

Legal Commentary

December 28, 2021

HANKUN
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BEIJING | SHANGHAI | SHENZHEN | HONG KONG

Overseas IPOs (Part I): Rules Based Filing System

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On December 24, 2021, the China Securities Regulatory Commission (“**CSRC**”) released the *Administrative Provisions of the State Council Regarding the Overseas Issuance and Listing of Securities by Domestic Enterprises* (the “**Administrative Provisions**”) and the *Measures for the Overseas Issuance of Securities and Listing Record-Filings by Domestic Enterprises* (Draft for Comments) (the “**Filing Measures**”), both of which have a comment period that expires on January 23, 2022. The Administrative Provisions and Filing Measures regulate the system, filing management, and other related rules in respect of the direct or indirect overseas issuance of listed and traded securities by “domestic enterprises”. As analyzed below, the Administrative Provisions and Filing Measures apply to PRC enterprises with Cayman parent entities and /or variable interest entity structures.

For a period of time, especially in the past six months, market participants such as listing applicants, listed companies, professional advisers, and PRC and non-PRC investors alike have paid close attention to the reform and improvement of the regulatory system in respect of the overseas issuance of listed and traded securities by domestic enterprises. The market and these participants expected the PRC to issue rules and regulations quickly to further clarify requirements and procedures. The Administrative Provisions and Filing Measures provide directional guidance to the PRC's reform plan for the supervision of overseas listings. They play a positive role in setting the rules of the road to allow PRC enterprises to make their own choices on listing location and particulars, to achieve stable and healthy development.

This newsletter summarizes the Administrative Provisions and Filing Measures' regulatory requirements and filing procedures in respect of the overseas issuance of listed and traded securities by domestic enterprises, and is for reference only.

Background of the methods of overseas listing and the supervisory reform system

The current regulatory regime for the overseas issuance of listed securities by domestic enterprises is primarily set forth in the Special Provisions of the State Council on the Overseas Offering and Listing of Securities by Companies with Limited Liability (Order No. 160 of the State Council) issued in 1994, which was formulated when the PRC's capital markets was in its infancy. These rules have fallen behind market

practice. In December 2019, the newly revised Securities Law of the PRC clarified that **direct and indirect** overseas issuances and listings should comply with the relevant regulations of the State Council.

For PRC enterprises, there have always been two methods of accessing capital markets outside of Mainland China, one of which was direct and one of which was indirect, but the existing regulatory framework prior to the issuance of the Administrative was very different for both.

1. A “direct” issuance and listing of securities by a domestic enterprise refers to the issuance of overseas securities that are listed and trading by a company limited by shares incorporated in the PRC. This includes “H” shares (i.e. PRC entities issuing public shares on the Stock Exchange of Hong Kong), “N” shares (i.e. PRC entities issuing public shares on U.S. exchanges) and “S” shares (i.e. PRC entities issuing public shares on the Stock Exchange of Singapore). This type of “direct” listing has always required the dual review of both PRC regulators and the regulators of the place of listing.

For example, in a typical “H” shares listing, the applicant is a company limited by shares, the applicant first submits an application to the CSRC in accordance with its requirements. The CSRC first issues an acknowledgement of receipt commonly known as the “**Initial Pass**”. The applicant then applies to list with the Stock Exchange of Hong Kong, and then receives an approval from the CSRC commonly known as the “**Final Pass**”, after which it can list on the Stock Exchange of Hong Kong.

2. An “indirect” issuance and listing of securities by a domestic enterprise refers to the overseas listing of an enterprise whose primary business activities are in the PRC, using a non-PRC parent as the issuer, where the listing is based on the equity, assets, income, or other similar rights and interests of PRC entities (the “**Red-Chip Model**”). The Red-Chip Model is divided as follows:

(1) **Large Red-Chips:** A “large” red-chip exists where the issuer (i.e. a non-PRC entity issuing listed securities) is established and/or controlled by a PRC entity. The *Notice of the State Council on Further Strengthening the Administration of Offering and Listing of Shares Overseas* (the “**97 Red Chip Guidelines**”) applies where a PRC enterprise’s assets are transferred to a non-PRC non-listed entity established or controlled by a PRC enterprise that then intends to list, or a PRC enterprise’s assets are first transferred to a non-PRC non-listed entity established by a PRC enterprise and then transferred to another non-PRC non-listed entity established or controlled by a PRC enterprise that intends to list. Pursuant to the 97 Red Chip Guidelines, the required governmental approvals and registrations include, but are not limited to, approval by the provincial People’s government or the relevant competent department of the State council, the approval of the CSRC (if necessary) and the approval or filing with other regulatory authorities such as the National Development and Reform Commission and the local Ministry of Commerce. Due to the complexity of the supervisory requirements, few applicants in the market have achieved an overseas listing through the Large Red-Chip structure.

