

THE INITIAL PUBLIC
OFFERINGS LAW
REVIEW

FIFTH EDITION

Editor
Marco Georg Carbonare

THE LAWREVIEWS

THE INITIAL PUBLIC
OFFERINGS LAW
REVIEW

FIFTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Marco Georg Carbonare

THE LAWREVIEWS

PUBLISHER

Clare Bolton

HEAD OF BUSINESS DEVELOPMENT

Nick Barette

TEAM LEADERS

Jack Bagnall, Joel Woods

BUSINESS DEVELOPMENT MANAGERS

Katie Hodgetts, Rebecca Mogridge

BUSINESS DEVELOPMENT EXECUTIVE

Olivia Budd

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATOR

Gavin Jordan

PRODUCTION AND OPERATIONS DIRECTOR

Adam Myers

PRODUCTION EDITOR

Helen Sou

SUBEDITOR

Caroline Fewkes

CHIEF EXECUTIVE OFFICER

Nick Brailey

Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

© 2021 Law Business Research Ltd

www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at August 2021, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-83862-785-0

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:

ALLEN & GLEDHILL LLP

ALLEN & OVERY

ALLFUNDS

BAE, KIM & LEE LLC

BOWMANS

DLA PIPER FINLAND ATTORNEYS LTD

GANADO ADVOCATES

HAN KUN LAW OFFICES

LATHAM & WATKINS

LEE AND LI, ATTORNEYS-AT-LAW

LINKLATERS LLP

MAPLES GROUP

MATTOS FILHO, VEIGA FILHO, MARREY JR E QUIROGA ADVOGADOS

TORYS LLP

TRILEGAL

URÍA MENÉNDEZ

WALDER WYSS LTD

CONTENTS

PREFACE.....	v
<i>Marco Georg Carbonare</i>	
Chapter 1 BRAZIL.....	1
<i>Jean Marcel Arakawa</i>	
Chapter 2 CANADA.....	10
<i>Scott R Cochlan, Robbie Leibel, Kevin M Morris and Rima Ramchandani</i>	
Chapter 3 CAYMAN ISLANDS.....	21
<i>Suzanne Correy and Finn O'Hegarty</i>	
Chapter 4 CHINA.....	30
<i>Chen Yang</i>	
Chapter 5 FINLAND.....	42
<i>Salla Tuominen</i>	
Chapter 6 FRANCE.....	55
<i>Thomas Margenet-Baudry and Jemma Lohr McPherson</i>	
Chapter 7 GERMANY.....	69
<i>Marco Georg Carbonare</i>	
Chapter 8 INDIA.....	79
<i>Bhakta Batsal Patnaik and Brajendu Bhaskar</i>	
Chapter 9 LUXEMBOURG.....	90
<i>Frank Mausen and Paul Péporté</i>	
Chapter 10 MALTA.....	107
<i>Nicholas Curmi and Luke Hili</i>	

Chapter 11	SINGAPORE.....	115
	<i>Tan Tze Gay and Wu Zhaoqi</i>	
Chapter 12	SOUTH AFRICA	127
	<i>Ezra Davids, David Yuill, Ryan Wessels and Sibonelo Mdluli</i>	
Chapter 13	SOUTH KOREA	135
	<i>Mi Eun Roh and Heesug Chung</i>	
Chapter 14	SPAIN.....	146
	<i>Alfonso Ventoso and Marta Rubio</i>	
Chapter 15	SWITZERLAND	156
	<i>Theodor Härtsch and Daniel Dedeyan</i>	
Chapter 16	TAIWAN.....	166
	<i>Abe T S Sung</i>	
Appendix 1	ABOUT THE AUTHORS.....	179
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	191

PREFACE

The onset of the covid-19 pandemic in March 2020 led to a significant slowdown of IPO activity globally in the first half of 2020, in particular in the United States and Europe. While IPO activity remained subdued in Europe in the second half of 2020, the United States witnessed a significant increase, making 2020 one of its strongest IPO years in a decade, despite the challenges related to the pandemic.

