listing.

The New Filing Rules specify that domestic entities may retain the option incentive plans that are formulated prior to the filing and will be implemented after the listing, but relevant explanations and examination and verification are required to be made, which shall include the basic content of the plan, the decision-making procedures, the principles for price determination, the basic information of the incentive targets, the impact on the controlling power and whether to reserve equities and interests, etc. Therefore, if domestic entities have option incentive plans that are formulated prior to the listing and will be implemented after the listing, they no longer need to communicate with the CSRC on a case-by-case basis. Instead, such entities shall perform the examination and verification procedures in accordance with the requirements under the New Filing Rules, and shall make a comprehensive explanation to the CSRC with the concluding opinions issued by lawyers. For domestic entities proposed to list overseas directly, more flexible incentive arrangements are now available.

### Changes in the regulation mode for full circulation

Since the implementation of full circulation, the projects of Direct Overseas Listings by domestic entities are on the rise. After the full implementation of the filing-based system, the regulation on the “full circulation” regarding the conversion from domestic unlisted shares to overseas listed shares is also changed from the approval-based system to the filing-based system, which brings differences in the supervision and administration with respect to the procedures, time and the submission of materials:

#	Approval-based system	Filing-based system
<b>Procedural requirements</b>	<ul style="list-style-type: none"> <li>■ Simultaneous Application: the issuer simultaneously applies for full circulation at the time of the overseas initial public offering and listing or before issuing additional shares after the overseas listing.</li> <li>■ Separate Application: the issuer applies separately for full circulation after the listing.</li> </ul>	<p>The shareholders who hold domestic unlisted shares entrust the issuer to file with the CSRC.</p> <p>Under the filing-based system, the existing principles of simultaneous filing and separate filing shall still apply.</p>
<b>Requirements for the submission of materials</b>	<p>For the application for full circulation only, the issuer shall submit the following materials to the CSRC:</p> <ul style="list-style-type: none"> <li>■ Application report and the relevant documents;</li> <li>■ Regulatory opinions issued by the</li> </ul>	<p>For the filing of full circulation only, the issuer shall submit the following materials to the CSRC:</p> <ul style="list-style-type: none"> <li>■ The filing report and the relevant appendices, including (1) the authorization documents of the shareholders of the unlisted shares</li> </ul>

#	Approval-based system	Filing-based system
	<p>industry regulatory authorities (if applicable);</p> <ul style="list-style-type: none"> <li>■ The relevant approval documents for the management of the setting of state-owned equity and the conversion of state-owned shares to overseas listed shares (if applicable);</li> <li>■ The authorization documents of the shareholders of the domestic unlisted shares who apply for the “full circulation” of H shares and the statements on the legality of the acquisition of shares;</li> <li>■ Domestic legal opinions.</li> </ul>	<p>and the undertakings on the legality of the acquisition of shares; (2) the name list and contact information of project team of the issuer and the intermediaries; the filing report shall state the status of the internal decision-making procedures, the external approvals and the compliance with the relevant provisions of the CSRC on “full circulation”;</p> <ul style="list-style-type: none"> <li>■ Domestic legal opinions.</li> </ul>
<p><b>Key points</b></p>	<p>The issuer and the PRC counsels of the issuer shall issue specific examination and verification opinions in accordance with the <i>Key Points of the Examination and Verification of the Application for “Full Circulation” of Domestic Unlisted Shares by H share Entities</i>, mainly including key points such as the access of foreign investment, the internal decision-making procedures, the external approvals such as industry regulation or state-owned assets supervision and administration, legality and compliance, employee shareholding, etc.</p>	<p>The PRC counsels of the issuer shall issue special legal opinions in accordance with the “<i>Key Points of Examination and Verification for Specific Legal Opinions</i>” set forth in the Guideline No. 2, mainly including key points such as the access of foreign investment, the internal decision-making procedures, the external approvals such as industry regulation or state-owned assets supervision and administration, legality and compliance, performance of previous undertakings, etc.</p>

In general, compared to the approval-based system, the review of full circulation application under the filing-based system maintains the original key points, based on which, the filing materials and key points for examination and verification have been refined and improved.

- Improving the disclosure contents: under the approval-based system, the contents of the application report for full circulation are almost the same as that of the initial public offering and listing or the issuance of additional shares after the listing, while the disclosure contents of the filing report under the filing-based system are more detailed. For details, please refer to the *Filing-based System for Overseas Listing (II) - Indirect Listing* for details.

■ Key points requiring further attention:

- A. Whether the necessary internal decision-making procedures, as well as the approval, filing or verification procedures of state-owned assets management and industry regulation have been

performed;

- B. Whether the issuer continuously complies with the policies on access of foreign investment after full circulation;
  - C. Whether the shareholder applying for full circulation is a subject of serious dishonesty;
  - D. The shareholder applying for full circulation is still required to issue authorization documents and make undertakings on the legality of the acquisition of shares;
- New addition: Pay attention to whether the undertakings in the previous filings have been fulfilled;
  - Simplification: Internal employee shareholding is no longer required to be disclosed in the specific examination and verification.

## 4. Filing-based System for Overseas Listing (IV) – Legal Verification

Author: Transaction Department

In the process of overseas offering and listing of domestic enterprises so far, it is necessary for the listing intermediaries (the “**Intermediaries**”) to conduct due diligence on all aspects of the issuer. In particular, PRC lawyers are required to issue the PRC legal opinions on the history, corporate governance, business operation, major assets, tax, employment, and other aspects of the domestic enterprises. The New Filing Rules not only unify the domestic regulatory procedures between direct (e.g. H-shares listing)<sup>2</sup> and indirect (e.g. red-chip listing) overseas offering and listing of domestic enterprises, but also maintain basically the same scope and standard for domestic legal verification<sup>3</sup>, clarifying the legal verification requirements under the domestic regulation for the overseas offering and listing of domestic enterprises.

As the fourth episode of the series of *New Era of Filing-based System for Overseas Offering and Listing*<sup>4</sup>, this article begins with the scope of the PRC legal opinions issued by the PRC lawyers of the issuers and the items subject to the legal verification in connection with overseas offering and listing of domestic enterprises under the New Filing Rules. From the perspective of the issuers, we will summarize the requirements for the scope and standard of the legal verification for domestic enterprises under the New Filing Rules as well as the key points therein for your reference.

### Circumstances and scope of verification

#### I. Circumstances of verification

With the implementation of the New Filing Rules, the following filing or reporting requirements to the CSRC at different stages or circumstances of overseas offering and listing of domestic enterprises are clarified:

Stages or circumstances of overseas offering and listing for domestic enterprises	Corresponding key filing/reporting materials
Overseas initial public offering or listing (except where otherwise indicated, including other circumstances that require the filing procedures in accordance with the relevant provisions on issuers’ overseas initial public offering or listing <sup>5</sup> )	<ul style="list-style-type: none"> <li>■ Filing report</li> <li>■ Legal opinion</li> <li>■ Special legal opinion (hereinafter referred to as “<b>Special Legal Opinion</b>”)</li> <li>■ Report on overseas offering and listing</li> </ul>
Overseas Securities Offering after Overseas Listing	(applicable to overseas initial public

<sup>2</sup> For the convenience of elaboration, this article discusses the direct overseas listing of domestic enterprises prior to the implementation of the New Filing Rules mainly from the perspective of H-shares listing.

<sup>3</sup> Due to the differences in the legal framework and legal entities between direct and indirect overseas listing, the New Filing Rules make different requirements for the PRC legal opinions based on such differences.

<sup>4</sup> Terms or attributes used in this article but not defined herein shall have the meaning given to them in the series of *New Era of Filing-based System for Overseas Offering and Listing*.

<sup>5</sup> Including subsequent listing in another overseas market after being listed, reverse takeover, listing through De-SPAC transaction, re-listing overseas after being delisted from overseas market, etc. Please refer to the Trial Measures and the Guideline No.1 for more details.

Stages or circumstances of overseas offering and listing for domestic enterprises		Corresponding key filing/reporting materials
Full Circulation		offering or listing) ■ Prospectus (applicable to overseas initial public offering or listing)
Occurrence of Material Events after Listing	Change of control	■ Report on change of control after overseas offering and listing
	Being investigated or punished by overseas securities regulatory authorities or relevant competent authorities	■ Report on other material events after overseas offering and listing
	Change of the listing status or listing board	
	Voluntary or compulsory termination of listing	
	Significant changes in the main business operations that no longer fall within the scope of filing thereafter	■ Special report ■ Legal opinion

## II. Scope of verification

### 1. General verification

Prior to the implementation of the New Filing Rules, issuers and Intermediaries have been following a relatively fixed scope of legal verification for domestic enterprises within different corporate structures for listing in accordance with the approval requirements and practice of the CSRC, foreign securities regulatory authorities and/or stock exchanges and other corresponding regulatory/review authorities. In terms of H-shares structures and small red-chip structures that are common in overseas listing, compared with H-shares listing, during which it is required to submit application materials to the CSRC and foreign stock exchanges respectively within their respective scope of supervision and review, listing with small red-chip structures is subject to less direct domestic supervision and is generally required to meet the requirements set by the foreign stock exchanges. Therefore, the scope of legal verification for listing with small red-chip structures is more flexible than that of H-shares listing.

Under the New Filing Rules, the Guideline No. 2, in the form of guideline for the content and format of the filing materials, has refined and clarified the general filing and verification requirements for main issues of overseas offering and listing from the perspective of domestic regulation. The scope of filing materials covers the basic information, business operation and corporate governance, the offering plan and other important aspects of the issuer. Some contents of the filing materials, such as the determination and basis of the issuer’s controlling shareholder and actual controller and the associated relationship or concert party arrangement among existing shareholders, are made with reference to the regulatory requirements for domestic listing. Since the overseas offering and listing rules might not cover such concepts as actual controller, and there are differences in the definition and scope of certain concepts (such as “associated” relationship in the domestic listing rules and “connected”

relationship in the Hong Kong listing rules), the standard for determining such matters in the context of filing with or reporting to the CSRC remains to be further clarified.

So far, the New Filing Rules only set forth the scope of general verification of legal matters, but there are no further interpretations regarding the depth of information disclosure in the filing materials and attitude towards the non-compliance of the issuer. The key concerns and verification criteria of domestic regulatory authorities during the process of reviewing filing materials remain to be further observed after the implementation of the New Filing Rules.

## 2. Special verification

In addition to the general matters above, before the implementation of the New Filing Rules, since an approval by the CSRC is necessary under the H-shares structure, a special legal opinion is required to be issued by PRC lawyers based on the key points for verification<sup>6</sup> (hereinafter referred to as “**Key Points for Verification**”) promulgated by the CSRC. Similarly, the Guideline No. 2 of New Filing Rules also provides that a Special Legal Opinion issued by the PRC lawyers of issuer based on the points for verification (hereinafter referred to as “**Special Verification Points**”) shall be one of the filing materials. The main content of the Special Legal Opinion is briefly summarized as follows:

Category	Summary of verification matters
Current offering and listing	<ul style="list-style-type: none"> <li>■ Whether there is a circumstance in which overseas offering and listing are prohibited in accordance with the Trial Measures</li> <li>■ Where security review is involved, whether the relevant procedures have been completed</li> <li>■ Whether the internal and external decision-making and approval procedures for the offering and listing have been performed</li> <li>■ Whether domestic or overseas fund-raising and investment projects have undergone the corresponding procedures or comply with the corresponding national policies</li> </ul>
Confidentiality and archive management	<ul style="list-style-type: none"> <li>■ Whether the confidentiality and archive management systems comply with the relevant regulations</li> </ul>
Equity structure and control structure	<ul style="list-style-type: none"> <li>■ Detailed verification requirements for shareholding entrustment, newly-added shareholders, ESOP, equity incentives, number of shareholders and VIE structures</li> </ul>
Applicable matters in specific circumstances	<ul style="list-style-type: none"> <li>■ Whether the market access requirements for foreign investment are met</li> <li>■ Whether the real estate business is involved</li> <li>■ Whether the previous filing commitments have been fulfilled</li> <li>■ Special verification requirements for spin-off of a domestic listed company for overseas listing, domestic enterprises’ asset transactions, overseas issuance of convertible bonds, exchangeable bonds and Full Circulation</li> </ul>

<sup>6</sup> For details, please refer to the relevant information in the *Key Points for Review of The Overseas Public Offering and Listing of Shares (Including Additional Issuance of Shares) By Companies Limited by Shares* and the *Key Points for Review of the Application by H-share Companies for “Full Circulation” of Unlisted Shares* issued by the CSRC.



