THE INITIAL PUBLIC OFFERINGS LAW REVIEW

THIRD EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

THE INITIAL PUBLIC OFFERINGS LAW REVIEW

THIRD EDITION

Editor
David J Goldschmidt

THE LAWREVIEWS

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Joel Woods

SENIOR ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS
Sophie Emberson, Katie Hodgetts

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Helen Smith

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-014-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

A&L GOODBODY

ALLEN & GLEDHILL LLP

ALLEN & OVERY

BOWMANS

CHIOMENTI

DLA PIPER

FISCHER BEHAR CHEN WELL ORION & CO

HAN KUN LAW OFFICES

HENGELER MUELLER

LATHAM & WATKINS

MAPLES GROUP

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

NIEDERER KRAFT FREY LTD

PAKSOY

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

TRILEGAL

URÍA MENÉNDEZ

CONTENTS

PREFACE

Welcome to the third edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 18 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe and many are publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2018 marked a year of continued resurgence for many IPO markets. The number of 2018 IPOs and total proceeds raised were led by the Asia-Pacific exchanges, which accounted for almost 50 per cent of deals in terms of both number and deal volume. China alone was responsible for 307 IPOs valued at US$56.7 billion. Many other regions also experienced strong IPO markets in 2018. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2019 in terms of both global deal count and proceeds. The global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different among jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This third edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions, and serves as a guide for issuers and their directors and management.

David J Goldschmidt
Skadden, Arps, Slate, Meagher & Flom LLP
New York
March 2019

Chapter 3

CHINA

Chen Yang and Zhi Bin[1]

I INTRODUCTION

There are two primary exchanges in China, the Shanghai Stock Exchange (SHSE) and the Shenzhen Stock Exchange (SZSE). The SHSE consists of the Main Board and the forthcoming Technology Innovation Board (detailed draft rules (the Draft Rules) were released on 30 January 2019), whereas the SZSE consists of the Main Board, the Small and Medium Enterprises Board (the SME Board) and ChiNext (a board consisting mainly of high-technology companies).

Shares traded on the SHSE and SZSE that are settled in Chinese yuan are A-shares, whereas shares settled in foreign currency are B-shares. In practice, there are few (if any) B-share initial public offerings (IPOs) in China, as the regulatory framework for B-share IPOs is incomplete.

This chapter focuses on A-share listings. For the purposes of this chapter, 'China' excludes Hong Kong, Macau and Taiwan.

According to the 2017 Annual Report of the China Securities Regulatory Commission (CSRC), at the end of 2017, 1,872 companies were listed on the Main Board of the SHSE and the SZSE, 903 companies were listed on the SME Board and 710 companies were listed on ChiNext. The total market capitalisation of these listed companies was 56.71 trillion yuan, which was 68.56 per cent of China's total 2017 GDP.

The primary regulator of China's capital markets is the CSRC. The SHSE and SZSE are responsible for administering the CSRC's rules, and are empowered by the CSRC to enact rules under the CSRC's supervision.

IPO listings in China are currently subject to regulatory approval by the CSRC. Therefore, the approval system in China differs from the registration-based system in Hong Kong, the United States and other capital markets, though the proposed new Technology Innovation Board will purportedly have a registration-based system (see below). The CSRC determines whether a prospective issuer provided accurate and adequate disclosure in accordance with listing requirements. Prior to 2017, applicants faced long waiting periods (sometimes two to three years or even more) owing to administrative backlog and repeated requests for information. However, since 2017, the waiting periods have shortened to approximately nine months.

1 Chen Yang and Zhi Bin are partners at Han Kun Law Offices.

II GOVERNING RULES

i Main stock exchanges

As discussed in Section I, the SHSE consists of the Main Board and the forthcoming Technology Innovation Board, whereas the SZSE consists of the Main Board, the SME Board and ChiNext.

Main Board (SHSE and SZSE)

The Main Board of the SHSE primarily attracts established blue-chip companies such as state-owned enterprises. In recent years, however, the Main Board of the SHSE attracted private companies from industries other than traditional state-owned blue-chip companies.