IPOs of special-purpose acquisition companies (SPACs) and ‘de-SPAC’ transactions continued to be one of the main drivers of IPO activity in the United States. There was, however, also a significant increase in traditional IPOs, especially from companies in the technology sector. IPO activity in the United States has remained strong since the beginning of 2021.

Towards the end of 2020, there was a noticeable shift in sentiment in favour of IPOs across the globe, in particular in Europe, driven mainly by beneficial equity capital markets conditions and outlook. This has resulted in a significant increase in IPO activity since the beginning of 2021, both in terms of volume and size, driven mainly by a significant increase in IPOs of companies in the technology and life sciences sectors. The pipeline for IPOs in key markets globally for the remainder of 2021 and 2022 is exceptionally strong.

Potential near-term headwinds to the IPO market include the increasing regulatory scrutiny relating to, and a slowdown in, investor appetite for SPAC IPOs, potential changes to monetary policies and new waves of the covid-19 pandemic.

There has also been a noticeable increase in cross-border listings, where IPO candidates decide to pursue a listing outside their home market, resulting in increased competition among stock exchanges. This trend is driven by a number of factors, including considerations regarding valuation, sector-related considerations and the large number of US-listed SPACs looking for targets abroad. It is, therefore, increasingly necessary to consider the listing and regulatory requirements of different stock exchanges, as well as IPO market practices in different jurisdictions.

This publication provides an overview of the main rules and regulations applying to IPOs in 16 different jurisdictions across the globe and offers great insights into local market practices.

I would like to thank each author for their contribution to the fifth edition of *The Initial Public Offerings Law Review*.

Marco Georg Carbonare

Linklaters LLP

Frankfurt

August 2021

CHINA

*Chen Yang*¹

I INTRODUCTION

There are two primary stock exchanges in China: the Shanghai Stock Exchange (SSE) and the Shenzhen Stock Exchange (SZSE). The SSE comprises the Main Board and the Sci-Tech Innovation Board (the STAR Board), whereas the SZSE comprises the Main Board, the Small and Medium-Sized Enterprises Board (the SME Board, which was merged with the Main Board on 6 April 2021) and ChiNext (a board comprising mainly high-technology companies).

According to the 2019 Annual Report of the China Securities Regulatory Commission (CSRC), as at the end of 2019, 3,777 companies were listed on the SSE and the SZSE, with 193 new listings throughout 2018; 1,973 companies were listed on the Main Boards of the SSE and the SZSE; 943 companies were listed on the SME Board; 791 companies were listed on ChiNext; and 70 companies were listed on STAR. The total market capitalisation of these listed companies was 48.35 trillion yuan, which was 59.84 per cent of China's total 2019 GDP.

There were three major developments in China's capital markets in 2020.

i New Securities Law

First, on 1 March 2020, the new Securities Law was formally implemented. Since the implementation of the new Securities Law, the CSRC has adopted an unprecedented level of scrutiny towards violations of laws and regulations in the Chinese capital market. It has severely cracked down on financial fraud of listed companies, making it impossible to evade market manipulation. With the continuous strengthening of the new Securities Law for investor protection, the protection of investors' rights and interests has become one of the most important concerns of the CSRC.

ii Reform of the ChiNext with the registration-based system

Reform of ChiNext in respect of a registration-based system was launched on the SZSE. On 24 August 2020, the first batch of 18 companies under the registration-based system appeared in ChiNext, along with the new trading rules. As at 16 December 2020, a total of 54 companies have successfully entered ChiNext under the registration-based system. The 54 companies raised approximately 56.154 billion yuan in the first round.