Compared with the Key Points for Verification, the Special Verification Points replace the relevant provisions under H-shares structures which are to be repealed with the relevant criteria of overseas offering and listing in the New Filing Rules, while, covering the special verification requirements for specific overseas listing and refinancing in accordance with the changes in the definition of overseas offering and listing. It is worth mentioning that the Guideline No. 2 has further detailed the verification requirements for the section of “Equity Structure and Control Structure” in the Special Verification Points, which indicates that such matters, in addition to the existing approval of/disclosure to the securities regulatory authorities and/or stock exchanges in the place of listing, may also be the focus of domestic regulatory authorities.

### 3. Report of occurrence of material events after listing

The completion of the overseas initial offering and listing does not mean the domestic legal verification is completely finished. Upon occurrence of any of the following specific events, issuers shall conduct self-review and report to the CSRC in accordance with the requirements of the Guideline No. 3:

Material events occurred after listing	Summary of reporting matters
Change of control	<ul style="list-style-type: none"> <li>■ Basic information of the change of control</li> <li>■ Basic information of the actual controller after the change of control and the method by which the control is obtained</li> <li>■ If there is no actual controller after the change of control, the basis of determination shall be provided</li> </ul>
Being investigated or punished by overseas securities regulatory authorities or relevant competent authorities	<ul style="list-style-type: none"> <li>■ Time of the occurrence of such events and the specific details of such events</li> </ul>
Change of listing status or listing board	
Voluntary or compulsory termination of listing	
Significant changes in the main business operations that no longer fall within the scope of filing thereafter	<ul style="list-style-type: none"> <li>■ Explanation of such events (Note 1)</li> </ul>

Note 1: In particular, under such circumstance, the issuer, in addition to submitting a special report, shall also engage a PRC law firm to issue the legal opinion to explain the relevant situations.

It can be seen that after overseas offering and listing, the issuer shall pay special attention to the occurrence and progress of the aforementioned material events and shall timely fulfill the reporting requirements under the New Filing Rules in addition to the existing approval of/disclosure to the securities regulatory authorities and/or stock exchanges of the listing place.

## Key matters

Taking into account the refinement and consideration of the verification requirements imposed by the domestic regulatory authorities on the H-shares listing prior to the implementation of the New Filing Rules, we understand that the verification requirements on the following matters under the New Filing Rules deserve special attention<sup>7</sup>.

### I. Matters of control

Before the implementation of the New Filing Rules, in the case of H-shares listing, although the listing entity is a domestic enterprise, the CSRC has only proposed a few special verification requirements on the controlling shareholder and actual controller in the Key Points for Verification during the review process for offering and listing and in the feedback opinions provided by the CSRC to some issuers; in the case of listing with small red-chip structures, since the listing entity is an overseas entity, verification and disclosure on the controlling shareholder and control shall be mainly based on the laws of the domicile of the listing entity and the rules and approval requirements of the foreign securities regulatory authorities and/or stock exchanges<sup>8</sup>.

After the H-shares listing and listing with red-chip structure have been incorporated into a unified filing-based system under the New Filing Rules, the controlling shareholder, actual controller and control of the domestic enterprises shall be elaborated in the filing/reporting materials submitted to the CSRC. The summary is as follows:

#	Relevant provisions under the New Filing Rules	Comments
Control	<p>The concept of “determination of control” in Article 6 of Guideline No.1:</p> <p>It refers to the actual control over an enterprise separately or jointly, directly or indirectly through equity, voting rights, trusts, agreements, other arrangements, etc.</p>	<p>As the overseas listed domestic enterprises may, in accordance with the requirements of the listing place, adopt flexible financing methods and corporate governance methods, it may lead to a greater complexity of the post-listing shareholding structures.</p> <p>Determination of control under the New Filing Rules adapts to the current situation of the overseas listing market, and provides basis for the following reporting requirements for</p>

<sup>7</sup> Before the implementation of the New Filing Rules, the common overseas listing structures include small red-chip structures and H-shares structures. Under the small red-chip structures, there are no corresponding verification requirements as there are no regulatory requirements for the pre-approval from the CSRC. Due to space limitation, we mainly compare the relevant requirements of the New Filing Rules with the domestic verification standards for H-shares listing in the approval-based system in this article.

<sup>8</sup> As this article mainly discusses the impact of the New Filing Rules on domestic legal verification, we will not make specific listing or comparison of the verification requirements under the laws of the domicile of the listing entity and the rules and approval requirements of the foreign securities regulatory authorities and/or stock exchanges.

#	Relevant provisions under the New Filing Rules	Comments
		change of control
Offering conditions (circumstances where overseas offering and listing are prohibited)	<ul style="list-style-type: none"> <li>■ The controlling shareholder or actual controller has committed a specific kind of criminal offence in the last three years;</li> <li>■ The equity held by the controlling shareholder or the shareholders controlled by the controlling shareholder or the actual controller has a major ownership dispute</li> </ul>	The New Filing Rules have made reference to the provisions on domestic A-shares listing and include the compliance and major ownership dispute of equity of the controlling shareholder and actual controller in the “negative list” <sup>9</sup> of overseas offering and listing, which will be one of the key contents in the filing materials submitted to the CSRC after the implementation of the New Filing Rules.
Disclosure requirements for filing materials	<ul style="list-style-type: none"> <li>■ Basic information of the controlling shareholder and actual controller and the basis for determination thereof;</li> <li>■ If there is no controlling shareholder or actual controller, the information of the largest shareholder and shareholders who have significant impact on the issuer shall be disclosed with reference to the requirements for controlling shareholder and actual controller;</li> <li>■ Special shareholder rights arrangements or special agreements involving shares;</li> <li>■ Pledge, freezing, litigation, arbitration or other disputed situations of shares held by the controlling shareholder or the shareholders controlled by the controlling shareholder or the actual controller</li> </ul>	<p>The disclosure requirements in the filing materials are still focused on control.</p> <p>In addition, when there is no controlling shareholder (s) or actual controller (s), whether the inclusion of the largest shareholder and shareholders who have significant impact on the issuer within the scope of the disclosure means that the CSRC may impose further disclosure requirements on these shareholders in the form of a supplementary feedback during the filing process remains to be seen.</p>

<sup>9</sup> The circumstances under which overseas offering and listing are prohibited under Article 8 of the Trial Measures, include “(1) where such securities offering and listing is explicitly prohibited by provisions in laws, administrative regulations and relevant state rules; (2) where the intended securities offering and listing may endanger national security as reviewed and determined by competent authorities under the State Council in accordance with law; (3) where the domestic company intending to make the securities offering and listing, or its controlling shareholders and the actual controller, have committed crimes such as corruption, bribery, embezzlement, misappropriation of property or undermining the order of the socialist market economy during the latest three years; (4) where the domestic company intending to make the securities offering and listing is suspected of committing crimes or major violations of laws and regulations, and is under investigation according to law, and no conclusion has yet been made thereof; (5) where there are material ownership disputes over equity held by the domestic company’s controlling shareholder or by other shareholders that are controlled by the controlling shareholder and/or actual controller.”

#	Relevant provisions under the New Filing Rules	Comments
Reporting requirements of material events after listing	<ul style="list-style-type: none"> <li>Where there is a change of control, the report for change of control shall be submitted</li> </ul>	In addition to the existing approval by/ disclosure to the securities regulatory authorities and/or stock exchanges of the listing place, the situation of the change of control of the controlling shareholder and actual controller will become an on-going reporting obligation of the issuer to the CSRC.

The abovementioned requirements of the New Filing Rules reflect the concern of the domestic regulatory authorities on the control of overseas-listed enterprises and the changes thereof. In addition, in consideration of the complex control relationships of overseas-listed enterprises, the New Filing Rules impose reporting requirements on the control of domestic enterprises after overseas listing, and implement more detailed reporting obligations on the controlling shareholders and actual controllers of domestic enterprises under the domestic regulatory rules.

## II. Shareholder verification

Prior to the implementation of New Filing Rules, relevant legal verification and information disclosure on shareholders shall mainly comply with the rules and approval requirements of foreign securities regulatory authorities and/or stock exchanges. Meanwhile, the CSRC’s Key Points for Verification of shareholders of a listing entity under the H-shares structure mainly refer to whether the relevant shareholders are associated or acting in concert with each other and whether the number of shareholders exceeds 200, and does not set out requirements for penetrating verification of shareholders or verification of newly-added shareholders.

Under the New Filing Rules, in addition to the rules and approval requirements of foreign securities regulatory authorities and/or stock exchanges, there are unified shareholder verification requirements for both direct and indirect overseas listings of domestic enterprises. Details are listed as follows:

#	Approval-based system (H shares) <sup>10</sup>	Filing-based system (applicable to both direct and indirect overseas listing of domestic enterprises)	Comments
Penetrating verification of shareholders	No specific requirements (except necessary penetrating verification where the number of shareholders does	<ul style="list-style-type: none"> <li>Actual controller: penetrating verification until it reaches the level of the ultimate state-controlled or management entity (including public institutions, industry funds controlled by state-owned entities, etc., the same below), collective organization</li> </ul>	The explicit requirement for penetrating verification of shareholders under the filing-based system is to some extent a reference to

<sup>10</sup> Since the CSRC does not explicitly set out the legal verification and disclosure requirements for shareholders under the small red-chip structure, here we only set out the relevant requirements under the H-shares structure before the implementation of the New Filing Rules.

#	Approval-based system (H shares) <sup>10</sup>	Filing-based system (applicable to both direct and indirect overseas listing of domestic enterprises)	Comments
	not exceed 200)	<p>or natural person.</p> <ul style="list-style-type: none"> <li>■ The largest shareholder and shareholder (s) who have significant impact on the issuer (without controlling shareholder or actual controller): refer to the provisions on controlling shareholder or actual controller.</li> <li>■ Major shareholders: penetrating verification until it reaches natural persons, listed companies, public companies including companies listed on the NEEQ, state-controlled or managed entities, collective organizations, foreign government investment funds (including sovereign wealth funds), university endowment funds, pension funds, public welfare funds, and publicly offered asset management products<sup>11</sup>.</li> </ul>	<p>the penetrating verification of shareholders of A shares. Although the current penetration standards are relatively clear, it remains to be seen whether the specific verification items and standards shall be formulated in accordance with the provisions for A shares.</p>
Associated relationship among shareholders	Whether there is associated relationship or concert party arrangement between the issuer's existing shareholders and the offering participant (if applicable); and the shareholding relationship between the major shareholders holding more than 5% of shares and the offering	<ul style="list-style-type: none"> <li>■ State the associated relationship and concert party arrangement among the shareholders holding more than 5% of the issuer's shares or voting rights; if the offering participant is specific, the associated relationship among the offering participant, the issuer as well as the issuer's shareholders shall be stated.</li> <li>■ State the associated relationship and concert party arrangement among the existing shareholders.</li> </ul>	<p>The requirements of the approval-based system and the filing-based system are basically the same regarding verification requirements for associated relationship among shareholders.</p>

<sup>11</sup> According to the filing report provided for in the Guideline No.2, where a major shareholder is an overseas private equity fund, if it is not a shareholder or platform solely for the purpose of shareholding, and its purchase price is not obviously abnormal, the filing-based system may choose not to apply for penetrating verification. However, where one of the investors, executive partners or actual controllers is a domestic entity (including legal persons, natural persons and unincorporated organizations with Chinese nationality), the relevant situation shall be stated through penetrating verification.