SME Board

The SME Board targets small and medium-sized enterprises with shares in circulation of under 100 million. The listing requirements for the SME Board and the Main Board are nearly identical.

ChiNext

ChiNext was established on 30 October 2009 to support small and medium-sized enterprises, especially in the high-technology sector. Although the overall listing requirements for ChiNext are lower than the ones set forth for the Main Board and the SME Board, the CSRC generally exercises greater regulatory scrutiny, such as increasing the number of members on the issuance review committee, prolonging the sponsor's supervisory period and imposing more rigorous delisting rules.

Presently, there are only a few Chinese companies (primarily state-owned) that are dual listed in China and an overseas exchange (usually the Hong Kong Stock Exchange). Chinese companies are not prevented from pursuing dual listings after listing on a domestic stock exchange, though this would require approval from the CSRC.

Some Chinese companies choose to list on foreign exchanges in lieu of listing on a domestic exchange, such as the Hong Kong Stock Exchange, Nasdaq and the New York Stock Exchange (NYSE). Among foreign-listed Chinese companies, some choose to list overseas mainly for business reasons, such as avoiding profitability threshold requirements. Others choose to list overseas because of China's restrictions on foreign investment in certain industries. Particularly in the technology, media and telecommunications sectors, owing to regulatory restrictions and practice that effectively prevents controlling foreign ownership in a Chinese operating company, some issuers adopt foreign parent entities and list abroad using the variable interest entity (VIE) structure. However, joint ventures involving foreign ownership in a non-restricted sector are permitted to list on China's domestic exchanges.

Forthcoming Technology Innovation Board

President Xi Jinping, in his speech at the first China International Import Expo on 5 November 2018, announced that the SHSE will launch the Technology Innovation Board, which will adopt, among other prospective reforms, a registration-based system. On 30 January 2019, with only two months of preparation, the CSRC and the SHSE released the Draft Rules. They introduce a registration-based system and eased listing standards to accommodate qualified technology companies. In addition, the Draft Rules contain significant detail on execution procedures, such as listing and trading rules.

The Draft Rules may be considered a breakthrough in China's capital market for the following reasons:

a Removal of profit requirement: pre-profit technology industries such as information technology, high-tech manufacturing, new materials, new energy and environmental protection, along with pre-revenue bio-tech companies, may list on the Technology Innovation Board.

b Unweighted voting rights: the Technology Innovation Board permits, for the first time in the mainland capital markets, technology companies with unweighted rights to list.

c Red-chip companies may list: red-chip companies (those whose parent entity is incorporated outside mainland China and whose primary business activities are in China, including VIE structure companies), may apply for a public offering of its stock in mainland China or through the issuance of Chinese depository receipts (CDRs), though listing standards are higher (see below).

d Spun-off companies may list: the Technology Innovation Board permits, for the first time in mainland capital markets, spun-off technology companies to list.

The above reforms bring the Technology Innovation Board in line with offshore jurisdictions where fast-growing Chinese technology companies have opted to list in recent years, such as Hong Kong and New York. That said, the Draft Rules also contain more restricting delisting procedures whereby affected companies may be delisted without any suspension or cure period. The Draft Rules are available for public comment until the end of February. The market believes the first batch of applicants will submit applications to list on the Technology Innovation Board in the beginning of March at the earliest.

ii Overview of listing requirements

Presently, all listing applications are submitted to and approved by the CSRC, though the forthcoming Technology Innovation Board will have a registration-based system. If an applicant engages in a business subject to regulatory oversight by specific agencies, the CSRC will require such agencies to issue a no-objection letter in respect of the applicant.

Table 1 sets forth the main requirements for the Main Board, SME Board, ChiNext and the Technology Innovation Board. Tables 2a and 2b set forth the main requirements for red-chip companies. These companies must be qualified enterprises, whether they are listing stocks or CDRs, in addition to satisfying the requirements under the Draft Rules.