(2) **Small Red-Chips:** A “small” red-chip exists where the issuer (i.e. a non-PRC entity issuing listed securities) is established and controlled by a PRC natural persons. Such PRC natural persons transfer the PRC and non-PRC assets, income, or other similar rights and interests (including by way of direct shareholding or a control model via a variable interest entity structure) to a non-PRC entity that intends to list outside of Mainland China. Under the current regulatory framework prior to the

Administrative Provisions and Filing Measures, there was less PRC supervision of this structure. Namely, the PRC issues mainly involved the establishment of overseas special purpose vehicles by PRC natural persons and return investment registration pursuant to Circular 37 of the State Administration of Foreign Exchange and any overseas direct investment approvals required by domestic investors to take shares in the non-PRC parent. Accordingly, the procedures for overseas listings of Small Red-Chips were comparatively more flexible and convenient as compared to Large Red-Chips.

Key points for the regulation of overseas offerings and listings: centered on “filing”

The overseas listings regulatory reform is based on the concept of a “filing” based system.

The Administrative Provisions specify that the CSRC has regulatory authority over the “overseas securities offering and listing by domestic enterprises”, and requires “domestic” companies to complete filing procedures with the CSRC if they wish to list overseas. The Administrative Provisions also contain regulatory red lines for overseas offerings and listings by “domestic” companies.

The Filing Measures provide supporting rules for the Administrative Provisions by specifying the primary filing procedures for overseas offerings and listing by “domestic” companies.

I Uniform regulation for the “overseas offerings and listings by domestic enterprises”

The Administrative Provisions specify that its jurisdiction extends to the “overseas offering and listing by domestic enterprises”, whether directly or indirectly. The Administrative Provisions specify that the CSRC has regulatory authority over the “overseas securities offering and listing by domestic enterprises”, and requires “domestic” companies to complete filing procedures with the CSRC if they wish to list overseas. The Administrative Provisions also contain regulatory red lines for overseas offerings and listings by “domestic” companies (set forth below).

With respect to the meaning of the phrases “direct” and “indirect”, as stated above, the term “direct” means an overseas offering and listing made by an issuer that is a company limited by shares incorporated in Mainland China, while the term “indirect” means an overseas offering and listing made by an issuer not incorporated in Mainland China, but where the offering is based on the underlying equity, assets, earnings, or other similar rights of a Mainland China company whose primary operations are in Mainland China.

With respect to the meaning of the phrase “overseas”, as the Administrative Provisions fall under the umbrella of the Securities Law of the PRC, the definition of “overseas” should be consistent with the definitions for the phrases “in/outside China”, “exit/enter China” and other related phrases in the Securities Law and its implementation rules and other existing laws and regulations¹. In other words, the term “overseas” typically includes Hong Kong.

¹ For example, under Article 89 of the *Exit and Entry Administration Law of the People’s Republic of China*, exit refers to leaving Mainland China for other countries or regions, the Hong Kong Special Administrative Region or the Macao Special Administrative Region, or Taiwan. Entry refers to entering Mainland China from other countries or regions, the Hong Kong Special Administrative Region or the Macao Special Administrative Region, or Taiwan.

In addition, the Administrative Provisions specify that its jurisdiction extends to entities controlled by domestic listed companies that intend to list outside of Mainland China. Furthermore, the Administrative Provisions clearly specify that its jurisdiction extends not only to listed shares, but also depository receipts, convertible corporate bonds, or other equity instruments.

Put another way, the different offering and listing models, such as IPOs, DPOs, RTOs, and SPACs, all will be subject to the CSRC's jurisdiction under the Administrative Provisions.