#	Approval-based system (H shares) <sup>10</sup>	Filing-based system (applicable to both direct and indirect overseas listing of domestic enterprises)	Comments
	participant (if applicable)		
Verification of newly-added shareholders	No specific requirements	<ul style="list-style-type: none"> <li>■ The number of shares held by the newly-added shareholders in the most recent year, changes in shareholding, the time when the new shareholders obtained the shares, the price of the shares and the pricing basis (applicable to IPO or listing) shall be stated.</li> <li>■ If new shareholder(s) join within 12 months before the issuer submits the filing application for overseas offering and listing, the basic information, reason for entry, share purchase price and pricing basis of the new shareholder(s), whether the new shareholder(s) are associated with other shareholders, directors, supervisors and senior executives of the issuer, whether the new shareholder(s) are associated with the intermediary(s) of the current offering and its person-in-charge, senior executives and handling personnel, and whether there is any direct or indirect holding of shares in the issuer by participants whose shareholding is prohibited by laws and regulations shall be verified. The requirements above shall apply as reference for any shareholder change after the filing application is submitted.</li> </ul>	<p>Among previous red-chip or H-shares projects, the pre-IPO series of financing within 12 months before the submission of listing application is common. The verification standard for new shareholders (not limited to major shareholders) under the filing-based system on the left column provides higher requirements of information disclosure on the issuers, Intermediaries and shareholders to some extent.</p> <p>It should be noted that the requirements above shall apply for any shareholder change (not limited to the addition of shareholders) after the filing application is submitted.</p>

#	Approval-based system (H shares) <sup>10</sup>	Filing-based system (applicable to both direct and indirect overseas listing of domestic enterprises)	Comments
Number of shareholders	Whether the number of shareholders of the issuer, its controlling shareholder, actual controller and important holding subsidiary exceeds 200 (applicable to domestic enterprises that are not listed in China)	<ul style="list-style-type: none"> <li>■ <u>Only applicable to direct overseas offering and listing of domestic enterprises</u>: The PRC lawyer of the issuer shall, in accordance with the Securities Law and the relevant regulations on supervision and administration of non-listed public companies, verify whether the number of the issuer’s shareholders exceeds 200 and issue a clear conclusive opinion.</li> <li>A. The calculation principles of ESOP: ESOP implemented in accordance with the law by shareholding platforms such as corporate enterprises, partnership enterprises and asset management plans shall be counted as one shareholder; persons who were employees when participating in ESOP and still hold interests of ESOP after leaving office in accordance with the articles of association or agreement of the ESOP may be deemed as internal personnel; the external personnel in ESOP shall be calculated by penetrating verification based on the actual number of persons.</li> <li>B. Private equity funds, asset management plans, and other financial plans which are subject to regulation by domestic financial supervision and regulation authorities shall be counted as one shareholder.</li> </ul>	Both the approval-based system and the filing-based system require to verify whether the number of shareholders of the direct overseas offering and listing of domestic enterprises exceeds 200. The New Filing Rules have further specified the calculation standard of 200 shareholders, which is basically the same as that for A shares.

It can be seen from the above that the Guidance No. 2 specifically sets out a chapter titled “Verification Requirements for Shareholding Structure and Control Structure”, which reflects the importance the CSRC attaches to shareholder verification when filing or reporting for overseas listing of domestic enterprises. Based on the focus on control in the aforesaid New Filing Rules, the penetrating verification requirements of the actual controller are more stringent than those of other shareholders.

### III. Nominee holding

In the current practice, where there is any nominee holding of an issuer or its domestic equity company,

legal verification will be conducted with respect to the formation, evolution, clearing, and other details of such holding with reference to the rules and approval requirements of foreign securities regulatory authorities and/or stock exchanges. However, in terms of rules of domestic regulation, the CSRC's Key Points for Verification under the H-shares structure include whether there is any nominee holding for an issuer (applicable to financial enterprises) and whether the holding of the shares of the shareholder of relevant domestically unlisted shares (under full circulation) involves any nominee holding.

The New Filing Rules impose clearer legal verification requirements on nominee holding of shares in terms of domestic regulation. That is, where there is nominee holding of shares in an issuer, the PRC lawyer of the issuer shall verify the reason for formation, evolution and compliance of such nominee holding of shares, whether there are existing or potential disputes, and whether there is existing direct or indirect holding of share in the issuer by participants whose shareholding is prohibited by laws and regulations, and shall issue a clear and conclusive opinion thereon.

#### IV. Employee incentives

Before the implementation of the New Filing Rules, Intermediaries will, in accordance with the laws and regulations of the domicile of the listing entity and rules and approval requirements of foreign securities regulatory authorities and/or stock exchanges, verify and disclose the employee incentive implemented previously and/or to be implemented at the time of listing. For domestic regulation, as demonstrated in *Filing-based System for Overseas Listings (III)-Direct Listings*, in the review process of H-shares structure, since the issuer's shareholding structure is required to be clear and stable, most of the equity incentive plans have been exercised or have been cancelled with respect to the portion that has not been exercised prior to listing. Meanwhile, the approval requirements on shareholding structure and corporate governance do not explicitly stipulate the regulatory requirements on employee incentive plans implemented prior to listing (except for the specific approval requirements for financial enterprises, which are set out in the table below). In contrast, under the New Filing Rules, higher and more detailed verification requirements are imposed on the PRC lawyers of the issuer for the employee incentive plans implemented prior to listing. The details are as follows:

#	Approval-based system (H shares) <sup>12</sup>	Filing-based system	Comments
Employee incentives	Only with respect to specific enterprises (financial enterprises), verification is required for whether there is	<ul style="list-style-type: none"> <li>Where an issuer implements an ESOP before the filing of IPO, the PRC lawyer of the issuer shall fully verify the background regarding the establishment of the ESOP, composition of the specific personnel, fairness of price, provisions of articles of association or relevant agreements</li> </ul>	The key points of the verification of employee incentives under the New Filing System, to a certain extent, refer to the verification provisions of A shares, which are also more

<sup>12</sup> Since the CSRC does not explicitly set out the legal verification and disclosure requirements for employee incentives under the small red-chip structure, here we only set out the relevant requirements under the H-shares structure before the implementation of the New Filing Rules.



#	Approval-based system (H shares) <sup>12</sup>	Filing-based system	Comments
	<p>direct shareholding by employees, and if so, whether such enterprises violate relevant regulations including the Notice on Regulating the Shareholding by Employees of Financial Enterprises (Cai Jin [2010] No. 97); the senior officers of the issuer and other individuals holding more than 50,000 internal employee shares shall make special undertakings regarding the lock-up period and sale limit of share transfer according to the relevant regulations.</p>	<p>of the ESOP, performance of decision-making procedures, and standard operation of the ESOP.</p> <ul style="list-style-type: none"> <li>■ In principle, all of the ESOP shall be held by the employees of the company; where the participants of the ESOP established prior to the effective date of the Securities Law of the People’s Republic of China (i.e. prior to March 1, 2020) include a small number of external personnel, the PRC lawyer of the issuer shall verify the shareholding reason and background of the relevant personnel, share purchase price, pricing basis, source of funds, and where the share purchase price is the same or similar to that of the employee, whether there is any benefit transfer shall be explained.</li> <li>■ For persons who still hold interests in the ESOP after resignation, the PRC lawyer of the issuer shall verify whether the relevant persons are employees of the company at the time of participation in the ESOP, and whether they currently hold interests in the ESOP under the articles of association or relevant agreements of the ESOP. Where the relevant persons participate in the ESOP in the capacity of advisors of the issuer, the PRC lawyer of the issuer shall verify whether the relevant persons have signed a consulting contract with the company, and whether such contract specifies the specific duties and term of advisors as well as the way to participate in the operation and management of the company.</li> </ul>	<p>extensive and detailed. Whether the verification requirements on the foreign exchange and tax compliance for employees who exercise their rights prior to overseas listing under the small red-chip structure and the relevant foreign exchange regulations relating to the employees’ exercise of rights will be subject to adjustment following the implementation of the New Filing Rules remains to be closely watched.</p>

In addition, the New Filing Rules also contain more detailed verification points relating to the Stock Option Incentive Plan formulated before IPO filing and to be implemented after listing by the issuers as compared with the previous H-shares structure. The New Filing Rules also contain provisions

relating to the issuance of securities to specific domestic targets for the purpose of implementing equity incentives by domestic enterprises which completed direct overseas offering and listing. For details, please refer to the *Filing-based System for Overseas Listings (III)-Direct Listings*.

## V. VIE structure

After the implementation of the New Filing Rules, the overseas offering and listing of domestic enterprises with the VIE structures will be subject to the supervision and administration of the CSRC. The *Filing-based System for Overseas Listing (II) – Indirect Listing* briefly introduced that under the New Filing Rules, it was allowed for the filing of overseas listing of enterprises with VIE Structures that satisfied the compliance requirements and the issuer’s lawyer shall conduct special verification of the VIE Structure<sup>13</sup>. In addition, from the issuer’s perspective, if the issuer has any VIE structure, it shall also specify the following information in the filing report: (1) the reasons for and the specific arrangements for the establishment of the VIE structure, including the basic conditions of the parties involved in the VIE structure, the core terms of the main contract and the transaction arrangements; (2) risks that may be caused by the VIE structure in respect of control, breach of contract by relevant parties and tax; and (3) the arrangements for risk response measures.

On the whole, the New Filing Rules and the CSRC’s response to the reporters’ questions<sup>14</sup> sent another positive signal to the overseas listing of enterprises with VIE structures. However, whether the filing for overseas listing with VIE structure can be ultimately completed is subject to the fulfillment of verification requirements stipulated in the Guideline No. 2 under the premise of meeting compliance requirements. Such arrangements, to some extent, respond to the discussion triggered by the content of the Negative Lists for Foreign Investment Access in 2021<sup>15</sup> (the “**Foreign Investment Access Negative Lists**”) on overseas offering and listing of shares by domestic enterprises. On the one hand, this arrangement maintains internal consistency with the NDRC’s statement in a press conference in December 2021 when the Foreign Investment Access Negative List was first released, which states that “after a domestic enterprise submits the application materials for overseas listing to the CSRC, if the application involves any industries prohibited by the Foreign Investment Access Negative List, the CSRC will seek opinions from the industrial or related competent authorities, and carry out relevant regulatory procedures in accordance with the relevant provisions.” On the other hand, this arrangement, to a certain extent, may echo that the application scope of Article 6<sup>16</sup> of the Foreign Investment Access Negative List is limited to direct overseas listing by domestic enterprises

<sup>13</sup> For more details, please refer to *Filing-based System for Overseas Listing (II) – Indirect Listing*.

<sup>14</sup> For overseas listing of VIE structured enterprises, filing administration will adhere to the market-oriented and rule-of-law principles, and regulatory coordination will be strengthened. The CSRC will seek opinions from relevant authorities and file the overseas listing of VIE structure enterprises that satisfy the compliance requirements to support enterprises to take advantage of two markets and two resources for development.

<sup>15</sup> They refer to the Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Version) and the Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2021 Version).

<sup>16</sup> Where a domestic enterprise engaging in industries prohibited by the Negative List for Foreign Investment Access/Negative List for Pilot Free Trade Zones intends to offer shares and list such shares for trading overseas, the offering and trading of shares shall be subject to the examination and approval of the relevant authorities. Foreign investors shall not participate in the operation and management of the enterprises, and their shareholding percentage shall be determined with reference to the relevant provisions on the administration of domestic securities investments by foreign investors.

engaging in industries prohibited by the Foreign Investment Access Negative List and regarding the indirect overseas listing of domestic enterprises, the CSRC is seeking opinions from the public on relevant rules and regulations, and relevant authorities will handle the matter in accordance with such rules once the relevant documents are officially released, which was referred to in the NDRC's response to the hot-button issues in January 2022. However, the standards for judgment by competent authorities of different industries and other relevant government departments on the compliance of VIE structures remain to be further observed in practice and paid attention to.

## Summary

Just like the CSRC's intention of streamlining administration, delegating power, strengthening regulation and improving services for filing-based administration of overseas listing, the CSRC will focus more on the compliance of the filing materials, and the filing-based administration will also strengthen the coordination of domestic and overseas supervision, severely crack down on fraudulent offering and other serious illegal acts, and specify the liabilities of issuers and Intermediaries. Therefore, it is more necessary for issuers to understand in advance the scope and standards of the matters to be verified before preparing filing materials, and take the relevant regulatory measures and strengthen the communication with Intermediaries, shareholders and other relevant parties. With respect to the existing or potential compliance problems of an issuer, the problems that it is impossible to judge the compliance because the regulatory requirements are unclear or the practice has not become customary, and the problems that the issuer has a VIE structure, the issuer and Intermediaries shall communicate and discuss the solutions as soon as possible, determine whether to use the communication mechanism specified in the New Filing Rules to communicate in advance<sup>17</sup> according to the issuer's own circumstances so as to complete the filing process in a smooth and efficient manner.