Table 1 Issuers incorporated in China

IPO requirements	Main Board and SME Board	ChiNext	Technology Innovation Board (the Draft Rules)
Issuer qualifications	A company limited by shares that is duly incorporated and validly existing in China.		
Business records	At least three years of continuous operations or as otherwise approved by the State Council (where a limited liability company is converted into a company limited by shares through the conversion of the entire original book value of its net assets, the term 'continuous operation' may start from the date the limited liability company was established).	At least three years of continuous operations (where a limited liability company is converted into a company limited by shares through the conversion of the entire original book value of its net assets, the term 'continuous operation' may start from the date the limited liability company was established).	

<table>
<tr><th>IPO requirements</th><th>Main Board and SME Board</th><th>ChiNext</th><th>Technology Innovation Board (the Draft Rules)</th></tr>
<tr><td>Profitability</td><td>• Annual aggregate net profit exceeding 30 million yuan in each of the past three fiscal years (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses);
• aggregate net cash flow over 50 million yuan, or aggregate revenue of over 300 million yuan, in each case for the past three fiscal years; and
• no unrecovered losses at the end of the most recent accounting period.</td><td>• Annual aggregate net profit of not less than 10 million yuan for the past two years (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses); or
• annual aggregate net profit of not less than 50 million yuan in the past year.</td><td>N/A</td></tr>
<tr><td>Pre-profit alternatives for the Technology Innovation Board only</td><td colspan="3">One of the following five thresholds (four of which do not have profitability requirements) where expected market value:
• (1) is not less than 1 billion yuan; net profit in the past two years is positive, and the aggregate net profit is not less than 50 million yuan, or (2) expected market value is not less than 1 billion yuan; net profit in the last year is positive; operating income is not less than 100 million yuan (net profit shall be calculated based on the lower net profit before and after deduction of non-regular profits or losses);
• is not less than 1.5 billion yuan; operating income in the past year is not less than 200 million yuan; and total R&D investment in the past three years accounts for not less than 15% of business income in the past three years;
• is not less than 2 billion yuan; operating income in the past year is not less than 300 million yuan; and net cash flow generated from business activities in the past three years is not less than 100 million yuan;
• is not less than 3 billion yuan; operating income in the past year is not less than 300 million yuan; and
• is not less than 4 billion yuan; significant business or products need to be approved by relevant governmental departments; significant market space and phased results; and investment from renowned investment institutions. Pharmaceutical applicants are required to obtain at least one approval for Phase II clinical trials for new drugs that are first rate. Other applicants are required to possess 'obvious technological advantages' and meet corresponding conditions.

Expected market value means total equity following the IPO multiplied by the offering price.</td></tr>
<tr><td>Assets</td><td>Proportion of intangible assets (after deduction of land use aquaculture, mining and similar rights) at the end of the most recent accounting period in net assets of ≤20%.</td><td>Net assets at the end of most recent accounting period of ≥20 million yuan and no uncovered losses.</td><td>N/A</td></tr>
<tr><td>Capital</td><td>Pre-listing capitalisation of ≥30 million yuan; or post-listing capitalisation of ≥50 million yuan.</td><td colspan="2">Post-listing capitalisation of ≥30 million yuan.</td></tr>
<tr><td>Major business</td><td>No significant changes in the past three years.</td><td>Only one major business; no significant changes in the past two years.</td><td>No significant changes in the past two years.</td></tr>
<tr><td>Directors and senior management</td><td>No significant changes in the past three years.</td><td colspan="2">No significant changes in the past two years.</td></tr>
<tr><td>Actual controller</td><td>No change in the past three years (the definition of 'actual controller' is based on several legally prescribed factors that are applied to each individual case based on the facts and circumstances of such case).</td><td colspan="2">No change in the past two years.</td></tr>
<tr><td>Internal control</td><td>• Effective internal control systems in all significant respects; and
• an unreserved internal control report issued by a certified accountant.</td><td colspan="2">• Effective internal control systems in all significant respects, proving the issuer's operational efficiency, legality and compliance, and the accuracy of its audit report; and
• an unreserved internal control report issued by a certified accountant.</td></tr>
</table>