The smooth implementation of the registration-based system on the STAR has made it possible for the Chinese capital market to implement the registration-based system. In

¹ Chen Yang is a partner at Han Kun Law Offices.

this regard, on 31 October 2020, the meeting of the financial stability and development committee of the State Council proposed to enhance the hub function of the capital market to fully implement the registration-based system in order to establish a normalised delisting mechanism and to increase the proportion of direct financing.

iii CSRC Guiding Opinions

On 3 June 2020, the CSRC issued Guiding Opinions on the Transfer of Companies Listed on the National Equities and Exchange Quotations for Listing on Other Boards (the Guidance). This has resulted in the formal implementation of the National Equities Exchange (NEEQ) transfer system, and it was also regarded as a milestone event in China's capital market reform.

Before the guidance, companies listed on NEEQ that wanted to be listed on the SSE and the SZSE first had to delist from the NEEQ and then complete the full listing procedure, which was no different from other applicant.

With the implementation of the reform, eligible NEEQ companies can apply for listing directly on ChiNext or STAR, without going through the process of delisting from NEEQ and resubmitting the listing application.

II GOVERNING RULES

i Main stock exchanges

As discussed in Section I, the SSE comprises the Main Board and the STAR, whereas the SZSE comprises the Main Board and ChiNext.

Main Board (SSE and SZSE)

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

The SME Board, which was merged with the Main Board of the SZSE on 6 April 2021, 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.

STAR

On 1 March 2019, the CSRC and the SSE issued the Rules of the STAR, which took effect the same day. The Rules introduced a registration-based system and eased listing standards to accommodate qualified technology companies. On 22 July 2019, the STAR officially opened for trading. As at the end of 2019, 70 companies have listed on the STAR.

The STAR may be considered a breakthrough in China's capital market for the following reasons.

- a* Removal of profit requirement: pre-profit technology industries (e.g., information technology, high-tech manufacturing, new materials, new energy and environmental protection) and pre-revenue bio-tech companies may list on the STAR. In practice, pre-profit companies such as Suzhou Zelgen Biopharmaceuticals Co, Ltd have successfully passed the SSE's examination and have completed registration procedures with the CSRC, allowing them to list on the STAR.
- b* Unweighted voting rights: the STAR permits, for the first time in the mainland capital markets, technology companies with unweighted rights to list. UCloud Technology

Co, Ltd, which had an unweighted voting rights structure, successfully passed the SSE's examination and has completed the registration procedure with the CSRC, allowing it to list on the STAR.

- c The possibility of red-chip companies to list: red-chip companies (those whose parent entity is incorporated outside mainland China and whose primary business activities are in China, including variable interest entity (VIE) structure companies) may apply for a public offering of their stock in mainland China or through the issuance of Chinese depository receipts (CDRs), although listing standards are higher (see below). China Resources Microelectronics Limited successfully passed the SSE's examination and is awaiting registration with the CSRC.
- d The possibility of spun-off companies to list: the STAR permits, for the first time in mainland capital markets, spun-off technology companies to list.

ChiNext

ChiNext was established on 30 October 2009 to support small and medium-sized enterprises, particularly those in the high-technology sector. With the reform of ChiNext in respect of the registration-based system, ChiNext is adapting to the general trend towards greater reliance on innovation, creation and creativity. It mainly serves growth-oriented innovation and entrepreneurship enterprises and supports the deep integration of traditional industries with new technologies, new industries, new formats and new models.

The reform of ChiNext fully draws on the experience and practice of the pilot of the registration-based system of STAR. It basically follows the STAR in the main aspects (e.g., legal rules, issuance conditions, registration procedures, supervision and management).

ii Overview of listing requirements

At present, all listing applications are submitted to and approved by the CSRC except for STAR and ChiNext, which have a registration-based system.² If an applicant engages in a business subject to regulatory oversight by specific agencies, the CSRC will require these agencies to issue a no-objection letter in respect of the applicant.

Table 1 sets forth the main requirements for the Main Board and the SME Board, ChiNext and STAR. 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 rules of ChiNext and STAR.