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<sup>17</sup> Article 3 of Guideline No. 4 provides: Prior to the submission of filing materials, an issuer may submit an application for communication in respect of the regulatory policies and control structure of the issuer's industry.

## 5. Filing-based System for Overseas Listing (V) – Investors

Author: Transaction Department

For a long time, overseas listing of domestic enterprises has been one of the major ways for investment institutions to exit. The filing-based system for overseas offering and listing adopts a unified regulation pattern over direct overseas listing and indirect overseas listing, optimizes the original examination and approval procedures for direct overseas listing and full circulation, and meanwhile increases the filing requirements for indirect overseas listing. For private equity investment funds and other institutional investors, the filing-based system not only brings more options for their investment and future exits, but also brings some new challenges, especially in the aspect of shareholder verification.

As the fifth episode of the series of *New Era of Filing-based System for Overseas Offering and Listing*<sup>18</sup>, this article summarizes the information disclosure and verification requirements for investors acting as shareholders of issuers in overseas listing from the perspective of domestic enterprises' investors for your reference.

### Penetrating disclosure requirements for investors as major shareholders

From the perspective of investors, under the filing-based system, regardless of whether the issuer is listing directly or indirectly overseas, it is worth noting with respect to the information disclosure of shareholders that a penetrating disclosure of the information of the issuer's major shareholders shall be conducted in the filing report, including the following:

- **Major shareholders:** A major shareholder refers to a shareholder who holds 5% or more of the issuer's shares or voting rights.
- **With the principle of penetration:** Major shareholders shall be penetrated to natural persons, listed companies (including overseas listed companies), public companies such as companies listed on the NEEQ, state-controlled or state-managed entities (including public institutions and industrial funds controlled by state-owned entities), collective organizations, overseas government investment funds (including sovereign wealth funds), university endowment funds, pension funds, public welfare funds, and publicly offered asset management products.
- **Exception:** where a major shareholder is an overseas private equity fund, if it is not a shareholding entity or platform only for the purpose of holding shares, and the price of purchasing shares is not obviously abnormal, the information penetration mechanism is not required; however, where there is a domestic entity (including legal person, natural person and unincorporated organization with Chinese nationality) among its investors, managing partners or actual controllers, the relevant situation shall be explained through the information penetration mechanism.
- **Under the situation of no controlling shareholder or actual controller:** Where there is no

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<sup>18</sup> Terms or attributes used in this article but not defined herein shall have the meaning ascribed to them in articles in the series of *New Era of Filing-based System for Overseas Offering and Listing*.

controlling shareholder or actual controller, the information of the major shareholder and other shareholders who may have significant impact on the issuer shall be disclosed by referring to the requirements of the issuer's controlling shareholder and actual controller.

With respect to domestic listing, the CSRC and stock exchanges have proposed relatively strict shareholders penetrating verification standards and requirements. However, with respect to the approval of direct overseas listing, taking H-shares listing as an example, the CSRC has not explicitly required penetrating verification of the shareholders of an issuer. In contrast, there is no penetrating verification requirement for domestic enterprises' indirect overseas listing, as it is not subject to the supervision of the CSRC, while shareholders verification shall be conducted in accordance with relevant rules and requirements of the overseas securities regulatory authority in the listing place. The New Filing Rules clarify that, based on the principle of penetration of major shareholders of the issuer, in consideration of the special conditions of overseas private equity funds, overseas private equity funds satisfying certain conditions are allowed not to be penetrated.

An overseas private equity fund is a mainstream investor in an indirect overseas listing project. The requirement for penetrating verification of an issuer's major shareholders under the New Filing Rules is a reference to that of domestic listing. Although overseas private equity funds are provided as an exception for penetrating disclosure, the New Filing Rules do not specify the identification standard of an overseas private equity fund, and instead overseas private equity funds shall cooperate with the issuer and its lawyer in verifying the reasonableness of the purchase price. In the meantime, if there is a domestic entity among the investors, managing partners or actual controllers of such fund, a penetrating disclosure shall be made, thus such funds still bear certain substantial obligations to conduct verification.

With reference to the practice of domestic listing projects, in the oncoming overseas offering and listing of domestic enterprises, an investor may be required by the issuer to cooperate in verification by providing relevant information and material of the equity structure of itself and all levels of its investors, issuing written confirmation or commitment, and accepting interviews, etc. In order to satisfy the verification requirements of the investee, an investor is advised to consider or conduct due diligence on its investors by collecting necessary information or obtaining relevant confirmations in advance.

### **Announcements for investors as shareholders by “sudden share subscription”**

In the practice of overseas listing, a domestic enterprise usually raises funds or constructs a red-chip structure for restructuring before listing, thus giving rise to the situation called “sudden share subscription” before an issuer's listing. Under the filing-based system, during an initial offering and listing, an issuer's PRC lawyer shall verify the following information about a new shareholder and issue a clear and conclusive opinion:

- **If the issuer has a new shareholder within 12 months before it submits the application for filing of overseas offering and listing:** the PRC lawyer shall verify and issue a clear and conclusive opinion on the new shareholder's basic information, reason for share subscription, share purchase price and pricing basis, whether the new shareholder is associated with other shareholders, directors, supervisors and senior executives of the issuer, whether the new

shareholder is associated with the intermediary for the current offering as well as its person-in-charge, senior executives and handling personnel, and whether there is any direct or indirect participant whose shareholding in the issuer is prohibited by laws and regulations.

- **If there is any change of shareholders after the filing application is submitted:** verification shall be conducted with reference to the requirements above. If the issuer's ownership of control is affected, the filing documents shall be updated.

This verification requirement makes reference to the current listing requirements for domestic listing, but does not impose a post-listing lock-up requirement for shareholder by "sudden share subscription" like domestic listing.

It is worth discussing that, for indirect overseas listing, whether an early investor of a domestic enterprise who is converted into a shareholder of an overseas listed entity due to restructuring of the issuer may be exempt from the abovementioned disclosure requirements for shareholders by "sudden share subscription" if the time of its shareholding at the issuer falls within 12 months prior to the listing application remains to be observed in practice. By referring to the latest requirements for domestic listing, if an issuer applies for listing with a domestic entity whose red-chip structure had been dismantled, and its direct shareholders had been converted from the original shareholders of the red-chip enterprise to the shareholders of the domestic entity within 12 months prior to the listing application, such shareholders are not required to, in principle, be deemed as new shareholders by "sudden share subscription". In view of such changes in the verification and approval requirements of domestic listing, there remains room for discussion if this exception rule is to be adopted in verification of overseas listing, which will also, to some extent, have an impact on investors' decisions on participating in an issuer's financing or restructuring.

### Nominee holding

According to the New Filing Rules, an issuer's PRC lawyer shall verify whether there is any nominee holding of shares of the issuer during an initial offering and listing.

- Where there is any nominee holding of shares in the issuer, the issuer's PRC lawyer shall verify the reason, evolution and legal compliance of the nominee holding, whether there are existing or potential disputes, and whether there is any direct or indirect participant whose shareholding in the issuer is prohibited by laws and regulations, and shall issue a clear and conclusive opinion thereon.

Prior to the New Filing Rules, whether any nominee holding of issuer's shares is allowed is mainly based on the requirements of the overseas securities regulatory authority in the listing place. Certainly, a direct overseas listing was previously subject to the CSRC's approval, and the CSRC generally refers to the verification and approval requirements for domestic listing, which set a higher standard for the clarity and stability of the issuer's shareholding structure and reflect a relatively conservative attitude towards nominee holding. Under the New Filing Rules, especially in the case of a direct domestic listing, it remains to be seen whether the issuer can successfully complete the filing process if it truthfully discloses that the investor has a nominee holding arrangement but has not yet restored or cleared such nominee holding. In the meantime, the retention of nominee holding by the investor shall also be subject to the requirements of the overseas securities regulatory authority in the listing place.

## Termination arrangements of special shareholder rights

Special shareholder rights are important guarantees for investors when they are shareholders of the issuer, including the assurance of investment return and exit. Termination arrangements of special shareholder rights are significant adjustments to the rights and obligations of investors. The current disclosure requirements for special shareholder rights provided for in the New Filing Rules include:

- The filing report shall include a table to briefly describe the special shareholder rights arrangements, such as valuation adjustment mechanism; in addition, if the issuer has shares with special voting rights or similar arrangements, it is required to specify: (1) the basic information of the special voting rights arrangements; (2) the scope of matters on which the holders of special voting rights can participate in the shareholders' meeting, and the special matters to which the special voting mechanism does not apply; (3) the relevant risks associated with the change of control possibly caused by the differentiated voting rights arrangements and the impact on the corporate governance.
- The legal opinion shall incorporate special shareholder rights arrangements or special covenants involving shares.

From the foregoing, it can be seen that the New Filing Rules emphasize on information disclosure and interim and ex-post supervision, and do not expressly require the termination of special shareholder rights arrangements. However, such disclosure requirements indicate that the CSRC will pay close attention to the special shareholder rights arrangements. In particular, regarding direct overseas listing, in the past, the CSRC has not explicitly required the disclosure or termination of special shareholder rights in the review of direct overseas listing projects. However, the CSRC has raised requirements in respect of the termination of special shareholder rights for a part of listing projects in the feedback of the overseas listing review, which requires the enterprise to be listed to conduct feedback on whether the special shareholder rights are truly and completely terminated, and requires the issuer's lawyer to issue a verification opinion on the authenticity and completeness of such termination of special shareholder rights. Therefore, whether the special shareholder rights of investors disclosed in direct overseas listing can be retained after the implementation of the New Filing Rules, subject to the compliance with the rules of the listing place, remains to be seen.

In addition to the concerns of the CSRC, the termination of special shareholder rights is also subject to the relevant laws and regulations of the listing place of the overseas listing. Taking listing in Hong Kong as an example, the listing rules of Hong Kong also stipulate the termination of special shareholder rights, mainly requiring that, if the special rights with respect to enterprises and shareholders are obtained by the investor before the initial offering, those special rights which are not extended to other shareholders generally shall be terminated upon listing so as to comply with the general principle that all shareholders are treated equally. However, where the investor is allowed to withdraw investment, such right to withdraw investment shall be terminated prior to A1 submission, unless such right to withdraw investment is exercisable only in the event that the listing has not taken place and terminated upon listing. In addition, if the special voting right arrangements do not satisfy the conditions stipulated by the listing rules of Hong Kong, such arrangements shall also be terminated.

In addition, it is worth noting that, since the domestic enterprise that directly lists overseas shall be a company limited by shares, a domestic enterprise (except for that directly established as a company limited by shares) is basically required to go through the process of the entire conversion from a limited liability company into a company limited by shares (the “**shareholding reform**”) in practice. According to the Company Law, when a limited liability company is converted into a company limited by shares, the total paid-in capital shall not be higher than the net asset value of the company. In consideration that if there are repurchase right, anti-dilution right and other special shareholders’ rights under which the company may be required to pay cash compensation, the investment funds may be deemed as financial indebtedness rather than paid-in capital and may affect the audited net asset value of the company on the shareholding reform benchmark date (for example, resulting in negative net asset value or the net asset value lower than the required amount of share capital after the shareholding reform), and therefore the issuer and its intermediaries (especially the auditor) may request the provisions relating to the company’s payment obligation under the repurchase right, anti-dilution right and other special rights of the investors to be completely terminated prior to the shareholding reform audit benchmark date, so as not to affect the net asset value of the company on the shareholding reform audit benchmark date.