IPO requirements	Main Board and SME Board	ChiNext	Technology Innovation Board (the Draft Rules)
Competition	The issuer's business must not compete with the business of the issuer's controlling shareholder, actual controller, or other enterprises controlled by such controlling shareholder or actual controller. The definition of 'controlling shareholder' and 'actual controller' are based on several legally prescribed factors that are applied to each individual case based on the facts and circumstances of such case. Although this item was officially removed in a 2015 revision of the listing rules on the condition that there is full disclosure of this item in the prospectus, in practice, the CSRC still devotes special attention to this item. Therefore, it is effectively still a listing requirement.		
Related-party transactions	No unreasonable related-party transactions; related-party transactions must be at arm's length and must not manipulate profits.	Related-party transactions must not significantly influence the issuer's independence or be unreasonable.	
Fund management	Rigorous fund-management procedures; the issuer's fund is not controlled by any controlling shareholder, actual controller or other enterprises controlled by any controlling shareholder or actual controller in respect of borrowing, the use of debt as compensation, advance payments or any other similar form.	Not a listing requirement, but required to be disclosed in the prospectus.	N/A
Tax	Taxes paid in accordance with law; no heavy reliance on tax preferences.	Not a listing requirement, but required to be disclosed in the prospectus.	N/A
Debt	No major credit risk; not a party to any major contingent liability such as a guarantee, litigation or arbitration that may adversely affect the issuer's continuous operation.	Not a listing requirement, but required to be disclosed in the prospectus.	No need to significantly rectify ownership of major assets, core technologies, trademarks, etc.; no major credit risk; not a party to any major contingent liability such as a guarantee, litigation or arbitration that may adversely affect the issuer's continuous operation.
Use of proceeds	Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business and investment projects.	Definitive plan for use of IPO proceeds; generally, IPO proceeds will be used for the principal business but not necessarily for investment projects.	N/A
Legal compliance	• In the past 36 months, no unauthorised direct or indirect public offering of shares, or if any of the above illegal practices are still currently in existence; and • no other material non-compliance in the past 36 months.	• In the past three years no unauthorised direct or indirect public offering of shares, or if any of the above illegal practices are still currently in existence; and • in the past three years, neither the issuer, its controlling shareholder nor its actual controller have committed a materially unlawful act that harms the legitimate rights and interests of investors and the public.	• The issuer's operations comply with laws and administrative regulations and national industrial policy; • in the past three years, neither the issuer, its controlling shareholders nor its actual controllers have committed the criminal offences of embezzlement, bribery, embezzlement of property, misappropriation of property or destruction of the order of the socialist market economy, nor have they committed any major offences involving national security, public security, environmental security, production security, public health security, etc.; and • in the past three years, neither the issuer, its controlling shareholder or its actual controller have committed a materially unlawful act that harms the legitimate rights and interests of investors and the public.
Other authorities' opinion	Subject to the opinions of the provincial government.	N/A	N/A

Table 2a Red-chip issuers: qualifying enterprises

Issuer qualifications	Large red-chip companies already listed overseas	Large unlisted red-chip companies
Expected market value/operating income/valuation	Expected market value is not less than 200 billion yuan.	Operating income is not less than 3 billion yuan in the past year; and valuation is not less than 20 billion yuan.
Alternatives	N/A	Accelerated operating income, independent R&D capability, leading international technology and advantageous market position.
Status	Issuer conforms to standards relating to national strategy, achieving core technology and market acceptance.	
Industry	Innovative enterprises that have achieved considered scale such as the internet, big data, cloud computing, artificial intelligence, software and integrated circuits, high-tech manufacturing, bio-tech and other high-tech industries, and strategic emerging industries.	

Table 2b Technology Innovation Board Rules for red-chip issuers

Requirements	Issuance of stock	Issuance of CDRs
Listing requirements	Be a qualifying enterprise (see Table 2a).	
	Satisfy the other threshold requirements under the Draft Rules.	• Basic listing requirements in Article 13 of the Securities Law of the People's Republic of China (2014 amendment); • complete and seamlessly operating organisation; • capacity to achieve profits continuously and sound financial status; • no false record in its financial statements over the past three years; no other major irregularity; and • any other requirements as prescribed by the securities regulatory authority under the State Council, which have been approved by the State Council. (The capacity to achieve profits continuously does not mean such profits have to be realised at the time of listing.)
Jurisdiction	The company law of the issuer, but higher standards will be applied for the purposes of investor protection.	
Disclosure	Full disclosure of any VIE structure, unweighted voting rights or other similar arrangement.	