II Regulatory red lines for overseas offerings and listings by domestic enterprises

According to Article 7 of the Administrative Provisions, an overseas offering and listing is prohibited under any of the following circumstances: (1) if the intended securities offering and listing is specifically prohibited by national laws and regulations and relevant provisions (*For example, the Opinions of the General Office of the CPC Central Committee and the State Council on Further Reducing Burdens of Homework and Off-campus Training on Students at the Compulsory Education Level clearly provides that, all curriculum-based tutoring institutions are prohibited from pursuing financing by a public listing, and are strictly prohibited from receiving investment*); (2) if the intended securities offering and listing may constitute a threat to or endangers national security as reviewed and determined by competent authorities under the State Council in accordance with law (*For example, if the competent authorities under the State Council determines the existence of such national security impact after a review pursuant to the National Security Law, Cybersecurity Law, Data Security Law, Measures for Cybersecurity Reviews, or other provisions*); (3) if there are material ownership disputes over the equity, major assets, and core technology, etc. of the issuer; (4) if, in the past three years, the domestic enterprise or its controlling shareholders or actual controllers have committed corruption, bribery, embezzlement, misappropriation of property, or other criminal offenses disruptive to the order of the socialist market economy, or are currently under judicial investigation for suspicion of criminal offenses, or are under investigation for suspicion of major violations; (5) if, in past three years, directors, supervisors, or senior executives have been subject to administrative punishments for severe violations, or are currently under judicial investigation for suspicion of criminal offenses, or are under investigation for suspicion of major violations; (6) other circumstances as prescribed by the State Council.

III Summary of the key points of the “filing” system

The Administrative Provisions established the “filing” based system, while the Filing Measures further specify the procedural requirements for a filing, as follows:

1. A filing for an initial public offering and listing

Where a domestic enterprise intends to directly offer and list securities in an overseas market, it is required to complete the filing obligations itself. Where the domestic enterprise intends to indirectly offer and list securities in an overseas market, the filing obligation is with a major operating entity incorporated in Mainland China.

The Filing Measures adopt an “ex-post filing mechanism” where the filer completes its filing obligation within 3 working days after it submits its listing application to the regulator in the place of intended

listing.

Where the issuer intends to list securities in multiple overseas jurisdictions or by way of reverse merger or SPAC, the filer is also required to complete filing obligations in compliance with the requirements for an initial public offering and listing.

2. The particulars and process for a “filing” for an initial public offering and listing

The Filing Measures set forth the requirements for the filing to be submitted to the CSRC in different scenarios. The required filing materials for an initial public offering and listing should include at least the following: record-filing report and related undertakings; compliance certificate from the primary regulator of the applicant’s business; filing or approval documents (if applicable); security assessment opinion issued by related departments (if applicable); PRC legal opinion; prospectus.

- With respect to the “compliance certificate from the primary regulator of the applicant’s business and filing or approval documents (if applicable)”, we understand they are different from the compliance requirements of the listing rules of the Stock Exchange of Hong Kong. We tend to believe that these requirements are for specially regulated industries where a no-objection certificate from the regulator is required prior to submitting a listing application. However, the specific requirements still need to be clarified in subsequent implementation rules.
- With respect to the “security assessment opinion issued by related departments (if applicable)”, we believe they mainly cover regulatory red line requirements that overseas issuances and listings must not endanger national security, and is consistent with a series of policies recently issued and proposed by the Cyberspace Administration of China and other regulators responsible for data security.
- With respect to the “PRC legal opinion and prospectus”, the style and content must meet the requirements of the regulators of the place of proposed listing. As to the CSRC, how to demonstrate an overseas issuance and listing does not cross any of the regulatory red lines stipulated in Article 7 of the Administrative Provisions, as well as the requirements for any writing methods, language, style, disclosure requirements and the like, are all matters where more detailed guidance from the CSRC is required.

If the filing materials are complete and fulfil requirements, the CSRC will issue a filing notice within 20 business days and publish it on its website. If the CSRC believes that the information in the application materials is incomplete or insufficient, it will require the applicant to provide supplemental explanations. Furthermore, based on the materials submitted by the applicant, the CSRC may consult other regulators on an as needed basis, and such consultations are not counted towards the time limit for feedback. The status of those consultations will be reported back to the applicant in a timely way. If the applicant intends to submit a confidential or non-public filing overseas, the filing procedures under the Filing Measures are made to a system created by the CSRC, and the applicant can apply to the CSRC to postpone any release of the status of the filing application.