Based on the above and our previous project experience, the investors should pay attention to the termination arrangements of special shareholder rights as follows:

Timing	Applicable listing circumstances	Requirements
Shareholding reform	Direct overseas listing	<b>Audit requirements:</b> The repurchase right, anti-dilution right and other special shareholder rights under circumstances that the company pays cash compensation may be deemed as financial indebtedness and may affect the net asset value in the audited accounts of the company on the shareholding system reform benchmark date (for example, resulting in negative net asset value or the net asset value lower than the required amount of share capital after the shareholding reform) and may be required to be terminated
Filing of listing	Direct or indirect overseas listing	<p><b>CSRC’s requirements:</b> Special shareholder rights shall be disclosed at the time of filing but the time of termination is not specified</p> <p><b>The requirements of the overseas listing place (taking Hong Kong Stock Exchange as an example):</b> If the investor is permitted to withdraw investment, <u>such right shall be terminated prior to A1 submission, unless such right is exercisable only in the event that the listing has not taken place and is terminated upon listing</u>; special voting rights arrangements that do not meet WVR requirements are required to be terminated prior to A1 submission</p>
Completion of listing	Direct or indirect overseas listing	<b>CSRC requirements:</b> Special shareholder rights shall be disclosed at the time of filing but the time of termination is not specified



Timing	Applicable listing circumstances	Requirements
		<b>The requirements of the overseas listing place (taking Hong Kong Stock Exchange as an example):</b> <u>The special shareholder rights that do not extend to all other shareholders</u> are required to be terminated upon listing

### Lock-up of the investors' shares

As introduced above, the lock-up period of an investor's exit through overseas listing of the investee is an important issue to which the investor shall pay attention. It not only concerns the timing of the investor's receipt of investment return but also is closely related to the investment period and duration of the funds. Pursuant to the current laws and regulations, the investors' shares of invested enterprises are subject to different lock-up periods in different listing places. The main lock-up periods are as follows:

Applicable listing circumstances	Main lock-up periods
Direct overseas listing	Shares issued by the company before the public offering shall not be transferred within one year from the date when the company's shares are listed and traded on a stock exchange;
	The shares transferred by the company's directors, supervisors and senior management each year during their term of office shall not exceed 25% of the total shares held in the company. The shares held by the aforesaid persons in the company shall not be transferred within six months after they leave the post.
Indirect overseas listing (Hong Kong Market)	There is no statutory lock-up requirement for ordinary investors, but underwriters usually require a six-month lock-up period by agreement between the investors before listing;
	The controlling shareholder shall not sell the shares held before the listing within six months from the date of listing (twelve months in the case of GEM), and shall not lose its status as the controlling shareholder due to any sale of the shares held in the following six months (twelve months in the case of GEM);
	The cornerstone investor shall not sell the cornerstone investment shares held within six months from the date of listing.
Indirect overseas listing (U.S. Market)	Although there is no regulatory requirement, the underwriters usually require that all the shareholders and insiders of a pre-listing company shall not sell the listed shares of the company within 180 days after the listing unless they have obtained the written consent from the underwriters, which can be realized by entering into a lock-up agreement.

The changes in the lock-up period under the New Filing Rules mainly focus on the requirement on the documentation of the application for direct overseas listing. Under the approval-based system, the lock-up commitment made by the shareholders is required to be submitted to the CSRC for the application for direct overseas listing, while no such requirement is stipulated in the New Filing Rules. However, as the

lock-up period requirements for direct overseas listing are mainly stipulated by the Company Law, such lock-up period cannot be bypassed or violated.

## Verification of other investor-related issues in the New Filing Rules

The New Filing Rules explicitly stipulate the requirements on disclosure and verification for shareholders, as well as disclosure requirements for directors, supervisors and senior management. In addition to the shareholder matters mentioned above, the following information shall also be noted:

- Disclosure of basic information of the investor: In addition to the required disclosure of the time of incorporation, registered capital, registered address, and shareholder composition of general legal persons or partnerships, the following information shall also be disclosed: (a) a statement on the association or concerted action relationship among the existing shareholders shall be provided; and (b) if the investor is a trust, a statement on the time of incorporation, type, operation mode and term of the trust, arrangement of the rights and obligations of the parties to the trust, and the beneficiaries of the trust shall be provided. Therefore, trust investors shall prepare for the information disclosure.
- Disclosure of basic information of directors and supervisors appointed by the investor: If there are directors or supervisors appointed by the investor, the information of such directors or supervisors shall be disclosed, including the gender, age, nationality and overseas residency, major work experience, shareholding of the issuer's shares, and associations with related parties of the issuer.
- Procedural requirements for the investor as a state-owned enterprise: According to the *Notice of the General Office of the SASAC on Further Clarifying the Matters Regarding the Administration of State-owned Equity in Unlisted Companies Limited by Shares*, when an unlisted company limited by shares intends to apply for IPO on the stock exchange, and its shareholders belong to circumstances stipulated in the *Measures for Supervision and Administration of State-owned Equity in Listed Companies*, it shall be identified and administered by the state-owned assets supervision and administration authority. Meanwhile, the New Filing Rules also expressly require that the relevant verification shall be conducted and opinions shall be issued on whether the listing involves the approval, filing or verification procedures of state-owned assets management, and whether such procedures have been performed according to the law. Therefore, if the investor is a state-owned enterprise, it is necessary for the investor to obtain identification for the state-owned shares during the listing of the invested company; and if the investor participates in the full circulation, it is also necessary to obtain the relevant approvals for converting state-owned shares into overseas-listed shares.
- Notes for investors regarding VIE structures: The New Filing Rules expressly require the PRC lawyers to verify the participation of foreign investors in the operation and management of the issuer, such as the appointment of director. Therefore, if foreign investors invest and participate in the operation and management of the issuer with a VIE structure, such investment and participation shall comply with laws, regulations and agreements.

## 6. HKEX Consultation Following CSRC New Filing Rules

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On February 24, 2023, The Stock Exchange of Hong Kong Limited (“**HKEX**”) published a consultation paper (the “**Consultation Paper**”), which detailed the proposed amendments to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “**Listing Rules**”) following new filing rules for the overseas listing of domestic enterprises announced by the China Securities Regulatory Commission (“**CSRC**”) on February 17, 2023 (the “**New Filing Rules**”). The Consultation Paper also invited comments from the market in relation to part of the proposed Listing Rule amendments.

The proposed Listing Rule amendments mainly arise from the following regulatory changes under the New Filing Rules: (1) domestic shares and H shares are both ordinary shares and are no longer deemed as different classes of shares; and (2) the Mandatory Provisions for Companies Listing Overseas (the “**Mandatory Provisions**”) are no longer applicable to the constitutional documents of PRC issuers. This article outlines the key Listing Rule amendments and important explanations covered by HKEX in the Consultation Paper.

### Part 1: Key Listing Rules amendments

	Key changes	Current Listing Rules requirements	Amended Listing Rules requirements
1.	Class meeting requirement	In order to change or abrogate the rights of a class of shareholders (including an increase or decrease in the number of shares of one particular class), PRC issuers must obtain special resolutions via (1) a shareholder meeting and (2) separate class meetings of holders of domestic shares and of H shares.	The class meeting requirement relating to the issuance and repurchase of shares is repealed <sup>19</sup> .
2.	Amendments to shareholders’ mandates for the issuance of shares	<i>Mandate limits</i>	
		PRC issuers may seek prior approvals from their shareholders to: (1) issue securities of up to 20% of each of its issued domestic shares and H shares (the “ <b>General Mandate</b> ”); and	The General Mandate and the Scheme  Mandate would be subject to an overall cap of 20% and 10% respectively of a PRC issuer’s total issued shares <sup>20</sup> .

<sup>19</sup> PRC issuers must still comply with the Company Law of the PRC which requires any issuance or repurchase of shares to be approved by special resolution in a general meeting.

<sup>20</sup> Note: HKEX is currently inviting public comments regarding this amendment, and any final Listing Rule amendment would be published in a conclusions paper after HKEX has considered the public’s views.

	Key changes	Current Listing Rules requirements	Amended Listing Rules requirements
		(2) issue securities in respect of options and awards granted under share schemes within the meaning under Chapter 17 of the Listing Rules of up to 10% of each of its issued domestic shares and H shares (the “ <b>Scheme Mandate</b> ”).	
		<i>Issue price limit</i>	
		<p>The price for new share issuance for cash under the General Mandate and the exercise price of share options under a share option scheme are benchmarked to the market price of H shares<sup>21</sup>.</p> <p>For PRC issuers whose H shares and domestic shares are dually listed on HKEX and a stock exchange in Mainland China (“<b>A+H issuers</b>”), the CSRC has promulgated rules that impose price limits on issuances of A shares benchmarked to the market price of A shares.</p>	<p>HKEX will retain the rules to benchmark the issue price limits to the H share market price and the current practice of considering waivers from strict compliance with the exercise price requirements on a case-by-case basis.</p>
3.	Rule amendments relating to articles of association of PRC issuers	<p>Appendix 13D (section 1) requires PRC issuers’ articles of association to include the Mandatory Provisions and the ancillary provisions.</p> <p>Appendix 13D (section 2) provides a list of matters to be included in listing documents which is applicable to both PRC issuers and overseas issuers.</p>	<p>Appendix 13D (section 1) will be repealed and the list of matters under Appendix 13D (section 2) will be moved to Appendix 1A (which governs disclosure in listing documents).</p> <p><i>Transitional arrangements:</i></p> <p>PRC issuers must still adhere to their existing articles of association concerning class meetings for certain resolutions and other provisions required under the Mandatory Provisions where applicable, until they amend their articles of association. They should also comply with the Listing Rules (or the amended Listing Rules after the effective date of the</p>

<sup>21</sup> Specifically, shares issued under a General Mandate for cash are limited to a price discount of not more than 20% of the prevailing market price of H shares (Rule 13.36(5) of the Listing Rules), and the exercise price of share options must not be lower than the prevailing market price of H shares (Rule 17.03E of the Listing Rules).

	Key changes	Current Listing Rules requirements	Amended Listing Rules requirements
			<p>Listing Rule amendments) at all times.</p> <p>New listing applicants established in the PRC are expected to follow the Guidelines for the Articles of Association of Listed Companies issued by the CSRC in preparing their articles of association. HKEX will allow applicants to comply with the Listing Rules taking into account the consequential amendments if they are listed on HKEX during the period from the repeal of the Mandatory Provisions to the effective date of the Listing Rule amendments.</p>
4.	Timing for dispatching the circular and the listing document	PRC issuers are required to dispatch (1) the circular and (2) the listing document on or before the deadline for giving notice of the general meeting under the Company Law of the PRC.	The timing for PRC issuers to dispatch the circular and the listing document will be aligned with that applicable to other issuers (i.e. at the same time as (or before) the notice of the general meeting is given) <sup>22</sup> .
5.	Requirements relating to the submission of a notification issued by the CSRC confirming the completion of filing procedures by new listing applicants to HKEX	A PRC new listing applicant is required to submit a copy of the CSRC's approval of its listing on HKEX at least 4 clear business days before the expected hearing date.	HKEX will remove the requirement concerning submission of a copy of the CSRC's approval and add a new Listing Rule to require new applicants (regardless of being established in the PRC or other jurisdictions) to submit, at least four clear business days before the expected hearing date, a notification issued by the CSRC confirming the completion of the filing procedures if the new applicant's application for listing on HKEX is required to be filed with the CSRC.

## Part 2: Public float requirement

Listing Rules 8.08 (as amended by Rules 19A.13A under the Listing Rules amendments) will maintain the

<sup>22</sup> Note: Since 2019, the notice period for special general meetings of PRC issuers has been shortened from 45 days to 15 days.

requirement that an A+H issuer's H shares listed on HKEX must, at the time of listing, be not less than 15% of the issuer's total number of issued shares with a market capitalisation of not less than HK\$125 million.

**Part 3: Timetable**

HKEX is conducting a public consultation on shareholders' mandate limits and certain other Listing Rules amendments, which will be closed on March 24, 2023.

Meanwhile, HKEX will not conduct public consultation on consequential Listing Rules amendments made to reflect the New Filing Rules (including the abovementioned items 1, 3, 4, and 5 and certain other amendments). Such consequential Listing Rules amendments will become effective on a date to be announced, subject to the necessary regulatory approvals.

## 7. A Brighter Future: Registration-based Share Offering Reform

Author: Domestic Capital Markets Division

On February 1, 2023, the China Securities Regulatory Commission (“**CSRC**”) started soliciting public feedback on the draft Administrative Measures for the Registration of Initial Public Offerings (“**Draft Administrative Measures**”) and other major rules of the registration-based share offering scheme. On the same day, the Shanghai Stock Exchange (“**SSE**”), the Shenzhen Stock Exchange (“**SZSE**”), the Beijing Stock Exchange (“**BSE**”), the National Equities Exchange and Quotations (“**NEEQ**”), the China Securities Depository and Clearing Co., Ltd and the China Securities Finance Corporation Limited all published relevant papers for public consultation ([click here to download the foregoing draft rules and papers](#)). This marks the official launch of the across-the-board registration-based share offering reform in China’s capital market after the pilot programs on SSE’s STAR Market, SZSE’s ChiNext and BSE in 2019, 2020 and 2021 respectively.