To date, no red-chip issuer has listed in the mainland.

Compared with the NYSE, Nasdaq and the Hong Kong Stock Exchange, Chinese stock exchanges (except for the Technology Innovation Board) are unique in the following respect (however, as stated above, the Technology Innovation Board's reforms bring it in line with other international exchanges such as the Hong Kong Stock Exchange, NYSE and Nasdaq):

a Applicant eligibility: unlike the NYSE, Nasdaq and the Hong Kong Stock Exchange, A-share applicants have to be companies limited by shares that are incorporated in China. Therefore, foreign issuers (such as Hong Kong, US or Caymanian parent companies) cannot be listed on Chinese stock exchanges. However, a joint venture incorporated in China operating in a non-restricted industry where foreign investment is permitted may list on Chinese stock exchanges.

b Financial criteria: unlike the NYSE, Nasdaq and the Hong Kong Stock Exchange, each financial listing threshold requires the issuer's net profits to be positive.

c Review process: the CSRC currently still uses an approval (rather than a registration) system that requires substantive review of all issuers. As a result, review times tend to be relatively longer and susceptible to policy considerations.

d Board of supervisors requirement: A-share listed companies are required to have a board of supervisors consisting of at least three members. Employee representative supervisors may not be less than one-third of the board of supervisors. Directors and senior management may not concurrently be supervisors. The purpose of the supervisor is to oversee the activities of the board of directors and the senior management.

e Competition: the CSRC devotes special attention to analysing potential competition between the issuer, on the one hand, and its controlling shareholder, actual controller or the enterprises controlled by the controlling shareholder or actual shareholder on the other. Generally, mere disclosure of such potential competition in the prospectus will be insufficient and the absence of such competition is effectively still a listing requirement, even though this item was officially removed in the 2015 revision of the listing rules.

f Foreign investment restrictions: if the issuer conducts business in an industry where foreign investment is restricted or prohibited (according to law or in practice), the issuer may not list in China. The CSRC will not accept indirect control arrangements such as variable interest entities, unlike the NYSE, Nasdaq and Hong Kong Stock Exchange.

g Lock-up periods: the listing rules for Chinese IPOs specifically state that the controlling shareholder or actual controller is subject to a three-year lock-up period. All other shareholders are generally subject to a one-year lock-up period. This differs from other jurisdictions where lock-up periods are primarily determined by the underwriters and not by the listing rules. The length of the lock-up period is also longer compared with Hong Kong, where controlling shareholders are only subject to a six-month lock-up period.

iii Overview of law and regulations

The listing requirements for the Main Board (SHSE and SZSE) are set forth in the Administrative Measures for Initial Public Offerings and Listings of Shares. The listing requirements for ChiNext are set forth in the Administrative Measures on Initial Public Offerings of and Listing of Shares on ChiNext. All listings must comply with the requirements set forth by the Company Law, the Securities Law, and other specific rules and requirements of the applicable exchange.

With regard to the CSRC's application of these rules, there have been the following general trends.

Accelerated review

The CSRC's review schedule accelerated, starting in the middle of November 2016. In 2017, the CSRC's issuance examination committee reviewed 488 IPO applications – a much faster pace than in previous periods. In 2018, the CSRC maintained this accelerated pace. In fact, in practice, the time between pre-disclosure and approval in 2018 was approximately 15 months, shorter than the approximately 19-month wait in 2017.

Reduced quantity and success rate of applications

Although the CSRC has accelerated its review of prospective applications, its recent practice of only selecting high-quality applicants that meet its listing standards has reduced the overall success rate of applications.

In 2016, the CSRC's issuance examination committee reviewed 266 applications, of which 241 were successful, resulting in a pass rate of 90.6 per cent. However, in 2017, the CSRC's issuance examination committee reviewed 488 applications (83 per cent more than the previous year), of which 380 were successful, resulting in a pass rate of 77.87 per cent. In particular, from 17 October 2017 (the date when the new issuance examination committee took office) to 28 December 2017, the pass rate for IPO applications was at just 57.78 per cent, significantly lower than before.[2] In 2018, the CSRC's issuance examination committee reviewed 185 applications (a much lower number than previous years), of which 111 were successful, resulting in a pass rate of about 60 per cent,[3] which is the lowest in the past five years.

