

Legal 500

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China

Capital Markets

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This country-specific Q&A provides an overview of capital markets laws and regulations applicable in China.

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China: Capital Markets

1. Please briefly describe the regulatory framework and landscape of both equity and debt capital market in your jurisdiction, including the major regimes, regulators and authorities.

Equity Capital Market ("ECM")

The China Securities Regulatory Commission, together with its representative offices, ("**CSRC**") is the regulatory authority in the People's Republic of China ("**PRC**", for the purpose of this overview, excluding the Hong Kong Special Administrative Region, the Macau Special Administrative Region and Taiwan region) in charge of the overall supervision and monitoring of the stock and future contract markets in PRC. At the same time, the three stock exchanges which operate as centralized securities trading facilities in PRC under the supervision of CSRC, namely the Shanghai Stock Exchange (the "**SSE**"), Shenzhen Stock Exchange (the "**SZSE**") and Beijing Stock Exchange (the "**BSE**"), also implement their own self-regulatory regime over the public offering, securities trading and other related activities taking place on the exchange.

In general, the capital market supervision measures in PRC can be classified as either pre-initial public offering ("**IPO**") or post-IPO in nature. Prior to the filing of an IPO application, the issuer shall apply to the local CSRC having jurisdiction over its place of incorporation to assess the completeness of the guidance provided by the sponsor to the issuer and obtain a confirmation from such local CSRC that it is satisfied with the guidance work of the sponsor. Upon local CSRC's confirmation, the issuer and the intermediaries engaged shall submit the IPO application documents to the relevant stock exchange for review and, if no objection from the stock exchange, to CSRC for final registration. Following the CSRC's consent of registration, the stock of the issuer will be listed on the stock exchange. Subsequent to the listing, the listed company shall be subject to the day to day monitoring of CSRC and the stock exchange in relation to the trading of its securities and information disclosure. The local CSRC will conduct regular inspection on the corporate governance of the listed company, while the stock exchange will focus on ensuring the listed company's compliance with information disclosure obligation by issuing a letter of enquiry on any matter of concern.

Debt Capital Market ("DCM")

1) Framework of Debt Capital Market

The bond market in the PRC consists of China Interbank Bond Market ("**CIBM**") and the Exchange Market, supplemented by the Over-The-Counter ("**OTC**") Market.

- CIBM

CIBM, established in 1997, is the most important part of China bond market in terms of both scale and liquidity, and bonds traded in CIBM account for over 80% of the amount outstanding in China bond market. After over 20 years of evolution, infrastructure in the financial market has been continuously improving amid growing diversity in market participants and trading instruments, and CIBM is also progressing steadily. Participants of CIBM include trading platforms, bond depository organizations, self-regulatory organizations, investors and issuers.

The types of bonds issued and traded in CIBM include treasury bonds, local government bonds, debt financing instruments of non-financial enterprises, financial bonds, enterprise bonds, etc.

- The Exchange Market

The Exchange Market consists of the SSE, the SZSE and the BSE, of which the SSE and the SZSE are the two major exchanges in the PRC. The participants of the Exchange Market include securities companies, fund companies, insurance companies, enterprises and individual investors.

The types of bonds issued and traded in the Exchange Market include corporate bonds, enterprise bonds, exchangeable bonds, convertible bonds, asset-based securities, government bonds, etc.

- OTC Market

OTC Market is mainly for direct transactions between counterparties through off-exchange negotiations.

2) Major Regulators and Authorities

- CSRC

CSRC is the governing authority having jurisdiction over the securities and futures market of the PRC. CSRC is

responsible for establishing a unified regulatory framework for the securities and futures market, managing the securities and futures market, promulgating relevant regulations and rules, and conducting other matters as designated by the State Council.

- PBOC

The People's Bank of China ("**PBOC**") is the main regulator and supervisor of CIBM. PBOC is the central bank of the PRC established under the administration and supervision of the State Council and is responsible for formulating and implementing monetary policies, preventing and resolving financial risks, maintaining financial stability and regulating the interbank market.

- NAFMII

The National Association of Financial Market Institutional Investors ("**NAFMII**") is the self-regulatory organization of CIBM, which was founded on 3 September 2007 under the approval of the State Council. Members of NAFMII include all kinds of financial institutions ranging from policy banks, commercial banks, credit cooperative banks, insurance companies, securities houses, fund management companies, trust and investment companies, finance companies affiliated with corporations, credit rating agencies to accounting firms as well as non-financial institutions. The main responsibilities of NAFMII include managing the issuance and registration of debt financing instruments issued by non-financial enterprises, promoting self-regulation of the interbank bond market, and achieving compliant growth of CIBM.

