

China Securities Regulatory Commission Released Regulations for Filing-based Administration of Overseas Securities Offering and Listing by Domestic Companies

On 17 February 2023, the China Securities Regulatory Commission (**CSRC**) released a set of new regulations for the filing-based administration of overseas securities offering and listing by domestic companies incorporated in the People's Republic of China (**PRC**). The regulations come into effect on 31 March 2023. The regulations comprise six documents, namely the *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies* (境内企业境外发行证券和上市管理试行办法) (**Trial Measures**) and five supporting guidelines.

The salient terms of the Trial Measures are summarised below.

Direct and indirect overseas offering and listing activities

The Trial Measures stipulate that both direct and indirect overseas offering and listing activities are subject to regulations.

Direct overseas offering and listing by domestic companies in Singapore are covered under "S" shares listings, namely, the listing of companies limited by shares incorporated in the PRC, which are governed by the Direct Listing Framework introduced by the Singapore Exchange.

Indirect overseas offering and listing (**Indirect Listings**, generally referred to as the **red chip structure**) covered under the Trial Measures refers to listing by a non-PRC incorporated entity where the listing entity (**Issuer**) meets the following conditions:

- (a) 50% or more of the Issuer's operating revenue, total profit, total assets **or** net assets for the most recent completed financial year is derived from PRC subsidiaries of the Issuer; **and**
- (b) The Issuer's business activities are mainly conducted in the PRC, its main place of business is located in the PRC, **or** the senior management in charge of its business operations comprises mostly PRC citizens or are domiciled in the PRC.

The Trial Measures also apply to secondary listings of companies which already have a primary listing in the PRC or overseas and secondary offerings undertaken by listed companies.

Regarding the overseas listing *via* Variable Interest Entity (**VIE**) structures, the CSRC indicated that it will procure the views of the relevant competent departments and permit filing for the listing *via* VIEs which meet compliance requirements. In the Singapore context, it is already a requirement under Singapore Exchange's Listing Decision (LD-2018-02) published on 31 December 2018 that the Issuer should obtain the support of appropriate regulatory assurance to demonstrate the legality of the VIE structure.

Filing procedures

Pursuant to the Trial Measures, the Issuer must designate its main PRC operating entity to carry out the filing procedures with the CSRC by submitting relevant materials which include a filing report and a PRC legal opinion.

Applications for initial public offerings or listings in overseas markets or subsequent securities offerings and listings of an Issuer in overseas markets **other than** where it has offered and listed (namely dual or secondary listings) must be filed with the CSRC **within three working days after the relevant application is submitted overseas**. The relevant application is the submission of Section (A) of the Listing Admissions Pack to Singapore Exchange in relation to applications for listings in Singapore.

Subsequent fund raisings of an Issuer in the **same** overseas market where it has previously offered and listed securities must be filed with the CSRC **within three working days after the offering is completed**.

Where the filing documents are complete and in compliance with stipulated requirements, the CSRC will, within 20 working days after receiving the filing documents, conclude the filing procedure and publish the filing results on the CSRC website.

Arrangements for existing listed companies or companies applying for listing

Existing listed companies

Companies which are already listed overseas as at 31 March 2023 are not required to carry out any filing procedures until they undertake further fund raising activities or activities which require filing under the Trial Measures.

Companies currently applying for listing

Companies that have been approved by overseas regulators or stock exchanges as at 31 March 2023 (for instance, where a proposed listing application in Hong Kong market has passed the hearing of the Hong Kong Securities and Futures Commission, a proposed listing in the United States has obtained approval for registration from the US Securities and Exchange Commission and a proposed listing in Singapore has obtained the eligibility-to-list letter from the Singapore Exchange), but have not completed the offering and listing, will be subject to a **six-month** transitional period. This means that such companies must complete their offering and listing by 30 September 2023.

If, within the six-month transitional period, such listing applicants are: (a) required to undertake again the offering and listing procedures with the relevant overseas regulators or stock exchanges; or (b) fail to complete the offering and listing, they will be required to undertake the filing procedures under the Trial Measures.

Responsibilities of issue manager and underwriter

An overseas securities company that serves as an issue manager **or** lead underwriter for Indirect Listings must, within 10 working days after signing its first engagement agreement for such matters, undertake filing procedures with the CSRC and submit to the CSRC, no later than 31 January of each year, an annual report on its business activities associated with Indirect Listings in the previous year.

An overseas securities company that has entered into engagement agreements before 31 March 2023 must undertake filing procedures with the CSRC within 30 working days after 31 March 2023.

If the overseas offering and listing by a domestic company or a foreign securities company contravenes the Trial Measures, the CSRC may inform its regulatory counterparts in the overseas jurisdictions (e.g., the Monetary Authority of Singapore in the context of Singapore) of such contraventions *via* cross-border securities regulatory cooperation mechanisms.

The Trial Measures reflect a significant reform by the CSRC for the administration of overseas securities offering and listing by PRC domestic companies. It is still unclear whether the new “filing-based” regime will be procedural or involve substantive review by the CSRC, similar to the regime of the “no-objection letter” requirement from the CSRC in the early 2000s. Notably, the Trial Measures also impose obligations on foreign securities companies involved in Indirect Listings. Any listing aspirants considering undertaking a direct or indirect offering and listing (primary or secondary) in overseas securities exchanges should be mindful of the implications of, and take necessary steps to comply with, the Trial Measures.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:



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