This article serves as a cover letter to introduce several highlights of the reform. We will follow it with serial articles to further discuss the draft rules in detail.

### Across-the-board reform

The across-the-board registration-based reform spans across various sectors of the SSE, SZSE, BSE and NEEQ, and strings through the offering of all kinds of shares or share-based securities. The reform involves multiple aspects such as IPO, secondary financing, material assets reorganization, trading regime, the mechanisms for margin trading and securities lending, underwriting and ongoing supervision, etc.

### More complete multi-level capital market system

Through the reform, the multi-level capital market system, with staggered development, complementary functions and organic links will be more complete.

- The Main Boards of the SSE and SZSE advertise “big and blue chip” and focus on supporting high quality enterprises with mature business models, stable performance, large scale and wide-range recognition.
- SSE STAR Market highlights “deep tech” and prioritizes companies that have core technologies, outstanding innovative capabilities, stable business models, and strong growth potential, and enjoy high market recognition and good corporate image, which are also in line with national strategies and rely mainly on core technologies for production and operation.
- SZSE ChiNext Market mainly services the growth-oriented innovative startups, and supports the integration of traditional industries with new technologies, new industries, new economy and new modes.
- BSE and NEEQ mainly services innovation-oriented small and medium-sized enterprises.

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## **Unified registration system**

Based on the earlier pilot programs of STAR Market and ChiNext, the reform unifies and complements the procedures and conditions of the registration-based system, forming a unified system among the CSRC and stock exchanges with regard to IPOs, follow-on offerings and other relevant securities offering. The stock exchanges will be mainly responsible to conduct comprehensive review of whether the issuer meets the conditions of share offering and listing and disclosure requirements by inquiries and other means, and the CSRC decides whether to grant the registration after the stock exchanges' review.

## **Significantly-optimized main board listing criteria**

The Draft Administrative Measures will scrap requirements of no accumulated loss and upper limit of intangible assets in the existing Main Board listing criteria, which will align with basic requirements of STAR Market and ChiNext Market. In terms of continuity of actual control, management and major business, the Main Board will still impose stricter requirements (3 years rather than 2 years) than STAR Market and ChiNext. We will provide a comparative analysis of the offering criteria and listing conditions among various sectors in coming articles.

## **Transitional arrangements**

For steady proceeding of the reform and orderly transition of approval matters, the CSRC, SSE, SZSE and the NEEQ have all issued notices on the arrangements for the transition period from February 1, 2023 to and after the date of official enactment of relevant major rules. Such transitional arrangements are market friendly. For example, during the transition period, the application for and review of Main Board IPOs, follow-on offerings, mergers and acquisitions and reorganizations will be conducted as usual; besides, existing listing applicants for the Main Board before February 1, 2023 not satisfying the revised financial criteria provided by the draft rules could still be subject to the relevant criteria under the original approval system even after the implementation of the reform.

## **Conclusion**

Four years in the pilot program of registration-based share offering scheme on the STAR Market, the disclosure-centered and market-orientated concept has taken root in China. The official launch of the across-the-board registration-based reform will open door to a standardized, transparent, open, dynamic and resilient capital market and envisage a brighter future for China's economic development.



## 8. Highlights of the Draft Revisions to the IPO System

**Author: Domestic Capital Markets Division**

On February 1, 2023, the China Securities Regulatory Commission (“**CSRC**”), the Shanghai Stock Exchange (“**SSE**”), the Shenzhen Stock Exchange (“**SZSE**”), and the Beijing Stock Exchange (“**BSE**”) issued for public comments draft rules and regulations (the “**Draft Rules**”) related to the registration-based stock issuance system. The Draft Rules mark the official launch of the full implementation of stock issuance reforms in China.

With respect to the highlights of the registration-based stock issuance system, we have provided an overview in the previous article in this series, *A Brighter Future: Registration-based Share Offering Reform*.

This article further analyzes the main points of the Draft Rules, the current reform and their impact on initial public offering and listing (“**IPO**”) applicants.

### Overview of the draft revisions to the IPO-related Draft Rules

In the current reform, the CSRC and the stock exchanges would systematically integrate or revise the IPO-related rules of all boards. In addition to making major adjustments to the IPO rules on the main boards in accordance with the registration-based system requirements, the regulators have mainly sought to optimize and adjust certain rules on the STAR Market and the ChiNext Market to form a clearer and more unified system of IPO rules. ([click here to download the foregoing draft rules and papers](#)).

#### I. Top priority: major adjustments to IPO-related main board rules to achieve the registration-based stock issuance system

The registration-based system would generally extend and apply to the main boards the review philosophy, procedures, methods, information disclosure requirements, and other provisions of the pilot registration-based system of the STAR Market and the ChiNext Market. The main boards would no longer require IPO applicants to be profitable for three consecutive years, to not have an undistributed deficit at the end of the last reporting period, or to be subject to a maximum amount of intangible assets among their net assets. Multiple sets of financial indicators would be available to choose from for domestic enterprises, red chip enterprises, and enterprises with differentiated voting rights arrangements. However, the Draft Rules also clarify the positioning requirements of the main boards, which would form a multi-tiered capital market pattern with coordinated development and complementary functions with the STAR Market, the ChiNext Market, and the BSE.

#### II. Optimization and supporting adjustments for IPO rules for other boards

Based on the experience of the pilot registration-based system and market feedback, the SZSE supports eligible currently unprofitable enterprises to list on the ChiNext Market and would cancel the ChiNext Market listing requirement of a positive net profit for the latest year for red-chip enterprises and enterprises with differentiated voting rights arrangements. Rather than making substantive adjustments to the IPO criteria on the STAR Market and the BSE, the relevant rules of these boards

would be appropriately unified and adjusted for the purpose of implementing the registration-based system.

## Highlights and interpretation of the IPO system under the registration-based system

### I. The main boards serve large-cap blue-chip enterprises and form a differentiated structure with other boards

The Draft Rules further clarify the positioning of the main boards, the STAR Market, and the ChiNext Market. Each board will present clearer multi-tiered and differentiated positioning to match enterprises of different development stages, business types, and industry characteristics. The details are as follows:

Matter	Main boards	STAR market	ChiNext market	BSE
<b>Positioning</b>	Highlight the features of the blue-chip market by prioritizing listing application support for enterprises with mature business models, stable performance, large scale and broad recognition.	Faces the frontiers of the world's science and technology, the major battlefield of the economy and the major needs of the country. Prioritize enterprises that have core technologies, outstanding innovative capabilities, stable business models, and strong growth potential, and enjoy broad market recognition and good corporate images, which are also in line with national strategies and rely mainly on core technologies for production and operation.	Focuses on the state innovation-driven development strategy, adapt to the trend of development relying more on innovation, creation, and creativity, mainly services growth-oriented innovative and start-up enterprises, and supports the integration of traditional industries with new technologies, new industries, the new economy and new models.	Mainly services innovation-oriented small and medium-sized enterprises, focuses on supporting enterprises in fields such as advanced manufacturing and modern service industries, promotes the transformation and upgrading of traditional industries, cultivates new driving forces for economic development, and promotes high-quality economic development.
<b>Industry requirements</b>	/	Supports new generation of information	In principle, the following industries are not supported	Enterprises are not supported to apply for offering

Matter	Main boards	STAR market	ChiNext market	BSE
		<p>technology, high-end equipment, new materials, new energy, energy conservation and environmental protection, biomedicine, and other fields that are in line with the positioning of the STAR Market.</p> <p>The STAR Market restricts the listing of FinTech and business model innovation enterprises.</p> <p>The STAR Market prohibits real estate enterprises and enterprises mainly engaging in finance and investment businesses from offering and listing.</p>	<p>to apply for offering and listing on the ChiNext Market, except for innovative and start-up enterprises deeply integrated with new technologies, new industries, new business models such as the Internet, big data, cloud computing, automation, artificial intelligence and new energy: agriculture, forestry, animal husbandry and fishery; mining; alcohol, beverages and refined tea manufacturing; textile industry; ferrous metal smelting and rolling processing industry; production and supply of electricity, heating, gas and water; construction industry; transportation, warehousing and postal service industry; accommodation and catering industry; financial industry; real estate industry; resident services, repair and other services.</p> <p>The ChiNext Market prohibits from offering and listing</p>	<p>and listing in the financial and real estate industries, that engage in industries with overcapacity, industries subject to elimination as provided in the <i>Catalogue for Guiding Industry Restructuring</i>, and those engaged in pre-school education, academic tutoring, and other services.</p>

Matter	Main boards	STAR market	ChiNext market	BSE
			enterprises engaged in industries with overcapacity, industries subject to elimination under the <i>Catalogue for Guiding Industry Restructuring</i> , and those engaged in pre-school education, academic tutoring, or similar financial services.	
<b>Detailed evaluation rules</b>	/	The <i>Interim Provisions on Application and Recommendation for Issuance and Listing of Enterprises on SSE STAR Market</i> and other rules specify the science and technology innovation attributes of enterprises are clearly stipulated from indicators such as applicants' R&D investment, proportion of researchers, number of relevant invention patents and compound revenue growth rate/scale as well the situations which can prove that enterprises	The <i>Interim Provisions on the Declaration and Recommendation for the Stock Offering and Listing of ChiNext Enterprises</i> and other rules specify the evaluation indicators for growth-oriented innovative and start-up enterprises in terms of applicants' R&D investment, compound revenue growth rate/scale, and other aspects.	/

Matter	Main boards	STAR market	ChiNext market	BSE
		have particularly outstanding science and technology innovation capabilities.		

We observe that the Draft Rules only provide principled provisions on the positioning of the main boards, and a further explanation has not been issued to describe the criteria of “mature business models, stable performance, large scale and broad recognition”. This is in contrast to the STAR Market, the ChiNext Market, and the BSE, which have relevant rules to determine the detailed criteria for their respective positioning (such as industry scope, quantitative evaluation index, etc.). Based on the rules and the previous listing review practice of the STAR Market and the ChiNext Market, whether an applicant complies with the positioning of the board is usually the key concern during an IPO review. Therefore, the criteria of the positioning requirements of the main boards will have a significant impact on the predictability of the main board IPO applications. It remains to be seen whether the securities regulators will in the future further specify the criteria by issuing relevant guidance.

## II. Revising the main board IPO listing criteria enhances market inclusiveness

The registration-based stock issuance system would significantly adjust the offering and listing criteria for main board IPOs. Based on the review philosophy of the registration-based system, diversified offering, and listing criteria have been set up to increase the inclusiveness of different types of enterprises. This change would avoid excluding from the main boards high-quality enterprises whose short-term performance is affected by changes in industry cycles, external factors, or the political and economic environment, or that have accumulated a large undistributed deficit in previous periods. At the same time, the listing requirements for red-chip enterprises and enterprises with differentiated voting rights arrangements are also clarified as follows.

### 1. Set up multiple financial indicators, profitability for three consecutive years is not required

Compared with the current main board IPO-related rules, the Draft Rules mainly focus on the financial indicator listing criteria.

The current main board IPO rules require enterprises that apply for listing on a main board to have positive net profit in excess of RMB 30 million accumulatively in the last three fiscal years prior to the application (calculated based on the lower amount before and after deducting non-recurring profit and loss). The Draft Rules set up three financial indicators for domestic enterprises to choose from when applying for a main board IPO, among which: (1) the first set of criteria mainly assess the applicant’s performance (profitability) and are similar to the current provisions, which require profitability for three consecutive years, set the threshold for the cumulative net profits for the past three years and the profit for the latest year, and raise the threshold for the amount of cumulative net cash flow or operating revenue for the last three years; (2) the second and third sets of criteria only require a positive net

profit in the latest year. In addition to the requirements of profitability in the latest year, the second set of main board criteria require market value, revenue, and net cash flow to reach a certain threshold, which is similar to the third set of criteria of the STAR Market. However, the requirements for each indicator are higher, reflecting the mature businesses and larger scale of enterprises listed on the main boards. The third set of main board criteria requires the enterprise’s market value and revenue to reach a certain threshold, which is similar to the fourth set of criteria of the STAR Market and the third set of criteria of the ChiNext Market, while it also requires higher market value and revenue indicators (and even higher than such requirements for the market capitalization and revenue of red chip enterprises that have not been listed on overseas stock exchanges to apply for domestic listing).