- Stock Exchanges

Stock Exchanges are responsible for regulating the bonds offered and traded in the Exchange Market. For corporate bonds (including enterprise bonds) offered through a public offering, the stock exchanges are responsible for reviewing and approving the issuance, after which the Issuer shall register the bonds with CSRC. For corporate bonds offered through private placement, a no-dissent letter shall be obtained from the relevant stock exchange.

- NDRC

The National Development and Reform Commission ("**NDRC**") was previously responsible for managing the issuance and approval of enterprise bonds. However, according to the Announcement on the Work Arrangements for the Transitional Period for the Transfer of Enterprise Bond Issuance Review Responsibilities issued jointly by the NDRC and CSRC on 18 April 2023

and the Announcement on Work Arrangements Relating to Post Transitional Period Conversion of Enterprise Bonds issued by the CSRC on 20 October 2023, the authority for approval of enterprise bonds has been transferred from the NDRC to the CSRC.

- NFRA

The National Financial Regulatory Administration ("**NFRA**") may supervise certain types of market participants (e.g. banks and insurance companies) when they issue capital instruments in the PRC.

- SAFE

If the issuance or trading of the bonds involves foreign currencies or cross-border transfer of funds, market participants may also be subject to the supervision of the State Administration of Foreign Exchange ("**SAFE**").

2. Please briefly describe the common exemptions for securities offerings without prospectus and/or regulatory registration in your market.

ECM:

Unlike IPO or issuance of shares or convertible bonds (regardless of whether they are issued to specific subscribers or not) where more stringent requirements apply, a listed company is exempted from preparing disclosure documents and from the regulatory review and registration requirements in certain scenarios including the implementation of an employee stock option plan ("**ESOP**"), converting capital reserves into share capital, stock dividends, etc. The listed company is only required to go through its internal approval process in relation to such exemption matters.

DCM:

Generally speaking, there are no exemptions for bond offerings without prospectus and/or regulatory registration in the PRC. In order to issue bonds in the PRC, an offering circular (or prospectus) must be prepared. In addition, all bond offerings in the PRC are regulated by relevant authorities, depending on the type of bonds and the market where the bonds are issued. However, some types of bonds may be issued in installments and are exempted from registration before every single issuance. For example, for debt financing instruments of non-financial enterprises in CIBM, enterprises that are experienced in issuing bonds may choose to implement a universal registration program,

under which the issuer may register all types of debt financing instruments, including but not limited to short-term commercial papers, super short-term commercial papers, mid-term notes, perpetual bonds etc., at one time, and may choose to issue the debt financing instruments within the validity period of registration at the issuer's discretion. However, if the issuance is contemplated to take place 12 months after the registration date, the issuer should file with NAFMII before issuance.

3. Please describe the insider trading regulations and describe what a public company would generally do to prevent any violation of such regulations.

ECM:

The regulations in relation to insider trading of domestic shares ("**A Shares**") are mainly provided for under the *Securities Law of PRC* (the "**Securities Law**"), the *Administrative Measures on Information Disclosure by Listed Companies*, and the No. 5 Guidance for the Supervision of Listed Companies – Registration and Management System for Inside Information Holders of Listed Companies. According to the aforementioned rules, any person in possession of any inside information shall not publicize or divulge such information, nor shall he or she engage in any dealing in the relevant securities unless and until the inside information has been made public in accordance with relevant laws and regulations. Any person in violation of the foregoing requirement shall be subject to administrative penalties by CSRC.

A listed company is required to have an effective inside information registration and administration system in place to mitigate the risk of insider trading. It shall also adopt a policy specifying the confidentiality requirements to be observed, the non-disclosure obligation of a holder of insider information as well as the liabilities for violating such obligation. Prior to a proper disclosure of any inside information, the listed company involved should make a record of the insider and inside information and submit the same to the stock exchange for registration in a promptly manner. On top of the foregoing corporate governance related requirements, in the course of negotiating any price sensitive projects, a listed company should enter into a confidentiality agreement with relevant parties as soon as possible to stipulate the confidentiality obligations of the persons in possession of any inside information, so as to avoid any abnormal fluctuation in the price of its securities. A share price fluctuation caused by leakage of inside information may result in trading halt or suspension which may in turn

affect the progress of transaction under negotiation. For example, a stock exchange will reject any proposed offer for material asset restructuring purpose if such restructuring has become the subject of any investigation by CSRC or any other judicial authority.