Restructuring of Chinese companies for the purposes of a Chinese listing

Chinese companies that originally had parent companies outside China have restructured in order to list in China. One common restructuring involves the removal of offshore entities under the variable interest entity structure.

In February 2015, the CSRC approved Baofeng's IPO application in what was regarded as a landmark case, involving a variable interest entity restructuring. Since May 2015, several Chinese companies with variable interest entity structures that were formerly listed abroad have privatised and restructured for onshore re-listings through an IPO or reverse merger. In December 2017, the CSRC's mergers and acquisitions examination committee conditionally agreed to Qihoo 360's reverse merger listing on the Main Board of the SHSE. Qihoo 360's reverse merger listing was valued at over 50 billion yuan.

The restructuring of variable interest entities for businesses that operate in a restricted or prohibited sector (according to law or in practice) involves the buyout of foreign shareholders who may not (as a result of such restrictions or prohibitions) hold equity stakes in the China-based issuer. In the context of a Chinese company that is already listed on a foreign exchange, this process requires the privatisation of the present issuer.

Prior to 2018, in light of the CSRC's accelerated review timetable and valuations that were generally higher than those overseas, some Chinese companies with offshore structures chose to privatise for the purposes of listing in mainland China. However, in 2018 there were fewer such instances owing to the low pass rate and the downturn in the A-shares market generally.

The introduction of the Technology Innovation Board may lead to more restructurings owing to more technology companies qualifying for listing as a result of the Technology Innovation Board's reforms. Established existing offshore incorporated red-chip companies may also list directly on the Technology Innovation Board.

Preferences for certain applicants

On 9 September 2016, the CSRC promulgated the Opinions on the Strategy for Capital Markets to Function and Serve Disadvantaged Districts. These measures provide accelerated review for enterprises located in disadvantaged districts of the country.

The eligibility requirements are as follows:

a being registered and having an operating address in a designated district; and having at least three years of business records and tax payments; or

b being registered in a designated district; having paid at least 20 million yuan in income tax in the past year; and committing not to change its registered address for more than three years after its IPO.

2 Prior to 17 October 2017, the issuance examination committee consisted of two different committees, one for the Main Board and the SME Board, and one for ChiNext. From 17 October 2017 onwards, these two committees were combined into one committee.

3 Based on public data of the CSRC.

Jiyou New Material Co, Ltd (182 days),[4] Tibet GaoZheng Explosive Co, Ltd (less than 11 months) and Tibet Aim Pharm Inc (less than nine months) are three recent examples of successful listings of issuers who received accelerated review owing to their location in disadvantaged districts. This accelerated review period is much shorter than those for ordinary applicants, who sometimes have to wait for two years or more for a final decision.

These recent success stories have prompted a few potential applicants to change their registered or operating addresses to eligible districts for the purposes of qualifying under the measures. However, these measures may be subject to discretionary interpretation by the authorities, requiring shareholders to carefully track regulatory developments. On 29 December 2017, the CSRC responded to the Proposal on the Extension of the CSRC's IPO Preference to Disadvantaged Districts that such preferences for applicants from the disadvantaged districts will be extended to 2025, and the Opinions on the Strategy for Capital Markets to Function and Serve Disadvantaged Districts will remain effective for a certain period.

III THE OFFERING PROCESS

i General overview of the IPO process

Listing in China involves steps that are common in other jurisdictions (due diligence, document preparation, including the prospectus), as well as steps that are unique to China (pre-listing review, conversion from a limited liability company to a company limited by shares, the CSRC approval). Below is a brief overview of the IPO process in China. The time frames set forth in the table reflect common practice. Specific time frames for individual applicants may vary from the ones set forth in the table. The time frames for the Technology Innovation Board are presently unknown, but presumably will be faster owing to its registration-based system.

