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New Regulations for Filing-Based Administration of Overseas Securities Offering and Listing by Domestic Companies

Introduction

On 17 February 2023, the China Securities Regulatory Commission ("**CSRC**") published new regulations for the filing-based administration of overseas securities offering and listing by companies that are incorporated in the People's Republic of China ("**PRC**") and the domestic operating entities of companies whose securities are indirectly offered and listed overseas (collectively referred to as "**domestic companies**"). The new regulations, which will come into effect on **31 March 2023**, establish a filing-based approach instead of the current approval-based approach.

The new regulations are made up of six sets of documents, namely, the "Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies (境内企业境外发行证券和上市管理试行办法)" ("**Measures**") and five supporting guidelines. CSRC also issued an accompanying "Notes on the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies" which provides an explanation of the Measures.

This Update provides a broad overview of several key areas under the Measures that may be of significance to domestic companies seeking to carry out a direct or indirect offering of securities and listing on an overseas securities exchange, namely: (1) scope of application of the Measures; (2) filing and reporting requirements applicable to domestic companies; (3) prohibitions against overseas listings; (4) national security review; and (5) consequences of non-compliance with the Measures.

Scope of Application

The Measures are specified to apply to both direct and indirect overseas securities offering and listing activities by domestic companies. A direct overseas offering and listing by a domestic company refers to an "overseas offering and listing by a joint-stock company incorporated domestically". An indirect overseas offering and listing by a domestic company refers to an "overseas offering and listing by a company in the name of an overseas incorporated entity, [where] the company's major business operations are located domestically and such offering and listing is based on the underlying equity,

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assets, earnings or other similar rights of a domestic company". In this regard, any overseas offering and listing made by an issuer that meets both the following conditions will be deemed as indirect, on a substance over form basis:

- 50% or more of the issuer's operating revenue, total profit, total assets or net assets based on its audited consolidated financial statements for the most recent accounting year is derived from domestic companies; **and**
- the main parts of the issuer's business activities are conducted in the Chinese Mainland, its main places of business are located in the Chinese Mainland, or the senior managers in charge of its business operation and management are mostly PRC citizens or domiciled in the Chinese Mainland.

"Securities" refer to "equity shares, depository receipts, corporate bonds convertible to equity shares, and other equity securities".

Filing Requirements

Under the Measures, an overseas securities offering and listing by a domestic company must comply with the following filing requirements:

- Entity which should make the filing is as follows:
 - For direct overseas offering and listing, the issuer must file with CSRC.
 - For indirect overseas offering and listing, the issuer must designate a major domestic operating entity in its group of companies to file with CSRC.
- Documents that must be filed with CSRC by a domestic company for its overseas securities offering and listing must include a filing report and a PRC legal opinion, and must be truthful, accurate and complete.
- Filing timeline applicable to a domestic company is as follows:
 - For initial public offerings or listings in overseas markets or subsequent securities offerings and listings of an issuer in overseas markets other than where it has previously offered and listed securities, the filing with CSRC must be made within **three working days** after the relevant application is submitted overseas.

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- Where a domestic company seeks to directly or indirectly list its domestic assets in overseas markets through single or multiple acquisitions, share swaps, transfers of shares or other means, the filing with CSRC must be made within **three working days** after the relevant application is submitted overseas. Where overseas applications are not required, the filing shall be made within three working days after the first public disclosure of the specifics of the transaction is made by the listed company.
- For subsequent securities offerings of an issuer in the same overseas market where it has previously offered and listed securities, the filing with CSRC must be made within **three working days** after the offering is completed.
- When the filing documents are complete and in compliance with stipulated requirements, CSRC will, within 20 working days after receiving the filing documents, conclude the filing procedure and publish the filing results on the CSRC website.
- Where the filing documents are incomplete or do not conform to the stipulated requirements, CSRC will request supplementation and amendment thereto within five working days after receiving the filing documents. The issuer should then complete supplementation and amendment within 30 working days.
- An overseas securities company that serves as a sponsor or lead underwriter for overseas securities offering and listing by domestic companies must carry out a filing with CSRC within 10 working days after the signing of its engagement agreement, and submit to CSRC no later than 31 January each year, an annual report on its business activities in the previous year associated with overseas securities offering and listing by domestic companies. An overseas securities company that has entered into engagement agreements before the Measures was effected must carry out a filing with CSRC within 30 working days after the Measures take effect.

Transitional Filing Arrangements for Domestic Companies

Domestic Companies Already Listed Overseas

Domestic companies which are already listed on an overseas securities exchange as at 31 March 2023 do not need to carry out any filing with CSRC unless they conduct a subsequent securities offering on such overseas securities exchange or any other activities which require them to carry out a filing with CSRC under the Measures.