DCM:

For bond market, the regulations on insider dealing are not as comprehensive as those of the equity market. The governing legislation is the Securities Law, which stipulates that (1) any form of insider dealing is prohibited in the process of securities offering; (2) if insider dealing causes any losses to the investors, holder of such inside information shall be liable to compensate the losses; and (3) any person who violates the rules on insider dealing will be subject to penalties, including confiscation of illegal proceeds, fines and warnings.

In order to prevent violation of insider dealing regulations of the bond market, companies should strictly abide by the information disclosure requirements imposed by the regulating authority of the market where the bonds are offered and traded, and strictly implement the internal resolution procedures.

4. What are the key remedies available to shareholders of public companies / debt securities holders in your market?

ECM:

The following are some of the principle remedies a prejudiced shareholder of a listed company may apply for under the *Company Law of PRC* (the "**Company Law**") and the Securities Law:

1. where the shareholders of a listed company disagree with a resolution passed at the general meeting of shareholders approving a merger, spin-off or main assets transaction, they may request the listed company to repurchase the shares held by them at a reasonable price;
2. where the legitimacy of any resolutions passed at a general meeting or board meeting of a listed company, whether procedural, in nature or otherwise, is called into question, the affected shareholders are entitled to petition to the court for a revocation of such resolutions;
3. where the directors, supervisors or senior management of a listed company violates law, regulations or the articles of association of the listed company in performing their duties, or

where the listed company is subject to loss as a result an infringement by any third party, the shareholders of such listed company are entitled to file a lawsuit in their own names for the benefit of the listed company; and

4. where the shareholders of a listed company suffer loss as a result of any fraudulent activity, misrepresentation or other disclosure illegality of the listed company, the affected shareholders may claim against the listed company in accordance with applicable laws and regulations. In addition, the China Securities Investor Services Center ("ISC"), a statutory body set up and managed by CSRC, is authorized to act as a "special representative" to bring class actions for and on behalf of the affected shareholders in the case of illegal information disclosure by a listed company, thereby ensuring that the statutory protections are accessible to shareholders in practice.

DCM:

The investor protection mechanisms in the PRC bond market are set out below:

1. Information disclosure: Issuers of debt securities in the PRC are required to comply with a set of strict and detailed information disclosure requirements, including the initial disclosure at issuance, regular disclosure during the outstanding period of the bonds, and disclosure of material events (e.g. any material change in the financial condition of the issuer which may affect its solvency) so long as any bond remains outstanding. The information disclosure mechanism aims to protect the information right of the securities holders.
2. Bondholders' meeting: Bondholders' meeting is an institution comprised by bondholders to collectively exercise their rights for the benefits of all bondholders. The offering circular for the bond issuance shall specify the rules for bondholders' meeting.

In addition to the investor protection mechanisms above and the judicial remedies available to bondholders, the PRC bond market is also exploring more debt management measures available to the issuer. For example, NAFMII has promulgated tentative rules on exchange offer and consent solicitation of bonds in April 2022 and formal operational guidelines on consent solicitation in December 2023, taking reference to the

experience and practice in the international bond market and providing issuers with more options to actively manage the debt securities, and requiring all offering circulars to be disclosed to agree upon such mechanism since 1 April 2024.

5. Please describe the expected outlook in fund raising activities (equity and debt) in your market in 2024.

ECM:

On 17 February 2023, CSRC declared that the adoption of a registration-based IPO system in relation to the public offering of A Shares on the main boards of the stock exchanges in PRC. Upon the full implementation of the registration-based system, the duties of CSRC and stock exchanges are defined in a clearer manner, and the regulatory core in the IPO process has been changed from substantive threshold of any particular issuer under the original approval system to ensuring appropriate and full disclosure, thereby making the whole process of public offering more standardized and transparent. The basic requirements for listing under the full registration-based system become more achievable, resulting in a vibrant direct financing capital market that is more capable of serving the need of the real economy and technology innovation. The full registration-based system simplifies the conditions for listing, improves the review and registration procedure, reforms the underwriting practice and further develops the listed company restructuring system. Moreover, the new system also facilitates regulatory enforcement and enhances investor protection, thereby triggering a restructuring of the capital market ecology within PRC and injecting new momentum into the equity financing market.

On 27 August 2023, the CSRC issued the policy of Balancing the Primary and Secondary Markets, Optimizing IPO and Refinancing Regulatory Arrangements, proposing to gradually tighten the IPO pace and reasonably control the financing interval and scale of refinancing for listed companies. In 2024, it is expected that the IPO market will continue to be influenced by policy regulation, and the number and scale of IPOs and refinancing will face downward pressure.