<table>
<tr><th>Step</th><th colspan="2">Particulars</th><th>Timetable</th></tr>
<tr><td>Due diligence</td><td colspan="2">The sponsor, auditors, legal advisers and other stakeholders conduct due diligence of the issuer, set IPO terms (such as the target amount to be raised), advise the issuer on the IPO process and assist the issuer in complying with IPO requirements.</td><td>T-90 days*</td></tr>
<tr><td>Restructuring</td><td colspan="2">The issuer is restructured into a company limited by shares (as required under law); stakeholders prepare a restructuring plan, audit and appraise the issuer's assets, and prepare sponsor agreements and the issuer's articles of association; the issuer executes the restructuring plan and establishes relevant internal departments in accordance with listing rules.</td><td>T-45 days</td></tr>
<tr><td>Pre-filing review</td><td colspan="2">The local counterpart of the CSRC conducts pre-listing guidance work.

Not applicable for the Technology Innovation Board under the Draft Rules.</td><td>T-15 days</td></tr>
<tr><td>Filing</td><td>All boards except the Technology Innovation Board: the sponsor files the IPO application documents with the CSRC; once the CSRC states the application documents are complete, the CSRC decides whether to accept the filing within five business days.</td><td>The Technology Innovation Board (the Draft Rules): the sponsor files the IPO application documents with the SHSE; once the SHSE states the application documents are complete, it has five business days to decide whether to accept the filing.</td><td>T</td></tr>
</table>

4 Review period calculations in this section start on the date the issuance examination committee accepts the application and end on the date the issuance examination committee approves the application.

<table>
<tr><th>Step</th><th colspan="2">Particulars</th><th>Timetable</th></tr>
<tr><td>CSRC procedures</td><td>All boards except the Technology Innovation Board:
• Acceptance of the application from the CSRC;
• pre-disclosure;
• feedback;
• face-to-face meeting;
• reply to the CSRC's feedback;
• pre-disclosure updates;
• preliminary review;
• examination of selected disclosures (if any);
• attendance of the issuance examination committee meeting;
• reply to the issuance examination committee's questions or requirements (if any);
• sealing of IPO application-related documents;
• post-meeting review by the issuance examination committee; and
• obtaining of official approval and issuance.</td><td colspan="2">Technology Innovation Board (Draft Rules):
• Acceptance of the application from the SHSE
• Pre-disclosure
• First round of inquiries
• Face-to-face meeting (if necessary)
• Feedback
• Multiple rounds of inquiries
• Reply to the SHSE's feedback
• Consultation regarding industry issues
• Face-to-face inquirers (if necessary)
• A department of the SHSE issues the audit report
• Pre-disclosure
• Attend the issuance examination committee meeting
• Hearing
• Release issuance examination committee's opinion
• SHSE issues opinion
• Report to the CSRC and obtain its official approval
• Pre-disclosure updates
• Disclosure of the prospectus.</td></tr>
<tr><td>Preparation by the exchange</td><td colspan="3">• Approval from the CSRC;
• negotiation with traders about stock abbreviation, stock code, etc;
• submission of documents to the relevant exchange;
• amendment registration with the Administration for Industry and Commerce; and
• listing and trading on the relevant exchange.</td></tr>
<tr><td>Offering**</td><td colspan="2">• Publication of the prospectus;
• offline price enquiries;
• offline subscriptions;
• publication of online announcements, online offerings;
• online subscriptions;
• freezing of capital commitment;
• capital verification;
• lottery;
• release of capital commitment; and
• share registration.</td><td>

T'-1***
T'
T'
T'+1
T'+2
T'+3
T'+4</td></tr>
<tr><td>Listing****</td><td colspan="2">• Publication of the prospectus;
• listing of the application;
• listing of the review;
• supplementary listing application;
• approval;
• notice;
• announcement; and
• listing.</td><td>
T"-1*****
T"-1–T"+6
T"+6
T"+6–T"+10
T"+10
L-5–L-1†
L</td></tr>
<tr><td colspan="4">* T refers to the date when the CSRC accepts the IPO application. Days are calendar days.
** There is some difference between the specific time frames of the SZSE and SHSE, and this part sets forth the common practice for the SZSE as an example.
*** T' refers to the date of online subscriptions. Days are calendar days.
**** There is some difference between the specific time frames of the SZSE and SHSE, and this part sets forth the common practice for the SZSE as an example.
***** T" refers to the date that the relevant exchange accepts the listing application.
† L means the listing date. Days are calendar days.</td></tr>
</table>