3. Securities service providers subject to regulation

The Administrative Provisions requires all securities companies and service institutions engaged in the overseas issuance and listing of securities of domestic enterprises to be subject to regulation and management in accordance with the law. The Filing Measures provide that overseas securities companies engaged in the sponsoring business for overseas issuances and listings of domestic enterprises, or who act as the lead underwriter, to complete a filing with the CSRC within 10 business days from the date they first engage in the relevant business. Furthermore, by January 31 of each year, they are also required to submit to the CSRC a status report on their business in the past year in respect of the overseas issuance and listing of securities of domestic enterprises.

IV Filing and reporting requirements after an overseas listing

After completing the filing procedures for an overseas initial public offering and listing, for the purposes of implementing and strengthening the CSRC's supervision, issuer will now need to comply with continuous filing and reporting requirements after such offering and listing, including the following:

- A reporting obligation in respect of a material event completed after the completion of an overseas offering and listing, which arose prior to such offering and listing;
- Filing for follow-on offerings after the initial offering and listing;
- Filing for share exchanges where by the issuer issues securities to acquire assets;
- A reporting obligation for material events after the initial offering and listing.

We note that the issuance of public bonds by overseas listed entities is currently regulated by the National Development and Reform Commission through a filing and registration management system. Accordingly, listed companies with red-chip structures have to complete the filing procedures with the National Development and Reform Commission. However, the Filing Measures also include in their regulatory scope the issuance of overseas “debt securities”. How these two systems are reconciled requires urgent action from regulators through the introduction of measures.

V Legal liabilities specifically prescribed, which increase the consequences of non-compliance

The Administrative Provisions clarify that the first actor responsible for compliance for and overseas issuance and listing of a domestic enterprise is the domestic enterprise itself. With respect to the domestic enterprises, non-compliance with the Administrative Provisions or an overseas listing completed in breach of them may result in a warning or a fine of 1-10 million RMB. If the circumstances are serious, they may be ordered to suspend their business or suspend their business pending rectification, or their permits or businesses license may be revoked. Furthermore, the controlling shareholder, actual controllers, directors, supervisors, and other legally appointed persons of the domestic enterprises may be warned, or fined between 500,000 - 5 million RMB either individually or collectively.

If, during the filing process, the domestic enterprises conceal important factors or the content is materially false, and securities are not issued, they are subject to a fine of 1-10 million. If the

securities have been issued, the domestic enterprise is subject to a fine of 10-100% of the listing proceeds. With respect to the controlling shareholder, actual controllers, directors, supervisors, and other legally appointed persons, they are subject to a warning and fines between 500,000 RMB and 5 million RMB, individually or collectively.

Securities companies and securities service providers that provide services for the overseas issuance and listing of domestic enterprises may also be subject to liability for non-compliance under the Administrative Provisions and Filing Measures. Namely, under the Administrative Provisions securities companies and law firms that do not comply are subject to a warning and fines between 500,000 RMB to 5 million RMB. The responsible person of these institutions are subject to a warning and fines between 200,000 RMB and 2 million RMB. If these service providers provide false records, misleading statements, or material omissions in application documents, they are subject to a potential suspension of practice before the CSRC of 3 months to 1 year.

Impact of indirect overseas listings and issuances by domestic enterprises

With respect to indirect overseas listings and issuances by domestic enterprises, substance will be more important than form. There should be a comprehensive analysis of the proportion of PRC sourced income and profit, the composition of senior management, and the location of business operations. In particular, the Filing Measures state that the following would be considered “indirect”: (i) the operating income, gross profit, total assets, or net assets of the domestic enterprise in the most recent fiscal year was more than 50% of the relevant line item in the issuer's audited consolidated financial statement for that year and (ii) senior management personnel responsible for business operations and management are mostly PRC citizens or are ordinarily resident in Mainland China, and the main place of business is in Mainland China or carried out in Mainland China. We believe that the above standards should be further clarified by regulators. For example, the accounting standard by which the financial thresholds are judged (IFRS, US GAAP, PRC GAAP, the standard in the proposed place of listing) is not specified. Furthermore, the standards for senior management do not state whether they apply to the main legal entity, or the domestic legal entity.

Compared with the status quo for overseas listings and issuances by indirect domestic enterprises, if the Administrative Provisions take effect in their current form, the filing process with the CSRC will be enhanced. While the filing technically is to be submitted after the submission of the overseas listing application, to prepare for the listing, the filing documents need to be prepared concurrently. In terms of filing, the process seems different from prior H-share listings, and we note that the new regulatory red lines and potentially serious consequences of non-compliance will mean that practically speaking, the regulators at the place of listing will likely view the successful attainment of the filing from the CSRC as a condition for the approval of the overseas listing, which may affect timing.