DCM:

2023 has been the first year of recovery after the pandemic, and the overall economy has achieved development, and policies such as steady growth have increased one after another. Due to the weakening

momentum of the global economic recovery, the unstable foundation of domestic economic repair, insufficient demand, low confidence in growth and other factors, the policy environment and funds are relatively loose, and bonds perform well.

Looking at the economic situation of the whole year of 2024, the steady growth policy will continue to exert force, with PRC's residents' income growing steadily, consumption expected to rise, and the economy will show a trend of bottoming out and rebound. The PRC government will guide financial institutions to intensify the support for technological innovation, green transformation, inclusion of micro and small enterprises, digital economy and other aspects, promote the stability and decrease of comprehensive social financing costs by lowering LPR, MLF and other policy interest rates. With the internationalization of the Renminbi, onshore bond markets have become more accessible for international investors, are included in an increasing number of major global bond indices, and are attracting global attention. Therefore, the scale of bond issuances in the PRC bond market is expected to maintain the growth.

6. What are the essential requirements for listing a company in the main stock exchange(s) in your market? Please describe the simplified regime (if any) for company seeking a dual-listing in your market.

A company applying for a public offering of securities on an A Share stock exchange should in general fulfill the following criteria:

- issuer shall be in the form of a joint stock limited company, provided that a common exception to this requirement is a **"Red-chip company"**, i.e. a company incorporated in an overseas jurisdiction while having its principal place of business in PRC;
- a track record of business continuity for more than three years free from legal or regulatory non-compliance;
- a sound financial and internal control system in place;
- business and financial stability has been maintained;
- a satisfactory degree of controlling and management continuity;
- a clear ownership structure of its shares;
- no change of the control in the past three years (with respect to the listing on the main board of the SSE or the SZSE) or the past two

years (with respect to the listing on the STAR Market (the Science and Technology Innovation Board of SSE) or the ChiNext Market (a NASDAQ-style subsidiary of SZSE)); and

- no criminal, major non-compliance record of the issuer, its controlling shareholders, ultimate controller, directors, supervisors and senior management, nor shall they be subject to any ongoing regulatory, administrative or investigation.

Apart from the foregoing general criteria, CSRC may issue regulatory guidelines from time to time to provide guidance on matters relating to listing application and examination.

As far as dual-listing is concerned, the most commonly seen dual-listing structure is a combination of domestic offering of A Shares and the offshore offering of shares (**"H Shares"**) on the Hong Kong Stock Exchange (the **"SEHK"**) by an issuer incorporated in PRC. Theoretically, there are no simplified listing rules for dual-listing of A Shares and H Shares in boards across the A shares capital market. An issuer seeking dual-listing on a domestic stock exchange and SEHK shall satisfy the general issuance conditions and listing criteria of both markets. That said, the PRC authorities have been encouraging sizable Red-chip Companies that align with the national development strategy, or those in the hi-tech sector or strategic emerging industries with master core technologies in hand to issue shares or depositary receipts on the domestic stock exchanges and offering them relatively relaxed listing criteria. Under those circumstance, market capitalization will often serve as the only factor to be taken in to account in assessing the listing application of an issuer had listed on overseas stock markets. The first Red-chip Company listed on a domestic stock exchange in PRC is China Resources Microelectronics Limited, followed by Semiconductor Manufacturing International Corporation which is the first Red-chip Company offering both H Shares and A Shares. Furthermore, CSRC promulgated and implemented the *Regulatory Provisions on Depositary Receipts under the Connect Scheme between Domestic and Overseas Stock Exchanges (2023 Revision)*, which allows an eligible issuer listed on an overseas stock exchange to issue Chinese depositary receipts on the main board of a domestic stock exchange, and vice versa. Since the effectiveness of such regulatory provisions, several A Share listed companies including Ming Yang Smart Energy Group Limited, Keda Industrial Group Co., Ltd., Ningbo Shanshan Co., Ltd., Sunwoda Electronic Co., Ltd. and Gotion High-tech Co., Ltd. have successfully issued

global depositary receipts in the European securities markets.

7. Are weighted voting rights in listed companies allowed in your market? What special rights are allowed to be reserved (if any) to certain shareholders after a company goes public?