In addition, the Draft Rules would cancel existing main board requirements that include three consecutive years of profitability, no accumulated deficit at the end of the latest reporting period, and a maximum amount of intangible assets among net assets. Main board IPO applicants would no longer be affected by high accumulated deficits due to historical R&D investment or investments in market development.

**2. Further improve the main board listing criteria for red-chip enterprises and enterprises with differentiated voting rights arrangements**

In the Draft Rules, the exchanges integrate and add to the main board listing rules the relevant provisions on domestic listings of red chip enterprises, which further clarifies the specific criteria for the main board listing of red chip enterprises.

Moreover, for enterprises with differentiated voting rights arrangements, in addition to complying with relevant listing rules, the main board rules also draw on the relevant rules of the STAR Market and the ChiNext Market. The Draft Rules would raise the requirement of estimated market value/revenue, and add the requirement of positive net profit in the latest year, which fills in the blank in the existing rules that do not provide clear arrangements for the listing criteria of such enterprises.

After the above adjustments, red-chip enterprises and enterprises with differentiated voting rights will have a clearer path in terms of main board IPOs, which would be conducive to those enterprises to conform to the positioning of the main boards in applying for listing.

The following table shows a comparison of the revised main board listing criteria:

Criteria	Current rules	Draft rules
<b>Market value and financial indicators (domestic enterprises)</b>	An issuer must meet the following financial indicators: <ul style="list-style-type: none"> <li>■ Positive net profits in the each of the last three fiscal years, in excess of RMB 30 million accumulatively;</li> <li>■ The cumulative net cash flow from operating activities in the last three fiscal years exceeds</li> </ul>	An issuer must meet at least one of the following criteria: <ul style="list-style-type: none"> <li>■ The net profit in each of the last three fiscal years is positive and the cumulative net profit in the last three years is no less than RMB 150 million, net profit in the latest year is no less than RMB 60 million, the cumulative net cash flow generated by operating activities in</li> </ul>

Criteria	Current rules	Draft rules
	<p>RMB 50 million, or cumulative operating revenue exceeds RMB 300 million;</p> <ul style="list-style-type: none"> <li>■ No undistributed deficit at the end of the latest period.</li> </ul>	<p>the last three years is no less than RMB 100 million or the cumulative operating revenue is no less than RMB 1 billion;</p> <ul style="list-style-type: none"> <li>■ The estimated market value is no less than RMB 5 billion and the net profit in the latest year is positive, the operating revenue in the last year is no less than RMB 600 million, and the cumulative net cash flow generated by operating activities in the last three years is no less than RMB 150 million;</li> <li>■ The estimated market value is no less than RMB 8 billion and the net profit in the last year is positive, and the operating revenue in the last year is no less than RMB 800 million.</li> </ul>
<p><b>Market value and financial indicators (red-chip enterprises not yet listed overseas)</b></p>	<p>An issuer must meet the following criteria:</p> <ul style="list-style-type: none"> <li>■ Its audited main business income in the latest year must be not less than RMB 3 billion, and the enterprise's valuation must be not less than RMB 20 billion;</li> <li>■ It is be a high-tech enterprise that possesses intellectual property rights or know-how that have been independently researched and developed, enjoy internationally leading position and can obviously lead the development of important areas in China, and has obvious technological advantages; the proportion of its research and development personnel exceeds 30%; it has obtained more than 100 invention patents relating to its main business or at least one new drug approval document relating to its main business, or possesses core technologies with internationally advanced and</li> </ul>	<p>An issuer must meet at least one of the following criteria:</p> <ul style="list-style-type: none"> <li>■ The estimated market value is no less than RMB 20 billion, and the operating revenue in the latest year is not less than RMB 3 billion;</li> <li>■ It has rapid operating revenue growth, independent research and development, internationally leading technology, in a relatively advantageous position in industry competition, and the estimated market value is not less than RMB 10 billion;</li> <li>■ It has rapid operating revenue growth, independent research and development, and international leading technology, holds a relatively advantageous competitive position in the industry, and its estimated market value is not less than RMB 5 billion, and the operating revenue in the last year is not less than RMB 500 million.</li> </ul> <p>The "rapid growth of operating revenue" as specified in the preceding paragraph must meet one of the following criteria:</p> <ul style="list-style-type: none"> <li>■ If the operating revenue in the latest year is not less than RMB 500 million, the compound growth rate of the operating</li> </ul>

Criteria	Current rules	Draft rules
	<p>leading roles recognized by competent authorities. It relies on technological innovation and intellectual property rights to participate in market competition, with a comparative advantage in a competitive position, and the market share of its top product is within the top three. Its compound annual operating revenue growth rate is more than 30% in the last three years; its audited main operating revenue in the latest year is not less than RMB 1 billion, and its annual research and development investments account for more than 10% of the total income from its main business in the last three years. Exceptions may apply to an enterprise with important significance for national innovation-driven development strategies and strong development potential and market prospects.</p>	<p>revenue in the last three years must be more than 10%;</p> <ul style="list-style-type: none"> <li>■ If operating revenue in the latest year is less than RMB 500 million, the compound growth rate of the operating revenue in the last three years must be more than 20%;</li> <li>■ Affected by cyclical fluctuations of the industry and other factors; if the industry as a whole is in a downward cycle, the compound growth rate of operating revenue of the issuer in the last three years must be higher than the average growth level of comparable companies in the same industry during the same period.</li> </ul> <p>Red-chip enterprises in the research and development stage and those of great significance to the national innovation-driven development strategy are not subject to the above “rapid growth of operating revenue” requirement.</p>
<p><b>Market value and financial indicators (enterprises with differentiated voting rights arrangements)</b></p>	<p>The current main board listing rules do not specify the financial indicators for listing such companies</p>	<p>An issuer must meet at least one of the following criteria:</p> <ul style="list-style-type: none"> <li>■ Estimated market value of not less than RMB 20 billion, and the net profit in the latest year is positive;</li> <li>■ Estimated market value of not less than RMB 10 billion, the net profit in the latest year is positive, and the operating revenue in the latest year is no less than RMB 1 billion.</li> </ul>
<p><b>Asset requirement</b></p>	<p>At the end of the last period, intangible assets account for no more than 20% of net assets (after deducting land use rights, surface aquaculture rights and mining rights, etc.).</p>	<p>Asset requirement removed.</p>



### III. Unify the review procedures to improve efficiency and transparency

In terms of review procedures, main board IPO applications will be subject to registration procedures, i.e., the exchange is responsible for accepting the application and conducting a comprehensive review of compliance with the issuance and listing criteria and information disclosure requirements, and will report to the CSRC for registration after the review.

Specifically, the main board review rules would generally follow the review rules of the STAR Market and ChiNext Market, which specify:

- Full implementation of the registration-based stock issuance system in issuance review, the exchange is fully responsible for the review of issuances, listing and information disclosures, and registration with the CSRC. The CSRC is mainly responsible for securities issuance registration, coordination, supervision, and management, and strengthening and gradually realizing the functional transformation of the CSRC;
- improve the mechanism for connecting the exchange review process and the CSRC registration process by specifying that the exchange's review is under the supervision and inspection of the CSRC; when the exchange accepts an enterprise's IPO application, it will review and determine whether the enterprise meets the offering conditions, listing conditions, and information disclosure requirements and immediately report to the CSRC for guidance any material sensitive matter, material unprecedented circumstance, major public opinions, and evidence of a major violation of law identified from the review (the "four major issues");
- unify the application document standards of the main boards, the STAR Market, and ChiNext Market, simplify the application documents, and increase the requirements for application materials such as shareholder look-through verification documents and descriptions of compliance with board positioning;
- compared with the current approval system, the overall timeframe of the listing review is shortened, and important segments of the entire process are disclosed to the public; consultation and communication between enterprises, intermediaries, and review authorities are accepted from the pre-declaration to the post-review, strengthening the transparency of review and registration.

With the full implementation of registration-based stock issuance system, the functions of the exchanges and the CSRC are further clarified, and the CSRC will gradually become a coordinator and regulator with a more open and transparent review process. According to the Draft Rules, in addition to general supervision and guidance, project sampling, and integrity supervision, the CSRC will focus on the "four major issues" and the issuers' compliance with industrial policies and board positioning. The efficiency of listing reviews is expected to improve further with the transformation of the CSRC's role.

### IV. Other

#### 1. Further loosen the listing criteria on the ChiNext Market for unprofitable enterprises

When the SZSE launched the ChiNext Market reform and piloted the registration-based system,

although the IPO rules specified listing criteria for unprofitable enterprises, SZSE proposed a one-year transitional period arrangement for such criteria in its June 12, 2020 circular for the *SZSE Rules on Governing the Listing of Shares on the ChiNext Market*. The one-year transition period has now long expired, and the ChiNext Market has accepted no unprofitable enterprise's IPO applications under this standard. In addition, the current rules require positive net profit in the latest year for red-chip enterprises and enterprises with a differentiated voting rights arrangements.

The Draft Rules would remove the positive net profit requirement for the latest year from the ChiNext Market financial indicators applicable to red-chip enterprises and enterprises with a differentiated voting rights arrangements, which is consistent with the current STAR Market rules. Moreover, the SZSE, in its comments to the press in relation to the Draft Rules, expressed that it would "support eligible unprofitable enterprises to list on the ChiNext Board". We expect that after the reform is implemented, unprofitable enterprises will be able to list on the ChiNext Board, so that innovative and entrepreneurial enterprises that have not yet become profitable will have more options for listing domestically.

## **2. Accommodate the registration-based stock issuance system and further strengthen the information disclosure requirements and the duties of intermediaries**

The registration-based system, with information disclosure at its core, imposes stricter requirements on the quality of information disclosures and the duties of intermediaries. The Draft Rules would further strengthen the information disclosure requirements and the duties of intermediaries, requiring the disclosure of information in filing documents to be concise and clear, easy to understand, relevant, effective, and readable. In addition, duties that previously arose after an application was accepted would now become duties undertaken at the time of application, reinforcing the responsibilities of intermediaries. In addition, the duties of intermediaries would be further clarified, and sponsors and other securities service providers, such as lawyers and auditors, would be guided to perform their respective duties and cooperate with each other. A clear and rational mechanism for the division of duties will be more conducive to the intermediaries to concentrate their efforts in their specialized fields and perform their role as gatekeepers.

In addition, The Draft Rules do not include intermediaries being investigated as a condition for rejecting or suspending a review, which would avoid the circumstance where an applicant is indirectly implicated by the legal or compliance issues associated with other IPO projects.

## **3. Reform the issuance and underwriting system, optimize the main board trading rules**

The current registration-based system reform would generally unify the main rules and trading system for securities issuance and underwriting on the SSE and SZSE, and sets up differentiated voting arrangements according to the positioning of each board. In terms of underwriting securities issuances, each board would uniformly apply the basic provisions for pricing, placement, issuance procedures, information disclosure, etc., fully implement the pricing mechanism based on market-oriented inquiries, supplemented by direct pricing, and an investment value research reporting system would be introduced on the main boards. After the implementation of market-oriented inquiries on the main boards, the invisible ceiling restrictions on the main board P/E ratios are expected to break

and the main boards would no longer limit the price range within five trading days; the enterprise valuations will be left to the market.

## **Conclusion**

Since the registration-based stock issuance system was first piloted on the STAR Market in 2019, relevant listing rules have undergone continuous adjustment and improvement. This current reform is not only an achievement of the pilot registration-based stock issuance system over the past four years, but also the starting point for entering the era of registration-based issuances and continuous improvement of the listing supervision system. We will remain focused on the introduction of the subsequent formal rules and look forward to improved financing platforms and new development opportunities for more high-quality enterprises.

## 9. Highlights of Draft Refinancing Policies for Listed Companies

Author: Domestic Capital Markets Division

The refinancing policies for listed companies on the Shanghai and Shenzhen Stock Exchanges will be revised as a part of the full implementation of the registration-based stock issuance system reform, in addition to the reform of the IPO-related rules. Relevant rules include: the *Measures for Administration of Securities Issuance Registration by Listed Companies (Draft for Comment)* (the “**Draft Refinancing Measures**”) and the *Measures for Administration of the Pilot Project for Preferred Shares (Revision Draft for Comment)*, issued by the China Securities Regulatory Commission (“**CSRC**”) on February 1, 2023; the *Rules Governing the Review of Offering and Listing of Securities by Companies Listed on Shanghai Stock Exchange (Draft for Comment)* (the “**Draft SSE Refinancing Review Rules**”), issued by the Shanghai Stock Exchange (“**SSE**”); and the *Rules for Reviewing Stock Offering and Listing (Draft for Comment)* (the “**Draft SZSE Refinancing Review Rules**”), issued by the Shenzhen Stock Exchange (“**SZSE**”). This article will share the key points of the draft rules regarding the refinancing of listed companies.