² Under the registration-based system, listing applications are submitted for approval to the SSE (for the STAR) and the SZSE (for the Chinext). If approved, the application is then registered with the CSRC.

Table 1: Issuers incorporated in China

Initial public offering (IPO) requirements	Main Board and SME Board	ChiNext	STAR
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).	
Profitability	<ul style="list-style-type: none"> 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. 	N/A after 12 June 2021.	N/A
Pre-profit alternatives for STAR only	<p>One of the following five thresholds (four of which do not have profitability requirements) where expected market value:</p> <ul style="list-style-type: none"> 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 expected market value is not less than 1 billion yuan, net profit in the last year is positive, and 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 per cent 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 government departments; and significant market space and phased results. For pharmaceutical applicants, at least one core product needs to be approved to carry out Phase II clinical trials for new drugs. Other applicants are required to possess 'obvious technological advantages' and meet corresponding conditions. <p>Expected market value means total equity following the IPO multiplied by the offering price.</p>		
Pre-profit alternatives for ChiNext only	<p>One of the following three thresholds (one of which does not have profitability requirements) where expected market value:</p> <ul style="list-style-type: none"> is the net profit in the past two years is positive, and the aggregate net profit is not less than 50 million yuan; is not less than 1 billion yuan; operating income in the past year is not less than 100 million yuan; and the net profit in the past year is positive; is not less than 5 billion yuan; and operating income in the past year is not less than 300 million yuan. <p>Expected market value means total equity following the IPO multiplied by the offering price.</p>		
Assets	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 per cent.	N/A	
Capital	Pre-listing capitalisation of ≥ 30 million yuan; or post-listing capitalisation of ≥ 50 million yuan.	Post-listing capitalisation of ≥ 30 million yuan.	

Initial public offering (IPO) requirements	Main Board and SME Board	ChiNext	STAR
Major business	No significant changes in the past three years.	No significant changes in the past two years.	
Directors and senior management	No significant changes in the past three years.	No significant changes in the past two years.	
Actual controller	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 the case).	No change in the past two years.	
Internal control	<ul style="list-style-type: none"> • Effective internal control systems in all significant respects; and • an unreserved internal control report issued by a certified accountant. 	<ul style="list-style-type: none"> • 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. 	
Competition	<p>The issuer's business must not compete with the business of the issuer's controlling shareholder, actual controller or other enterprises controlled by the controlling shareholder or actual controller. The definitions 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 the case.</p> <p>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.</p>	The business of the issuer's controlling shareholder, actual controller, or other enterprises controlled by the controlling shareholder or actual controller must not compete with the issuer's business in a manner that may have a significant adverse impact on the issuer.	
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.	N/A	

Initial public offering (IPO) requirements	Main Board and SME Board	ChiNext	STAR
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.	Generally, IPO proceeds will be used for the principal business and investment projects. The issuer shall disclose the contribution of the raised funds to the development of the main business of the issuer, the impact of the future business strategy and the supporting role of the business innovation and creativity of the issuer.	Generally, IPO proceeds will be used for the principal business and investment projects. The issuer shall disclose the specific arrangements for the key investment of the raised funds in the field of scientific and technological innovation.
Legal compliance	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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	

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 with an expected market value not less than 10 billion yuan or an expected market value not less than 5 billion yuan and operating income not less than 500 million yuan in the past year.
Status	Issuer conforms to standards relating to national strategy, achieving core technology and market acceptance.	
Industry	Innovative enterprises of a considerable 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: ChiNext and STAR 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 listing requirements of ChiNext or STAR.	<ul style="list-style-type: none"> • Basic listing requirements in Article 12 of the Securities Law of the People's Republic of China (2019 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. <p>(The capacity to achieve profits continuously does not mean the profits have to be realised at the time of listing.)</p>
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.	