Each of SSE, SZSE and BSE allows an issuer to set up special voting right arrangement before IPO, subject to the following restrictions:

1. proportion of the special voting right: an issuer shall ensure that (a) the proportion of ordinary voting rights is not less than 10%; (b) the number of voting rights carried by each special voting share shall be identical and shall not exceed ten times the number of voting rights attached to each ordinary share;
2. eligibility of special voting rights shareholder: special voting rights shares of an issuer shall only be held, directly or indirectly, by a person who has made significant contributions to the development of the issuer and continues to serve as a director prior to and after the listing, provided that the total number of shares beneficially held by those directors in aggregate shall be more than 10% of the total issued voting shares of the listed company.
3. scope of application of special voting right: special voting rights can only be exercised on the determination at the general meeting of those matters specifically prescribed in the articles of association of the issuer. In particular, no special voting right shall be exercised in relation to a decision on any of the following matters:
 - a. amending the articles of association;
 - b. amending the voting right attached to special voting right shares;
 - c. appointing or removing independent directors, supervisors and auditors; and
 - d. merger, split or dissolution of the issuer or a change of the legal structure of the issuer.

8. Is listing of SPAC allowed in your market? If so, please briefly describe the relevant regulations for SPAC listing.

The listing of securities of a special purpose acquisition

company ("SPAC") is an innovative issuing and listing structure, which poses certain challenges to investor protection. Introducing SPAC into domestic capital market is still a pre-matured topic of discussion in PRC at this moment. At present, none of SSE, SZSE, BSE and the National Equities Exchange and Quotations allow the listing of SPAC.

9. Please describe the potential prospectus liabilities in your market.

ECM:

The issuer should prepare a prospectus in accordance with the relevant rules on information disclosure and provide true, accurate and complete materials to the intermediaries participating in the IPO process. The controlling shareholder, ultimate controller, directors, supervisors and senior management of the issuer shall cooperate with the relevant intermediaries in the course of due diligence and other related work and shall procure that no concealment or misleading information is involved in the disclosure process. The aforementioned entities of the issuer shall verify the accuracy of the information disclosed in the prospectus by signing thereon. Below is a summary of the major potential prospectus liabilities in PRC:

1. Under the Securities Law, the issuer shall be subject to a fine if it is found to have concealed material facts or fabricated significant false contents in the offering documents, the amount of which will be calculated by reference to the amount illegally raised through the IPO. If the securities have already been issued. If the concealment or fabrication has been directed by the controlling shareholder or ultimate controller of the issuer, any illegal income obtained by such shareholder or controller therefrom will also be confiscated on top of the fine imposed. Other person(s)-in-charge or directly involved in the offence may also be subject to similar liabilities.
2. Under relevant provisions of the *Criminal Law of PRC*, if amount of loss caused by the concealment or fabrication is significant or other serious consequences or aggravated circumstances are involved, the issuer and person(s)-in-charge may be subject to imprisonment, criminal detention or fine. The controlling shareholder or ultimate controller who direct such act shall also be subject to similar criminal liability.

3. Under the listing rules of the domestic stock exchanges in PRC, an issuer subject to an administrative penalty referred to in sub-paragraph (1) above or is convicted by a people's court in relation to an offence referred to in sub-paragraph (2) may be subject to a compulsory delisting.

DCM:

In order to issue bonds in the PRC, an offering circular (or prospectus) must be prepared. The offering circular is the most important document in the bond offering process which will be reviewed by the regulatory authorities and will be relied on by the investors. The offering circular is a significant document for information disclosure.

Under PRC laws, in order to protect the interests of the investors, the regulatory authorities require the issuer and all of its directors, supervisors, senior management, and other persons performing the same duties to take responsibility to ensure the truthfulness, accuracy and completeness of the information disclosed in the offering circular, and to ensure that there are no false statements, misleading statements or material omissions in the offering circular. According to relevant PRC laws and regulations, if the issuer fails to perform its prescribed information disclosure obligations, or the information disclosed in the offering circular contains any false statement, misleading statement or material omission, causing loss to bondholders, the issuer shall assume corresponding legal liabilities. In addition, the issuer's controlling shareholders, ultimate controllers, directors, supervisors, senior management and other directly responsible persons, as well as the underwriting institutions and their directly responsible persons, shall be jointly liable in terms of such compensation to the bondholders, unless such persons can prove that they are not at fault.