Exhibit A sets forth a comparison between the standards for overseas issuances and listings currently in place and those contemplated by the Administrative Provisions and Filing Measures.

Changes in the regulatory model for direct overseas listings and Full Circulation of domestic enterprises

As discussed above, currently, the overseas public listing and issuance of shares of direct domestic enterprises requires an approval opinion from the CSRC. Under the current regulatory framework, available methods for shareholders applying to convert their domestic unlisted shares into overseas listed shares for circulation on overseas trading markets (“**Full Circulation**”) include either obtaining CRSC approval at the same time as the direct overseas offering and listing, or separately thereafter. In essence, both the existing direct overseas listing procedure and Full Circulation of domestic enterprises require CRSC review and approval. If both the Administrative Provisions and the Filing Measures are officially implemented in accordance with their drafts for comment, a filing-based regulatory model will be established for direct domestic enterprises listing overseas and their Full Circulation, which will differ from the existing approval-based regulatory model and regulatory environment. Below is a summary of the current model as compared to the proposed model.

Item	Existing regulatory model (approval)		Draft regulatory model (filing)	
	Direct overseas listing of domestic enterprises	Full circulation	Direct overseas listing of domestic enterprises	Full circulation
Procedure	Issuers are required to (i) obtain the Initial Pass from CRSC prior to submitting their IPO application; (ii) obtain the Final Pass before the review hearing and; (iii) report to CRSC within 15 days of their IPO.	(1) Issuers applying for Full Circulation at the same time as their overseas IPO are required (i) obtain the Initial Pass from CRSC prior to submitting their IPO application; (ii) obtain the Final Pass before the review hearing and; (iii) report to CRSC within 15 days of their IPO. (2) Issuers applying for Full Circulation after listing will need to obtain CRSC approval separately.	As set out above, issuers are required to submit filing materials with CRSC within 3 business days after the submission of their overseas IPO application and after the initial offering.	Issuers are required to comply with relevant CSRC regulations and submit filing materials through their domestic entities. However, there is no current regulation relating to filing for Full Circulation.
Required materials	Issuers must submit the following application materials to obtain Xiao Lu Tiao from CSRC: (1) Application form and supporting documents; (2) Regulatory opinion issued by industry regulators (if applicable); (3) Documents related to the review, approval or filing of fund-	Issuers must submit the following application materials when applying for Full Circulation: (1) Application form and supporting documents; (2) Regulatory opinion issued by industry regulators (if applicable); (3) Approval documents relating to the management of the establishment	(1) Please see above for the filing materials required to be submitted to CSRC after the issuer has submitted their IPO application. (2) Filing materials to be submitted by PRC issuer to CSRC after overseas’ listing: ■ Filing form and relevant undertakings; ■ PRC legal opinion.	The domestic entity must submit filing materials to CSRC with respect to Full Circulation, such materials include but are not limited to: ■ Filing form and relevant undertakings; ■ PRC legal opinion.

Item	Existing regulatory model (approval)		Draft regulatory model (filing)	
	Direct overseas listing of domestic enterprises	Full circulation	Direct overseas listing of domestic enterprises	Full circulation
	raising investment projects (if applicable); (4) Proof of taxation issued by the tax authorities either for the past three years (Main Board) or two years (GEM); (5) PRC legal opinion; (6) Prospectus (draft).	of state-owned shares and the conversion of state-owned shares to overseas listed shares if applicable); (4) Shareholder's authorization for the application of Full Circulation for domestic unlisted shares and a compliance statement on the shares. (5) PRC legal opinion.		
Key concerns	Issuers and their PRC lawyers are required to issue specific opinions in accordance with Guidelines for the for Overseas Public Offering of Shares and Listing (Including Additional Issuance) by A Company Limited by Shares.	Issuers and their PRC lawyers are required to issue specific opinions in accordance with the Guidelines for the Application for the "Full Circulation" of the Domestic Unlisted Shares of H-Share Companies.	No specific regulation; detailed guidelines to be drafted by CSRC	No specific regulation; detailed guidelines yet to be drafted by CSRC
Material changes	No specific regulation. However, if an overseas listed enterprise wishes to terminate its public status, relevant procedure must be met in accordance with the regulations.	No specific regulation. Full Circulation shares are predominantly managed by designated brokers and regulators.	Please see above.	No specific regulation, detailed guidelines for Full Circulation filings yet to be drafted.