### The revisions seek common ground while retaining differences

Based on the experience of the pilot registration-based system on the STAR Market and the ChiNext Market, the revisions of the relevant rules for the refinancing of listed companies seeks common ground while retaining differences on each board:

#### I. Unify CSRC and stock exchange rules

The Draft Refinancing Measures would comprehensively apply to listed companies on all boards. After its official promulgation and effectiveness, relevant rules on the refinancing of listed companies promulgated by the CSRC will be abolished.

Similarly, the Draft SSE Refinancing Review Rules and the Draft SZSE Refinancing Review Rules would generally follow the style and main institutional arrangements of the current listed company refinancing rules on the STAR Market and the ChiNext Market issued by the SSE and SZSE, respectively, and be applied to all boards. After the official promulgation and effectiveness of these draft rules, the corresponding current review rules for the STAR Market and the ChiNext Market will be abolished.

#### II. Set up general issuance criteria and procedures for all boards

Issuance criteria would be unified for companies listed on the main boards, STAR Market, and ChiNext Market with respect to issuing stocks to non-specific investors, issuing stocks to specific investors, and conditions for issuing convertible bonds. Except for the specific issuance criteria set by each market, the criteria and procedures would be the same for the issuance of stocks and convertible bonds by companies listed on the main boards, the STAR Market, and the ChiNext Market.

#### III. Set up differentiated issuance criteria based on the positioning of each board

The differentiated issuance criteria of each board are reflected in:

- In contrast to companies listed on the STAR Market and the ChiNext Market, listed companies on the main boards must be profitable in the last three fiscal years to allot shares, issue additional shares, or issue convertible bonds to non-specific investors. In addition, if a company listed on either of the main boards issues additional shares or convertible bonds to non-specific investors, the weighted average return on net assets in the last three fiscal years may not have fallen below an average of 6%, and the net profit is calculated based on the lower of either before or after accounting for non-recurring profits and losses.
- Compared with companies listed on the main boards and ChiNext Market, funds raised by the issuance of shares and convertible bonds by companies listed on the STAR Market would need to be invested in businesses in the field of scientific and technological innovation.

## **Further improve issuance criteria for the STAR Market and the ChiNext Market**

For companies listed on the STAR Market and the ChiNext Market, the issuance conditions stipulated in the Draft Refinancing Measures are basically the same as those stipulated in the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the STAR Market (for Trial Implementation)* and the *Measures for Administration of Securities Issuance Registration of Listed Companies on the ChiNext Market (for Trial Implementation)*. Further improvements would be made on this basis:

### **I. No substantial issuance criteria added for the STAR Market**

Compared with the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the STAR Market (for Trial Implementation)*, the Draft Refinancing Measures would further explicitly require that “except for financial enterprises, the proceeds raised shall not be for holding financial investments, and shall not directly or indirectly be invested in companies whose main business is to buy and sell securities.” Such restrictions on the use of proceeds have previously been required in the relevant regulatory Q&A of the CSRC, and there are no substantial issuance criteria added.

### **II. Issuance criteria reduced for the ChiNext Market**

Compared with the currently effective *Measures for Administration of Securities Issuance Registration of Listed Companies on the ChiNext Market (for Trial Implementation)*, the Draft Refinancing Measures would delete the requirement of positive net profit in the latest two years to issue securities for companies listed on the ChiNext Market (including stocks, convertible bonds, etc.) to non-specific investors, and would lower the requirements for companies listed on the ChiNext Market to issue securities to non-specific investors.

## **Simplify and optimize the issuance criteria for the main boards and introduce directional convertible bonds**

As the revisions to the Draft Refinancing Measures are based on the administrative measures for the issuance and registration of securities on the STAR Market and the ChiNext Market, the substantive

revisions for the main boards are reflected in the following points:

**I. Cancel the criteria related to dividends in the public issuance of stock**

Compared with the currently effective *Measures for Administration of Issuing of Securities by Listed Companies* on the main boards, the Draft Refinancing Measures would cancel the requirement that “the accumulated profits distributed in cash in the last three years shall be no less than 30% of the average annual distributable profits realized for the last three years.”

**II. Increase share allotment quotas and loosen the criteria for accumulated bond balances**

In the registration-based stock issuance system reform, the maximum number of allotted shares of companies listed on the main boards would be raised from 30% of the total share capital to 50%, and the proportion of the accumulated corporate bond balance not exceeding the net asset value at the end of the latest period after the issuance of convertible bonds would be raised from 40% to 50%, which would be in line with the existing rules for the STAR Market and ChiNext Market.

**III. Adjust the issuance criteria for major violations of law**

The Draft Refinancing Measures would adjust the major violations of law that would prevent listed companies from issuing securities to be consistent with those of the STAR Market and ChiNext Market.

**IV. Promote directional convertible bonds on the main boards**

The varieties of directional convertible bonds in the pilot registration-based stock issuance system for the STAR Market and the ChiNext Market have been tested in practice and have facilitated the refinancing of listed companies. This revision would apply and extend to the main boards, allowing companies listed on the main boards to issue directional convertible bonds for financing.

**Optimize the procedures for issuance review and registration**

**I. The main boards to adopt the registration-based stock issuance system**

After the full implementation of the registration-based stock issuance system, the review and registration procedures for securities issuance by companies listed on the main boards will be the same as those for the STAR Market and ChiNext Market. The stock exchanges will be responsible for accepting listed company securities issuance applications and conducting a comprehensive review mainly through making review inquiries to registrants. The review departments of the stock exchanges will determine whether a listed company’s issuance application meets the issuance criteria and information disclosure requirements and form a review opinion as to whether the listed company meets the issuance conditions and information disclosure requirements. If the exchange believes that the listed company meets the issuance conditions and information disclosure requirements, it will submit to the CSRC for registration a review opinion, the company’s registration application documents, and the relevant review materials. If the exchange believes that the listed company has failed to meet the issuance conditions or information disclosure requirements, it will terminate the review. After receiving the review opinions of the stock exchanges and relevant materials, the CSRC will perform the issuance registration procedures.

## II. Further optimize the issuance review and registration procedures

Compared with the current stock issuance and registration procedures of the STAR Market and the ChiNext Market, the optimization of the stock issuance and registration procedures in the Draft Refinancing Measures is reflected in:

- Establishing a request and reporting system for major matters

During the stock exchange review process, if there is discovered material sensitive matters, material unprecedented circumstances, major public opinions, or evidence of a major violation of law, it will be reported to the CSRC in a timely manner.

- Focus on industrial policies and the positioning of each board

The CSRC will, as of the date on which the stock exchange receives the registration application documents from the listed company, concurrently focus on whether the company is in compliance with national industrial policies and the positioning of the boards.

- The CSRC will perform the issuance registration procedures based on the review opinions of the stock exchanges

After receiving the review opinion and relevant materials, the CSRC will perform the issuance registration procedures in accordance with the law based on the review opinion. The CSRC will no longer look for omissions in the stock exchange's review, whether the review procedures complied with the provisions, or whether the listed company complies with the relevant provisions in significant aspects of issuance criteria and information disclosure requirements. However, where the CSRC discovers any new matter affecting issuance criteria during the registration period, it may require the stock exchanges to make further inquiries and form a review opinion on the new matter.

## III. Add new classification review provisions and expand the scope of the summary procedures

- At the stock exchange level, the Draft Refinancing Measures would add some new provisions to the classification review, promoting the CSRC classification review system on the main boards to the STAR Market and ChiNext Market. The Draft Refinancing Measures specify that when a listed company applies for issuing securities to specific investors and meets the conditions for classification review, the issuance and listing review department of the stock exchange may issue a review report without conducting review inquiries after performing the review procedures.
- Promote the summary procedures for the STAR Market and ChiNext Market to the main boards to facilitate the refinancing of listed companies.

## Adopt the registration-based stock issuance system for preferred share issuances

After full implementation of registration-based stock issuance reform, listed companies issuing preferred shares would be required to make a declaration to the stock exchanges, according to the *Measures for Administration of the Pilot Project for Preferred Shares (Revision Draft for Comment)*, the Draft SSE Refinancing Review Rules, the Draft SZSE Refinancing Review Rules, and the relevant comment drafts.

Issuance application, review, registration, issuance, and other relevant procedures would be subject to the registration-based stock issuance system and refer to the Measures for Administration of Securities Issuance Registration of Listed Companies and Measures for Administration of Issuing and Underwriting of Securities. The relevant examination and approval matters concerning the issuance of preferred shares by listed companies are included in the stock exchange's scope of examination and approval and the issuers of preferred shares will also be expanded to companies listed on the STAR Market or the ChiNext Market.

### **Clarify the application of relevant laws to red-chip enterprises**

The full implementation of the registration-based stock issuance system is intended to provide a broader space for the IPOs of red chip enterprises on the main boards, hence the Draft Refinancing Measures further clarify the legal application of refinancing by issuing shares and depositary receipts of red-chip enterprises after listing on the main boards, which is consistent with the current rules of the STAR Market and the ChiNext Market. Specifically, after the IPO of shares or depositary receipts of red-chip enterprises is listed on a main board, the STAR Market or the ChiNext Market, the refinancing by issuing shares will be subject to the provisions of the Measures for Administration of Securities Issuance Registration of Listed Companies concerning the issuance of shares by listed companies. Refinancing through the issuance of depositary receipts of newly added securities of red-chip enterprises as the underlying securities would be governed by the provisions of the issuance of shares by listed companies and the relevant provisions of the CSRC on depositary receipts in the *Securities Law of the PRC*, *Circular on Several Opinions on Launching Pilot Projects for the Domestic Issuance of Shares or Depositary Receipts by Innovative Enterprises*, the Measures for Administration of Securities Issuance Registration of Listed Companies, and the relevant provisions of the CSRC on the issuance of stocks by listed companies. In addition, when a red-chip enterprise issuing depositary receipts allocates overseas underlying stocks, the relevant plan and arrangement must ensure that depositary receipt holders actually enjoy rights and interests equivalent to those enjoyed by overseas underlying stockholders.

### **Impact of the registration-based system reform on listed company refinancing applications and reviews**

The launch of the full implementation of the registration-based stock issuance system would further optimize the procedures for the issuance review and registration (see above), it has no substantial impact on the listed companies' application and review process for refinancing on the STAR Market and the ChiNext Market. For companies listed on the main boards, according to the *Notice on Arrangements for the Transition Period of Relevant Administrative Licensing Items before and after the Full Implementation of the Stock Issuance Registration System*, issued by the CSRC on February 1, 2023:

- From February 1, 2023, the CSRC will continue to accept refinancing applications from companies listed on the main boards. Before the full implementation of the registration-based system, the CSRC will proceed with the administrative licensing for refinancing of companies listed on the main board in accordance with the current rules.
- Before the promulgation of the main rules of the registration-based system, if the refinancing



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application of a company listed on one of the main boards has passed the review of the CSRC, the CSRC will continue to carry out the follow-up procedures. From the date of the promulgation of the main rules of the registration-based system, if the refinancing application of the company listed on the main boards has been approved, and the underwriting work has not begun, the stock exchanges will carry out the subsequent underwriting supervision procedures.

- From the date of the promulgation of the main rules of the registration-based system, the CSRC will terminate its review of financings on the main boards and transfer the relevant materials to the stock exchanges. The CSRC will not process financing applications of listed companies on the main boards that have been accepted but have not yet been completed.
- Within ten working days from the date of the issuance of the main rules for the full implementation of the registration system, the stock exchanges will accept applications from companies under CSRC review for financing on the main boards. Ten working days after the release of the main rules for the full implementation of the registration system, the stock exchanges will begin to accept applications submitted by applicants for the main boards.

## Conclusion

The launch of the full implementation of registration-based stock issuance reform is being carried out simultaneously in terms of financing of listed companies, which promotes incremental reform and resource reform. We look forward to the finalization, introduction, and improvement of relevant systems and supporting rules to accelerate the financing efficiency of listed companies and improve the overall quality of listed companies.

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## ***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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