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Domestic Companies Currently Applying for an Overseas Listing

Domestic companies which have already obtained approval from overseas regulatory bodies or overseas securities exchanges as at 31 March 2023 for their overseas offering and listing, but have not completed their overseas offering and listing, will be granted a six-month transitional period until 30 September 2023 to complete their overseas offerings and listings.

If, within the six-month transitional period, such domestic companies: (1) are required to recommence their offering and listing procedures with the overseas regulatory bodies or overseas securities exchanges; or (2) fail to complete their overseas offering and listing, they must carry out the filing with CSRC in accordance with the Measures.

Reporting Requirements

The Measures also require domestic companies who offer and list overseas to comply with reporting requirements after such offerings and listings. For instance, an issuer which has offered and listed securities in an overseas market must submit a report to CSRC within three working days after the occurrence of any of the following material events:

- change of control;
- investigations or sanctions imposed by overseas securities regulatory agencies or other relevant competent authorities;
- change of listing status or transfer of listing segment;
- voluntary or mandatory delisting; or
- material changes to its main business, in which case a PRC legal opinion must also be submitted to CSRC.

Listing Overseas with a VIE Structure

In response to a question from a reporter on how the new filing-based regime would apply in relation to domestic companies adopting a variable interest entity ("**VIE**") structure and pursuing an overseas offering and listing, CSRC has indicated that it will seek the views of the relevant authorities and permit the filing for an overseas offering and listing of a domestic company with a legally-compliant VIE structure.

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Prohibitions against Overseas Listing

A domestic company is prohibited from offering and listing securities in overseas markets where:

- such offering and listing of securities is explicitly prohibited by provisions in laws, administrative regulations and relevant state rules;
- such offering and listing of securities may endanger national security;
- the domestic company or its controlling shareholders and actual controllers have committed crimes such as corruption, bribery, embezzlement or misappropriation of property during the last three years;
- the domestic company is under investigation for suspected criminal offences or major violations of laws and regulations; or
- there are material ownership disputes over the shareholding of its controlling shareholder or other shareholders controlled by the controlling shareholder.

National Security Review

The overseas offering and listing by domestic companies must comply with the relevant laws, administrative regulations and rules concerning national security in the spheres of foreign investment, cybersecurity and data security. If the overseas offering and listing necessitates a national security review, the relevant security review procedures must be completed before a domestic company submits the application for the offering and listing to the overseas regulatory agencies or securities exchanges.

A domestic company may also be required to take measures, including making timely rectification, providing undertakings and divesting its business and assets, to eliminate or avert any impact on national security resulting from an overseas offering and listing.

Consequences of Non-Compliance

The Measures also set out the penalties and actions which may be imposed for non-compliance with the Measures and other relevant laws. For example, CSRC may order rectification, warnings, fines and inform its regulatory counterparts in overseas jurisdictions via cross-border securities regulatory cooperation mechanisms. In the case of severe violations of the Measures or other laws and administrative regulations, CSRC *may* ban the relevant responsible persons from the securities market and criminal liability may accrue.

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Practical Considerations for Domestic Companies Seeking a Listing in Singapore

As the Measures are expressed to apply to both direct and indirect overseas securities offering and listing, and do not distinguish between primary and secondary listings, the filing procedure will have to be carried out with CSRC for:

- (a) direct offering and listing on the Singapore Exchange ("**SGX**") of "S-shares" of PRC-incorporated companies under the SGX's Direct Listing Framework;
- (b) indirect offering and listing on the SGX of the shares of entities incorporated outside of the PRC and adopting a "red-chip" structure;
- (c) secondary listing on the SGX of the shares of domestic companies which already have their primary listing on another securities exchange (whether within or outside the PRC);
- (d) reverse takeovers involving companies listed on the SGX which seek to acquire target companies which are "domestic companies" as defined under the Measures;
- (e) "de-SPAC" business combination transactions involving special purpose acquisition companies ("**SPAC**") listed on the SGX which carry out a business combination with target companies which are "domestic companies" as defined under the Measures; and
- (f) secondary offerings of securities on the SGX by a domestic company which is already listed on the SGX.

For scenarios (a) to (e) above, the filing procedure with CSRC must be carried out within **three working days** after the relevant application has been submitted to the SGX. The relevant application may be construed to refer to:

- (i) Section (A) of the Listing Admissions Pack (in the case of a primary or secondary listing on the SGX Mainboard);
- (ii) Pre-admission Notification (in the case of a primary listing on the SGX Catalist); or
- (iii) the application containing the draft circular to shareholders (in the case of a reverse takeover or "de-SPAC" business combination transaction).

For subsequent securities offerings of an issuer in the same overseas market where it has previously offered and listed securities, the filing procedure with CSRC must be carried out within **three working days** after the offering is completed.

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For scenario (f) above relating to secondary offerings, the filing procedure with CSRC must be carried out within **three working days** after the secondary offering is completed.