10. Please describe the key minority shareholder protection mechanisms in your market.

The key minority shareholder protection mechanisms in PRC can be classified into the following three types:

1) Protection on the exercise of voting rights by minority shareholders

- i. a separate counting system which requires that any decision to be made at the general meeting of a listed company in relation to offering of securities, material restructuring, ESOP or any other matter which may have a

significant impact on the interests of minority shareholders shall be subject to the determination of those shareholders who are not the directors, supervisors, senior management or other shareholders individually or in aggregate holding 5% or more of the shares of the listed company (the **"Minority Shareholders"**) and their voting shall be separate counted and disclosed;

- ii. decision on spin-off listing, privatization or restructuring during delisting period, etc. shall be subject to the consent of at least two-third of the voting rights represented by the Minority Shareholders present at the general meeting;
- iii. an online voting system is in place to facilitate the exercise of voting rights by Minority Shareholders.

2) Securities litigation and compensation in advance

The Supreme People's Court of PRC has developed a class action regime for public offering dispute to reduce the cost and risk of minority shareholders to claim against market misconducts such as insider dealing or **market** manipulation. The Securities Law also stipulates that investors suffered from the fraudulent activities, misrepresentation or other illegality of an issuer may choose to reach a settlement agreement with ISC or any other investor protection organization appointed by the issuer or any other person responsible for such illegality to obtain compensation in advance.

3) China Securities Investors Service Center

ISC is a public welfare organization established and managed by CSRC. Its responsibilities include organizing investor education campaign, holding securities for public interest, acting in independently or concert with other investors to exercise shareholder rights under circumstance provided for under the Securities Law, providing mediation, loss calculation and other alternative dispute resolution services, supporting shareholders in legal proceedings and participating in class actions, representing investors to voice their concerns on capital market matters to governmental and regulatory authorities.

11. What are the common types of transactions involving public companies that would require regulatory scrutiny and/or disclosure?

In principle, all types of transactions that are subject to the approval of the stock exchange and/or CSRC (see below for relevant types of transactions) are required to

be disclosed, while transactions that require disclosure may not necessarily be subject to regulatory approval.

The types of transactions that are subject to review and approval by the regulatory authorities are mainly of restructuring and refinancing nature. Any proposed issuance of shares, convertible bonds, depositary receipts or other securities by a listed company or any proposed acquisition to be paid by the issuance of consideration shares shall be sanctioned by the stock exchange and registered with CSRC. On the contrary, an acquisition to be settled in cash is only subject to the approval by the stock exchange without the involvement of CSRC.

In terms of disclosure requirement, the listing rules of each domestic stock exchanges classify disclosable transactions into major transactions, daily transactions and connected transactions and set the applicable disclosure standards for each of them. If a listed company intends to carry out the aforementioned transactions, and the relevant financial indicators relating to such transactions meet the disclosure standards, the listed company shall observe the relevant disclosure requirements.

12. Please describe the scope of related parties and introduce any special regulatory approval and disclosure mechanism in place for related parties' transactions.

ECM:

1) Scope of related parties

The related parties of a A-Share listed company can be classified into related natural persons and legal persons. Although there are slight differences among the listing rules of the domestic stock exchanges, the general principles are as follows:

- a. related natural persons of a listed company include: (i) any natural person who directly or indirectly hold more than 5% of the share capital of such company; (ii) the directors, supervisors and senior management of such company; (iii) the directors, supervisors and senior management of the controlling shareholders of the company; and (iv) the family members closely related to the aforementioned related natural persons; and
- b. related legal persons of a listed company include (i) any legal person who directly or indirectly hold more than 5% of the share

capital of the listed company and any other entity (other than the listed company) controlled by such legal persons; (ii) any other entity (other than the listed company) directly or indirectly controlled by the aforementioned related natural persons; and (iii) any other entity (other than the listed company) in which any of the related natural persons serves as a director (except for an independent director) or senior management, provided that, in the case of State-owned enterprises, an entity will not be regarded as a related legal entity simply because it is under the control of the same State-owned assets supervision and administration authority with the listed company, unless there is an overlapping of the of directorship, supervisors and senior management between the two companies.

Apart from the above, in identifying the related parties of an issuer, the regulatory authorities will follow the principle of "substance over form", such that an entity may be identified as a related party of an issuer if the issuer may incline towards the interests of such entity.