Based on the comparisons summarized above, if the direct listing and Full Circulation of a PRC enterprise takes the filing-based model, then the requirements with respect to procedures, timings, and documents to be submitted are more relaxed, giving greater flexibility to direct domestic enterprises listing overseas. Additionally, there is a greater emphasis on regulatory oversight during and after an IPO, which benefits the standardization of regulation.

Furthermore, since the adoption and implementation of Full Circulation, there has been an increase in the number of direct overseas listings of PRC companies, including those operating in the technology and innovation sectors. Current reforms may also give rise to a more relaxed regulatory environment for (i) flexible arrangements of weighted voting rights (WVR) and employee stock option plans (ESOPs) that are commonly expected of technology and innovative companies, as well as (ii) the establishment of VIE structures as a part of the listing process.

1. With respect to WVR, due to the provisions regarding the “same share same rights” principle in the existing Company Law and Essential Clauses in Articles of Association of Companies Listed Overseas, PRC companies intending to directly list overseas cannot set up WVRs. The existing Company Law is currently being revised and it is clear that companies will be able to issue different classes of shares with rights different to those attached to ordinary shares in accordance with their articles of associations. At the same time, the implementation of the Filing Measures will mean the Essential Clauses in Articles of Association of Companies Listed Overseas will be abolished. Instead, PRC companies directly listing overseas will use Guidelines for Articles of Association of Listed Companies as a reference when drafting their articles of association. As such, it is our understanding that after the implementation of the legislative changes discussed, legal restrictions on the establishment of WVR for PRC companies listing overseas will cease to exist.
2. With respect to flexible arrangements for ESOPs, as existing direct domestic enterprises listing overseas are subject to approval from the International Department of CSRC, who uses A-share review and approval requirements as a reference when raising clear and consistent requirements during their own review and approval process, most ESOPs of H-share listed companies are exercised prior to their listing, and only very few cases have ESOPs or reserved options. If the regulatory mechanism were to become filing-based, there is a possibility that the flexibility of ESOPs of direct domestic enterprises listing overseas will increase.
3. For the establishment of VIE structures for direct domestic enterprises listing overseas, considering the flexibility provided under the filing-based system and the fact that CSRC has confirmed the possibility of filing for the listing of VIE structured applicants in accordance with laws and regulations, there is a reasonable possibility that VIE structured domestic enterprises may directly list overseas, provided PRC laws, regulations and compliance requirements are met.

In sum, the implementation of a filing-based regulatory model for direct domestic enterprises listing overseas and Full Circulation will offer more flexibility and is expected to reduce the time taken for listing. However, the Administrative Provisions and the Filing Measures only provide a legislative framework and underlying principles for the filing-based mechanism and its requirements. Specific issues for direct domestic enterprises listing overseas and Full Circulation have yet to be addressed by the relevant regulators with supplementary guidelines and measures.

Active regulatory guidance generated by regulatory reform

I Emphasis of regulatory reform lies in perfecting the system and guiding the market

According to the Administrative Provisions, the Filing Measures and the Q&A with the Relevant CSRC Officials, the CSRC will establish a collaborative regulatory system with the competent authorities of relevant industries and fields within the PRC, including, (1) where the competent authorities of a particular industry/field explicitly requires pursuant to rules and regulations that an enterprise must perform its obligation to go through regulatory procedures prior to an overseas IPO, the enterprise must obtain a regulatory opinion, and obtain filing or approval documents issued by the competent authorities before the submission of their filing application; (2) CSRC will proactively communicate with

or seek opinions from the relevant authorities upon the receipt of filing application materials; and (3) for overseas listings of enterprises that are subject to laws and regulations such as security reviews for foreign investment and cybersecurity reviews, the enterprise must apply for relevant security reviews in accordance with the law before submitting their filing application.

The Administrative Provisions and the Filing Measures currently under consultation do not extend the scope of regulation relating to market concerns such as industry-specific regulatory opinions and security reviews. Where industry-specific regulatory opinions, filings or approvals from industry-specific authorities are required, companies are subject to blackletter rules explicitly requiring them to fulfil regulatory procedures prior to their overseas listing, but this is not applicable to all industries. Security reviews and cybersecurity reviews, the latter currently under consultation, reflect the increasing emphasis placed on the issue both at the legislative and executive level.

