

## Revision Notes on the *Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies*

China Securities Regulatory Commission (the CSRC), Ministry of Finance of the People's Republic of China (the MoF), National Administration of State Secrets Protection, and National Archives Administration of China, have jointly revised the *Provisions on Strengthening Confidentiality and Archives Administration for Overseas Securities Offering and Listing* (Announcement No. 29 [2009] of the CSRC, hereinafter referred to as the *Provisions*). The revised *Provisions* aims to further strengthen confidentiality and archives administration concerning overseas offering and listing by domestic companies, set clear requirements on listed companies' duty of information security, safeguard national information security, and enhance cross-border regulatory cooperation.

### **I. Background**

The original *Provisions* was released in 2009 as a normative document to regulate the confidentiality and archives administration in the overseas securities offering and listing by

domestic companies, and to stipulate the procedures that domestic companies shall undertake in providing confidential or sensitive information to securities companies, accounting firms and other securities service providers as well as overseas regulators. The document applied to “domestic companies that issue overseas-listed foreign shares”, and stipulated that the domestic holding entity of Chinese-controlled overseas-listed companies shall be governed by the *Provisions* similarly. For more than a decade, the *Provisions* has played a positive role in ensuring the secure administration of information related to overseas offering and listing by domestic companies, particularly providing audit working papers in the cross-border context.

Amid evolving market circumstances, the *Provisions* has fallen out of step in several aspects. **First, the *Provisions* has limited coverage.** It does not apply to indirect listing by domestic companies in overseas markets including the Hong Kong SAR and the U.S., which has become popular in recent years. **Second, the *Provisions* has not kept up with the regulatory reform in overseas offering and listing by domestic companies.** The *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic*

*Companies* (the *Trial Measures*) stipulates a filing-based administration system universally applied to direct and indirect overseas offering and listing activities by domestic companies. This *Provisions* therefore shall be revised accordingly. **Third, the *Provisions* falls short of the need for cross-border regulatory cooperation.** There has been deepening cross-border regulatory cooperation among global capital markets in recent years, making it imperative to improve relevant institutional arrangements that lay the ground for secure and efficient future cooperation.

## **II. Main Contents of Revision**

The revised *Provisions* contains 13 articles by striking out two articles and adding three new ones from the original document. Major contents of the revision include:

**(I) Ensuring cohesiveness with superior laws and relevant rules.** The *Accounting Law of the People's Republic of China* and the *Law of the People's Republic of China on Certified Public Accountants* are added as superior laws and the *Trial Measures* is also referenced as its legal basis. The term “overseas securities offering and listing” as mentioned in the title and text of the *Provisions* has been aligned with the *Trial Measures* for consistency (Article 1).

**(II) Expanding the application scope to cover indirect overseas listing by domestic companies.** The original definitions of “overseas listed companies” and “domestic holding entity of Chinese-controlled overseas-listed companies” are replaced by a unified term of “domestic companies” as stipulated in the *Trial Measures*, which covers both domestically incorporated joint-stock companies that offer and list securities directly in overseas markets, and the domestic operating entities of companies indirectly listed in overseas markets (Article 2).

**(III) Introducing clear guidance to define companies’ confidentiality responsibilities.** In order to ensure that companies perform their duties of information security, the revised *Provisions* requires that domestic companies abide by relevant laws and regulations on confidentiality when providing or disclosing, either directly or through their overseas listed entities, documents and materials to such securities companies, accounting firms or other securities services providers and overseas regulators in the process of overseas offering and listing. The revised *Provisions* also stipulates that domestic companies shall provide a written statement of the specific state secrets and sensitive information provided when providing documents and materials to securities companies and securities service providers. Securities

companies and securities service providers shall properly retain such written statements for inspection (Articles 3, 4 and 5).

**(IV) Specifying requirement for the administration of accounting archives.** The revised *Provisions* stipulates that domestic companies that provide securities companies, securities service providers, overseas regulators or other entities and individuals with accounting archives or copies of accounting archives shall fulfill due procedures in compliance with national regulations (Article 8).

**(V) Revising articles regarding cross-border inspection by overseas regulators.** Referencing international common practice in cross-border audit oversight cooperation, the revised *Provisions* deletes the stipulation that “on-site inspections shall be dominated by domestic regulators or depend on the conclusions of inspections by domestic regulators”. In compliance with Article 177 of the *Securities Law*, the revised *Provisions* stipulates that, where overseas securities regulators or relevant competent authorities request to inspect, investigate or collect evidence from domestic companies concerning their overseas offering and listing or securities companies and securities service providers that undertake securities business for such domestic companies, such inspection, investigation and evidence collection shall be

conducted under across-border regulatory cooperation mechanism, and that the CSRC or competent authorities of the Chinese government will provide necessary assistance pursuant to bilateral and multilateral cooperation mechanisms, which lays a solid institutional foundation for secure and efficient cross-border regulatory cooperation (Article 11).

From 2 April 2022 to 17 April 2022, the CSRC solicited public comments on the draft revised *Provisions* and received 25 comments in total. Generally, these comments focus on clarification of terms, specific procedures required under certain circumstances and suggested wording change, which do not concern major revisions of the document. The CSRC worked with the MoF, National Administration of State Secrets Protection and National Archives Administration of China in thoroughly deliberating on these comments and have made adjustments to the draft *Provisions* based on some reasonable suggestions.