The above table may not apply to the Technology Innovation Board in practice. Official policies and market practices will govern its procedures and timelines.

ii Pitfalls and considerations

Under the current IPO process (except for the Technology Innovation Board), the CSRC will conduct a thorough, substantive review of all IPO application documents. In recent years, the CSRC has raised mainly the following issues with respect to unsuccessful applicants:

a failure to satisfy qualification requirements;

b failure to satisfy sustainable profitability requirements;

c competition involving the controlling shareholder, actual controller or other enterprises controlled by such controlling shareholder or actual controller;
d use of proceeds-related issues;
e disclosure issues;
f corporate governance issues;
g compliance issues;
h finance and accounting issues; and
i defective reports issued by advisers.

This is not an exhaustive list of reasons, and one factor may not necessarily be decisive in an application's denial. However, they serve as a useful guide for prospective issuers.

iii Considerations for foreign issuers

As stated above, prior to the launch of the Technology Innovation Board, an issuer must be a company limited by shares incorporated in China. Accordingly, non-Chinese corporate bodies may not list on Chinese stock exchanges. In 2011, there were reports that the SHSE would create a board for qualified foreign issuers, although there have not been follow-up reports, specific timelines or plans in relation to such board. However, these restrictions do not prevent joint ventures with foreign ownership that do not operate in a restricted or prohibited industry from listing in China. Established offshore incorporated red-chip companies may list on the Technology Innovation Board.

IV POST-IPO REQUIREMENTS

Listed companies in China are subject to continuous disclosure requirements, including regular and *ad hoc* reporting. Generally, regular reporting includes the annual report, biannual report and quarterly reports. *Ad hoc* reporting is required when listed companies encounter significant events or shareholding changes (e.g., over 5 per cent shareholding, change in shareholding of directors or senior management). Tender offer rules also apply for shareholders who acquire more than 30 per cent of the issuer's shareholding after listing.

V OUTLOOK AND CONCLUSION

The most significant change in China's domestic IPO market in 2018 was the lower success rate of applicants. We have noticed recently that the CSRC does not merely focus on an applicant's financial performance and sustainable profitability, but will also pay more attention to its internal controls and the transparency, authenticity and accuracy of its disclosures. However, more rigorous scrutiny may lead to more disciplined and higher quality applicants. The central government's recent emphasis on the capital market's importance in the real economy, along with the Technology Innovation Board, which is currently set to launch in early 2019, means IPO activity in the A-shares market may rise in 2019.

Appendix 1

ABOUT THE AUTHORS

CHEN YANG

Han Kun Law Offices

Ms Chen's practice focuses on capital markets, mergers and acquisitions, and venture capital and private equity. She has helped clients establish company structures, conduct due diligence investigations and draft related legal documents. Ms Chen has represented many Chinese and international clients in a wide variety of cross-border transactions in different industries such as TMT, education, real estate and energy.

ZHI BIN

Han Kun Law Offices

Mr Zhi specialises in Chinese and non-Chinese listings, restructuring and reorganisation, mergers and acquisitions, venture capital and private equity, and foreign direct investment. He applies his knowledge of, and experience with, Chinese industry policy to assist clients in capital operations, financial planning, investment and project management. His clients include large state-owned enterprises and commercial banks, multinational corporations and leading high-growth enterprises. His practice covers a wide range of industrial sectors such as banking, insurance, infrastructure, construction, mining, energy, healthcare, biotechnology and pharmaceuticals.

HAN KUN LAW OFFICES

9/F, Office Tower C1
Oriental Plaza
No. 1 East Chang An Ave
Beijing 100738
China
Tel: +86 10 8525 5500
Fax: +86 10 8525 5511 / 5522
yang.chen@hankunlaw.com
bin.zhi@hankunlaw.com
www.hankunlaw.com

Law
Business
Research

ISBN 978-1-83862-014-1