In addition, under the current rules of the Administrative Provisions and the Filing Measures, the CSRC will lead the establishment of an inter-departmental and collaborative regulatory mechanism for the overseas listing of PRC enterprises and cooperate with the relevant authorities to clarify rules of specific industries under the regulatory system. This is particularly appealing with regards to creating certainty in the filing procedure for listing overseas. Certain industries face issues such as being regulated by multiple regulators, unclear regulatory attitudes, or ununified detailed rules in different regions.

II VIE structures can list Overseas, but must pay attention to regulatory principles

The Q&A with the Relevant CSRC Officials points out that, provided all PRC laws and regulations are complied with, enterprises with compliant VIE structures may list overseas after filing. For VIE structured enterprises that intend to list overseas, we suggest focusing on staying compliant with laws, regulations and regulatory filing requirements on foreign investment, industry access, cybersecurity, data security and others.

The Filing Provisions emphasizes that the CSRC filing of a domestic enterprise listing overseas by no means indicates that the CSRC guarantees the truthfulness, accuracy, and completeness of the filing materials. Also taking into account the provisions of the Administrative Provisions regarding how the CSRC will strengthen collaborative regulation with industry authorities in areas like risk response, issuers should be aware that during the filing application of VIE structured enterprises, the CSRC may consult with other competent authorities, impacting the filing process for overseas listings.

III Far-reaching impact on private equity investment

Overseas offerings and listings of domestic enterprises have long been one of the main exit strategies for private equity funds. As mentioned above, under the current regulatory system, compared with overseas listings of indirect domestic enterprises, direct domestic enterprises choosing to list overseas face a degree of uncertainty due to factors such as domestic regulatory procedures, difficulties in obtaining domestic approval, the difficulties in accurately predicting the timeline of listing, and in particular, regulatory attitude towards VIE structures. Altogether, these factors cause PRC companies to elect to be indirect domestic enterprises that list overseas. For companies in the

emerging and innovative markets, private equity investments are limited by future listing choices, and the closing process is often delayed by the need to set up an overseas listing structure for the target company. The introduction of the Administrative Provisions and the Filing Measures, particularly their impact on direct domestic enterprises listing overseas (e.g. H-shares), previously an uncommon choice for private equity exits, has undoubtedly given more room and convenience for private equity investments and their potential future exits by creating a system that is legally agnostic as to structure with no one structure being preferred by law to another. This dynamic may afford private equity investors more freedom to invest alongside other market participants on an equal playing field, by not pigeonholing them into one structure that must exist or be established as a condition to investment.

IV Steady progress, smooth transition

The CSRC has publicly declared that it will follow the basic legal principles of not applying the Administrative Provisions and Filing Measures retroactively and respecting business customs and market practices. In other words, the CSRC will distinguish companies already listed overseas from those current seeking to list overseas to roll out the reforms in a steady and orderly manner.

The new system is designed in such a way that new companies and existing companies seeking to carry out activities like follow-on financing will follow the filing procedures as required. The other filing procedures other existing companies will be provided separately with a sufficient transition period. A distinction is also drawn between initial public offerings and follow-on financings. The new system takes the convenience and efficiency of overseas follow-on financings into full account and provides differentiated arrangement for follow-on financings with respect to the timing of filing and required filing materials. This will enable smooth transition with respect to overseas market practices and reduce any impact on the financing activities of overseas listed companies.

The Administrative Provisions and the Filing Measures will establish a collaborative inter-departmental regulatory system based on filing as led by the CSRC for overseas listings of domestic enterprises. This will create a more transparent and predictable regulatory environment for going public overseas. We will continue to carry out detailed interpretations and analyses on the Administrative Provisions and Filing Measures, and proactively work with market participants to provide constructive feedback on this regulatory reform.

Exhibit A

Listing Standards Before and After the Administrative Provisions and Filing Measures