Compared with the New York Stock Exchange (NYSE), Nasdaq and the Hong Kong Stock Exchange, Chinese stock exchanges are currently unique in the following respects (however, as stated above, reforms of ChiNext and STAR that have already taken effect and the 2019 Securities Law have substantially altered China's IPO landscape).

- 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 Cayman 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. Furthermore, eligible red-chip companies may apply to list on ChiNext and STAR.
- 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. However, pre-profit companies are permitted to apply to list on ChiNext and STAR. Furthermore, the 2019 Securities Law revised a core listing condition for IPOs in China from 'sustainable profitability' to 'sustainable operational capability', which means there is a good chance that profitability requirements on all stock exchanges, not just ChiNext and STAR, may be lifted in the future.
- 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. As mentioned above, after the comprehensive promotion of the registration-based system, the role of the CSRC will turn towards being responsible for review of registration applications and supervision of the capital market. However, with the introduction of the registration-based system under the 2019 Securities Law, the CSRC will no longer be responsible for reviewing listing applications. Rather, the CSRC will review registered applications and supervise capital markets generally.
- 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 VIE structures, unlike the NYSE, Nasdaq and the Hong Kong Stock Exchange. However, red-chip enterprises (including those with VIE structures) can now apply to list on ChiNext and STAR. To date, Segway-Ninebot Limited, a company with a VIE structure, has successfully listed on STAR through the issuance of CDRs.
- 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 (SSE 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 Measures for the Administration of Registration of IPO Stocks on the ChiNext (for Trial Implementation) and the Rules Governing the Listing of Shares on the ChiNext Market of Shenzhen Stock Exchange (2020 Revision).

The listing requirements for STAR are set forth in the Measures for the Administration of the Registration of Initial Public Offerings of Stocks on the STAR Market (for Trial Implementation) (2020) and the Rules Governing the Listing of Stocks on the Science and Technology Innovation Board of Shanghai Stock Exchange (Revised in 2020).

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 has accelerated, starting from the mid-November 2016. In 2017, the CSRC's issuance examination committee reviewed 488 IPO applications – a much faster pace than in previous periods. In 2018, 2019 and 2020, the CSRC maintained this accelerated pace.

In practice, for stock exchanges other than the STAR, the time between pre-disclosure and approval in 2018 and 2019 was approximately 15 months – shorter than the approximately 19-month wait in 2017. For ChiNext and STAR, the review period in practice has been much shorter than before, with an average time of approximately nine months to 12 months, which is in line with or even shorter (in some cases) than international standards.

Increased success rate of applications

Although the CSRC has accelerated its review of prospective applications, its practice of only selecting high-quality applicants that meet its listing standards reduced the overall success rate of applications in 2019. 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.³

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,⁴ which is the lowest in the past five years.

In 2019, the pass rate for STAR IPOs was 95 per cent, with the same pass rate in 2020.⁵ Owing to the roll-out of STAR in 2019 and of the registration-based system of ChiNext in 2020, the CSRC's approach to applicants proposing to list on other stock exchanges has also changed, with a bias towards approval.

III THE OFFERING PROCESS

i General overview of the IPO process

Listing in China involves steps that are common in other jurisdictions (due diligence and 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 and the CSRC approval). Below is a brief overview of the IPO process in China.

For stock exchanges except ChiNext and STAR, the time frames set forth in Table 3A reflect common practice prior to the 2019 Securities Law coming into force. The time frames set forth in Table 3B reflect common practice for applicants proposing to list on ChiNext and STAR. Specific time frames for individual applicants may vary from those set forth in Table 3A and Table 3B.

3 Prior to 17 October 2017, the issuance examination committee comprised two different committees, one for the Main Board and the SME Board, and one for ChiNext. From 17 October 2017, these two committees have been combined into one committee.