2) Review procedures and disclosure requirements

A listed company engaging in a connected transaction should have due regard not only to the fairness of pricing, rationality and necessity of such transactions, but also the mechanism to ensure the due performance by the related party in the transaction. Different standards of financial indicators apply to connected transactions with related natural persons or legal persons. Once the applicable standard is reached in respect of a connected transaction, the listed company engaging in such transaction shall comply with the relevant procedural requirements (whether board resolution, shareholder approval and/or announcement) before carrying out the connected transactions. In addition, transactions that meet certain materiality standards shall be subject to the prior approval and independent opinions of independent directors of the listed company. When considering the above criteria, the company's transactions with the same related party in a period of twelve consecutive months (or transactions of similar nature with different related parties in a period of twelve consecutive months) shall be aggregated. As for connected transactions in the ordinary course of business of a listed company, the company may reasonably estimate the annual amount of such transactions and comply with the corresponding approval procedures and disclosure obligations, so as to avoid triggering the approval and/or disclosure requirements in a frequent manner.

DCM:

Under the PRC laws, the issuer is prohibited from purchasing the bonds issued by itself, whether directly or indirectly, in the bond offering process. Therefore, even though affiliated transactions in the debt capital market are not completely prohibited, it is subject to strict supervision. The regulation on affiliated transactions in the debt capital market focuses on whether there is sufficient disclosure, whether the approval procedure is proper and whether the price is fair. The rules for affiliated transaction in CIBM and the Exchange Market are very similar. First and foremost, if the issuer's directors, supervisors, senior management, shareholders holding more than 5% of the total shares or other affiliates participate in the subscription of the bonds offered by the issuer, it constitutes a major event that requires full disclosure. In addition, the affiliated parties should perform necessary internal and/or external resolution procedures as prescribed by relevant laws, regulations, the articles of associations and other internal rules of the issuer, to ensure that the approval procedures are proper and compliant. The price of such affiliated party transaction should be fair, and the affiliated parties shall not manipulate the issue price, conduct any improper transfer of benefits or disrupt the market order.

13. What are the key continuing obligations of a substantial shareholder and controlling shareholder of a listed company?

The concept of "substantial shareholder" is not found in the listing rules of the domestic stock exchanges in PRC. An investor holding shares that represent a significant portion of the issued capital of an issuer shall be aware of the following requirements:

1. The controlling shareholders or ultimate controllers of a listed company owe fiduciary duty to act in good faith to the company and its other shareholders, and shall comply with and **procure** the listed company to comply with the applicable laws and regulations as well as articles of association of the company. In particular, such controlling shareholders and ultimate controllers shall avoid competing with the company, maintain the independence of the company, control the number of connected transactions with the company and if such connected transactions are necessary, ensure that such transactions are conducted on an arm's length basis and abstain from voting on such transaction.
2. A controlling shareholder or major shareholder

holding more than 5% of the share capital of a listed company shall also subject to certain restrictions on share disposals. These restrictions include announcement prior to any proposed disposal of shares in the listed company, 1% ceiling of reducing the issued share of the issuer through centralised bidding transactions in any consecutive 90 days, 2% ceiling of reducing the issued share of the issuer through bulk deal in any consecutive 90 days, etc. Obligation in relation to disclosure of interests may also be triggered in case of increase in or reduction of shareholding by such shareholder in the listed company. Such shareholder is also prohibited from engaging in short-term speculative trading in the shares of the listed company.

14. What corporate actions or transactions require shareholders' approval?

According to relevant provisions of the Company Law, the *Guidelines on the Bylaws of Listed Companies* and the listing rules of the domestic stock exchanges, a listed company shall submit the following matters to the general meeting for approval: (1) amendment of the articles of association; (2) increase in or reduction of the registered capital; (3) election and removal of directors and supervisors (except for directors or supervisors who represent the employees of the company); (4) appointment and removal of accounting firms; (5) distribution of dividends or transfer of capital reserve to share capital; (6) major transactions that meet the criteria stipulated in the listing rules; (7) merger, split, dissolution or spin-off proposals; (8) equity incentive plan or ESOP; (9) change in use of proceeds from the offering; (10) issuance of corporate bonds; and (11) carrying out material restructuring, etc.

15. Under what circumstances a mandatory tender offer would be triggered? Is there any exemption commonly relied upon?

In principle, a mandatory tender offer will be triggered when a entity acquires more than 30% of the shares in a listed company, whether by on market or off market transactions.