In addition, to the extent a listing aspirant pursuing a primary or secondary listing on the SGX has adopted a VIE structure, CSRC will seek the views of the relevant authorities and the filing will only be permitted if the VIE structure is determined to be compliant with all applicable laws and regulations. In this regard, SGX's Listing Decision (LD-2018-02) published on 31 December 2018 and updated in March 2021 currently requires: (1) the issuer to obtain the support of appropriate regulatory assurance to demonstrate the legality of its VIE structure; and (2) the PRC legal adviser to issue a clean opinion confirming, among other things, that the VIE structure is in compliance with applicable laws and regulations, the necessary regulatory approval, authorisation, registration and/or certificate to effect the VIE structure have been obtained and where a regulatory authority's approval/opinion has been obtained, the competency of such regulatory authority to provide the approval/opinion.

Lastly, it is also important to note that the Measures also impose an obligation on the issue managers, sponsors and lead underwriters for offerings and listings by domestic companies on the SGX to make a filing with CSRC within 10 working days after the signing of its engagement agreement. Such overseas securities companies must also submit to CSRC no later than 31 January each year, an annual report on its business activities in the previous year associated with overseas securities offering and listing by domestic companies.

Further Information

If you have any queries on the above development, please feel free to contact any of our team members below who will be happy to assist.

Please click on the following links for more information (available on the CSRC website at www.csrc.gov.cn):

- [Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies](#) (Translated document in English)
- [Notes on the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies](#) (Translated document in English)
- CSRC media release dated 17 February 2023 titled "[CSRC Releases New Regulations for Filing-based Administration of Overseas Offering and Listing](#)"
- CSRC media release dated 17 February 2023 titled "[证监会有关部门负责人答记者问](#)"

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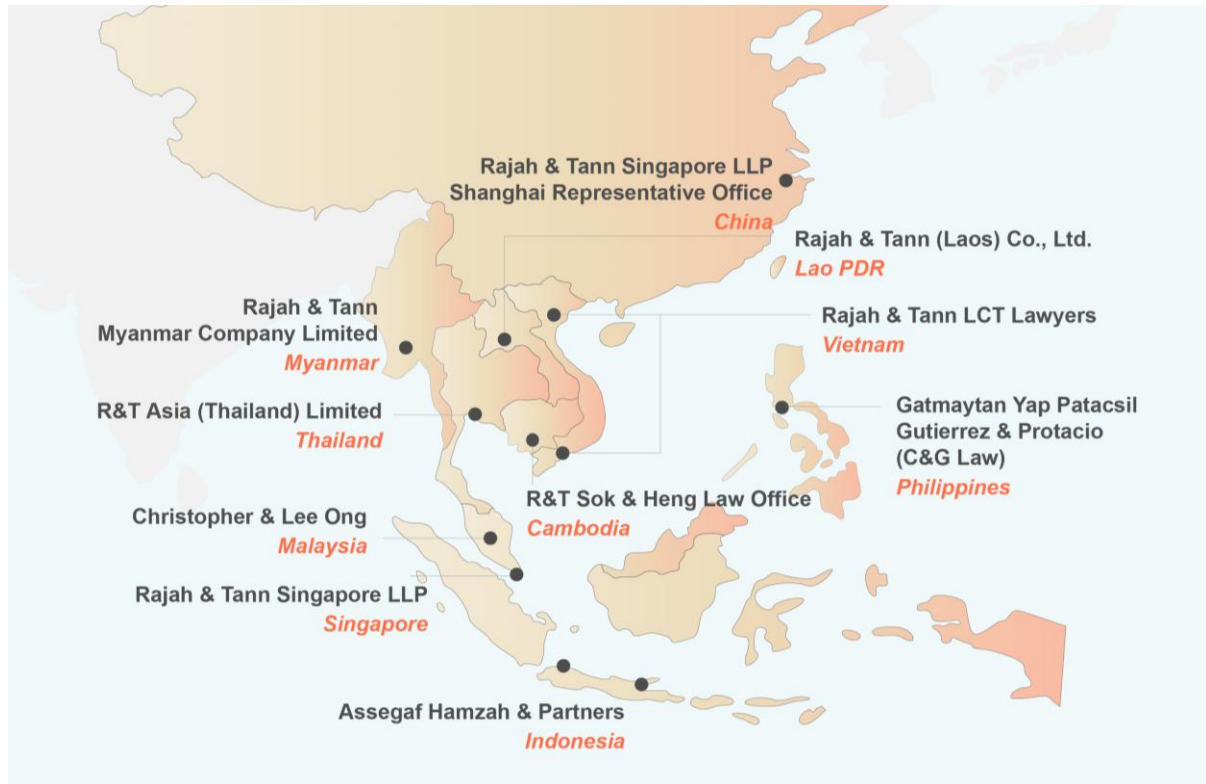
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