4 Based on public data of the CSRC.

5 Based on public data of the SSE.

Table 3A: The IPO process for Stock Exchanges Other Than ChiNext and STAR

Step	Particulars	Timetable
Due diligence	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.	T-90 days
Restructuring	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.	T-45 days
Pre-filing review	The local counterpart of the CSRC conducts pre-listing guidance work.	T-15 days
Filing	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.	T*
CSRC procedures	<ul style="list-style-type: none"> • 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. 	
Preparation by the exchange	<ul style="list-style-type: none"> • 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. 	

* T refers to the date when the CSRC accepts the IPO application. Days are calendar days.

Table 3B: The IPO process for ChiNext and STAR

Step	Particulars	Timetable
Due diligence	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.	T-90 days
Restructuring	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. The foregoing does not apply to applicants proposing to list under the CDR regime.	T-45 days
Pre-filing review	Communicate potential issues with the SSE or SZSE electronically or in person.	T-15 days
Filing	The sponsor files the IPO application documents with the SSE or SZSE; once the SSE or SZSE states the application documents are complete, it has five business days to decide whether to accept the filing.	T*
SSE/SZSE procedures	<ul style="list-style-type: none"> • Acceptance of the application from the SSE or SZSE; • pre-disclosure; • first round of enquiries; • face-to-face meeting (if necessary); • feedback; • multiple rounds of further enquiries; • reply to the SSE's or SZSE's feedback; • consultation with the SSE or SZSE regarding industry issues; • face-to-face enquiries (if necessary); • issuance of the audit report by a department of the SSE or SZSE; • pre-disclosure; • attendance of the issuance examination committee meeting; • hearing; • release of the issuance examination committee's opinion; and • SSE or SZSE issues opinion. 	T+220 days

Step	Particulars	Timetable
CSRC procedures	<ul style="list-style-type: none"> • Report to the CSRC and obtain its official approval; • pre-disclosure updates; and • disclosure of the prospectus. 	T+300 days
* T refers to the date when the SSE or SZSE accepts the IPO application. Days are calendar days.		

ii Pitfalls and considerations

Under the current IPO process (except for ChiNext and STAR), the CSRC will conduct a thorough, substantive review of all IPO application documents. In recent years, the CSRC has raised mainly the following issues in respect of 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 the 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. With the roll-out of the registration-based system for all issuers on 1 March 2020 pursuant to the 2019 Securities Law, we anticipate that internal controls and the transparency, authenticity and accuracy of disclosures will be decisive factors in the IPO process.

iii Considerations for foreign issuers

Prior to the launch of the registration-based system of ChiNext and STAR, an issuer must be a company limited by shares incorporated in China. Accordingly, non-Chinese corporate bodies may not list on Chinese stock exchanges.

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 eligible red-chip companies may list on ChiNext and STAR.

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 or 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 changes in China's domestic IPO market in 2020 were the launch of the registration-based system of ChiNext, the continuous deepening of the registration-based system reform of STAR and the promulgation of the 2019 Securities Law, which may extend the registration-based system to all other stock exchanges.

The accelerated review periods and high success rates of applicants, including pre-profit companies and those with unweighted voting rights structures, suggest that ChiNext and STAR will be viable and attractive options for new industries and high-tech Chinese companies going forward.

The 2019 Securities Law officially took effect on 1 March 2020. The CSRC has recently focused not only on an applicant's financial performance and sustainable profitability, but also on internal controls and the transparency, authenticity and accuracy of disclosures. This may prelude the approach taken by the stock exchanges and the CSRC when reviewing IPO applications in the future.

The central government's recent emphasis on the capital market's importance in the real economy, along with the implementation of the registration-based system of ChiNext and STAR and the promulgation of the 2019 Securities Law, means that IPO activity in the China may rise further in 2021 under the framework of compliance.

ABOUT THE AUTHORS

CHEN YANG

Han Kun Law Offices

Chen Yang'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.

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
www.hankunlaw.com

an LBR business

ISBN 978-1-83862-785-0