	Prior to the administrative provisions and filing measures			After the administrative provisions and filing measures (if adopted in their current form)		
	Hong Kong					
Structure	CAC approval	CSRC approval	Special Hong Kong requirements	CAC approval	CSRC approval	Special Hong Kong requirements
Onshore Parent	N/A	Yes, compliance certificate required from the primary regulator of the applicant's business	CSRC approval	Yes, to the extent the data processor's Hong Kong listing will or may potentially impact "national security" (an undefined term)	Yes, subject to the new measures issued by the CSRC, consisting of the following: -Record-filing report and related undertakings -Compliance certificate from the primary regulator of the applicant's business (consistent with the current practice for onshore parent applicants) -Security assessment opinion issued by related departments (i.e. the CAC rules) -PRC legal opinion -Prospectus	CSRC "record-filing", which must fulfill all requirements under the measures Most likely a CAC approval (as part of the CSRC "record-filing") to ensure that the listing does not impact "national security" as defined and interpreted by CAC
Offshore parent (No VIE)	N/A	N/A	None	N/A	Yes, subject to the new measures issued by the CSRC, consisting of the following: -Record-filing report and related undertakings -Compliance certificate from the primary regulator of the applicant's business (pursuant to the newly updated Negative List effective Jan. 1, 2022, foreign investment in prohibited sectors will now	CSRC "record-filing", which must fulfill all requirements under the measures Most likely a CAC approval (as part of the CSRC "record-filing") to ensure that the listing does not impact "national security" as defined and interpreted by CAC

Prior to the administrative provisions and filing measures				After the administrative provisions and filing measures (if adopted in their current form)		
					need an extra permission from the regulator in charge of its business in order to list outside of the PRC) -Security assessment opinion issued by related departments (i.e. the CAC rules) -PRC legal opinion -Prospectus	
Offshore parent (VIE)	N/A	N/A	VIE must be narrowly tailored and the structure must be endorsed by the primary regulator of the applicant's business		Yes, subject to the new measures issued by the CSRC, consisting of the following: -Record-filing report and related undertakings -Compliance certificate from the primary regulator of the applicant's business (pursuant to the newly updated Negative List effective Jan. 1, 2022, foreign investment in prohibited sectors will now need an extra permission from the regulator in charge of its business in order to list outside of the PRC) -Security assessment opinion issued by related departments (i.e. the CAC rules) -PRC legal opinion -Prospectus	CSRC "record-filing", which must fulfill all requirements under the measures Most likely a CAC approval (as part of the CSRC "record-filing") to ensure that the listing does not impact "national security" as defined and interpreted by CAC VIE must be narrowly tailored and the structure must be endorsed by the primary regulator of the applicant's business
US						
Structure	CAC approval	CSRC approval	Special US requirements	CAC approval	CSRC approval	Special US requirements
Offshore parent (No VIE)	N/A	N/A	De-listing in three years if audit papers cannot be inspected by the U.S. PCAOB	Yes, to the extent the listing applicant is a data processor that processes the personal	Yes, subject to the new measures issued by the CSRC, consisting of the following: -Record-filing report and related	CSRC "record-filing", which must fulfill all requirements under the measures

		Prior to the administrative provisions and filing measures		After the administrative provisions and filing measures (if adopted in their current form)		
			(may be reduced to two based on proposed legislation that has already passed the Senate unanimously)	information of more than one million individuals; the term “data processor” means “individuals and entities that have the ability to decide on the purpose and method of data processing activities”	<p>undertakings</p> <ul style="list-style-type: none"> -Compliance certificate from the primary regulator of the applicant’s business (pursuant to the newly updated Negative List effective Jan. 1, 2022, foreign investment in prohibited sectors will now need an extra permission from the regulator in charge of its business in order to list outside of the PRC) -Security assessment opinion issued by related departments (i.e. the CAC rules) -PRC legal opinion -Prospectus 	<p>CAC approval (as part of the CSRC “record-filing”)</p> <p>CAC/CSRC approval (as part of disclosure on attainment of PRC approvals);</p> <p>De-listing in three years if audit papers cannot be inspected by the U.S. PCAOB (may be reduced to two based on proposed legislation that has already passed the Senate unanimously)</p>
Offshore Parent (VIE)	N/A	N/A	Prominent disclosure of VIE; De-listing in three years if audit papers cannot be inspected by the U.S. PCAOB (may be reduced to two based on proposed legislation that has already passed the Senate unanimously)		<p>Yes, subject to the new measures issued by the CSRC, consisting of the following:</p> <ul style="list-style-type: none"> -Record-filing report and related undertakings -Compliance certificate from the primary regulator of the applicant’s business (pursuant to the newly updated Negative List effective Jan. 1, 2022, foreign investment in prohibited sectors will now need an extra permission from the regulator in charge of its business in order to list outside of the PRC) -Security assessment opinion issued by related departments (i.e. the CAC rules) -PRC legal opinion -Prospectus 	

Important Announcement

This Legal Commentary 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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