Under the current regulations, an investor will be exempted from making a mandatory tender offer under the following circumstances:

1. where the acquisition does not result in a

- substantial change in the control of the listed company, e.g. share transfer between different entities controlled by the same ultimate controller;
2. where the acquisition is made with a view of providing financial support to a listed company suffered from severe financial difficulties and the acquirer undertakes not to reduce its shareholding for three years;
 3. non-compensated allocation, change or consolidation of State-owned assets at zero consideration approved by the government or State-owned assets supervision and administration authorities;
 4. where the increase in shareholding percentage is caused by a buyback of shares or reduction of share capital by the listed company rather than as a result of an action taken by the investor;
 5. where the listed company issues new shares to an investor by private placement and the investor undertakes not to reduce its shareholding percentage for three years, provided that a resolution has been passed at the general meeting to exempt the investor from making a mandatory tender offer;
 6. in respect of any shareholder who does not increase its shareholding percentage in a listed company by more than 2% of the issued shares in such company in any consecutive 12-month period following the date on which it acquired 30% or more of the shares in such company;
 7. in respect of any shareholder holding 50% or more of the shares in the listed company;
 8. where the 30% threshold is exceeded by reason of any underwriting business or enforcement of loan security undertaken by an intermediary, bank or other financial institution holds in the ordinary course of business, provided that such intermediary, bank or other financial institution does not have actual control or intention to control the listed company and has put forth a proposal to transfer the shares to a non-related party within a reasonable period;
 9. where the 30% threshold is exceeded through succession;
 10. where the 30% threshold is exceeded as a result of the performance of a securities repurchase agreement, provided that the voting rights of such shares have not been transferred during the term of the repurchase agreement;

11. where the legal resumption of voting rights of preferences shares held by an investor causes its shareholding to exceed 30% of the issued shares of the listed company; and
12. any other circumstances recognized and approved by CSRC.

16. Are public companies required to engage any independent directors? What are the specific requirements for a director to be considered as "independent"?

An A-Share listed company is required to appoint such number of independent directors that constitutes at least one-third of the members of its board of directors. An independent director shall meet the stringent requirements imposed by CSRC and stock exchanges on independence. For example, he or she shall not hold any position or any share in the controlling shareholder of the listed company and there shall not be any significant business dealing between an independent director and the listed company. A person serving as an independent director shall have the work experience required for performing his or her duties and responsibilities as such. A person is not allowed to serve as an independent director for more than five (the number may be further reduced to three in the future) listed companies concurrently. A person is not allowed to serve as an independent director for more than three listed companies concurrently.

17. What financial statements are required for a public equity offering? When do financial statements go stale? Under what accounting standards do the financial statements have to be prepared?

An issuer applying for an A Shares IPO shall submit its financial reports, including the financial statements and the notes thereto, audited by certified public accountants. Such audited financial reports are valid within six months from the latest cut-off date, provided that an extension of no longer than three months may be allowed in exceptional circumstances. The financial statements shall be prepared in accordance with the Chinese Accounting Standards for Business Enterprises.

18. Please describe the key environmental, social, and governance (ESG) and sustainability requirements in your market. What are the key

recent changes or potential changes?

ECM:

On 12 April 2024, under the unified deployment and guidance of the CSRC, the SSE, SZSE and BSE officially released the Guidelines for Sustainable Development Reports of Listed Companies (the "**Guidelines**"), which has been implemented since 1 May 2024. The Guidelines require companies included in the SSE 180 Index, STAR 50 Index, SZSE 100 Index, ChiNext Index, and companies listed both domestically and overseas to disclose their Sustainable Development Reports for the year 2025 no later than 2026, and encourage other listed companies to voluntarily disclose their reports.

Based on a comprehensive consideration of China's national conditions, the Guidelines focus on key aspects of sustainable development, including the environment, society, and related governance. It sets out a total of 21 topics, such as climate change, pollutant emissions, rural revitalization, innovation-driven development, supply chain security, and anti-unfair competition. The disclosing entities should identify the topics that may have a significant impact on them based on their industry and business characteristics.

In addition, the CSRC has also issued rules and regulations related to the environment, society, and corporate governance in the Guidelines for Corporate Governance of Listed Companies, Information Disclosure Content and Format Guidelines, and rules and regulations for listing and self-regulation in various sectors. According to these regulations, listed companies should integrate ecological and environmental protection requirements into their development strategies and corporate governance processes, prepare annual social responsibility reports, and disclose major environmental protection events that may be related to stock prices. Listed companies can determine the specific content of their social responsibility reports based on their own characteristics, explaining their work in promoting social, environmental, ecological, and economic sustainable development. At present, except for the clear requirement in the rules that companies included in the SSE Corporate Governance Sector, companies listed both domestically and overseas, financial companies, and companies included in the SZSE 100 Index should disclose their social responsibility reports at the same time as their annual reports, the SSE and SZSE encourage but do not force other listed companies to disclose their social responsibility reports. Meanwhile, according to the Guidelines, if a listed company that should disclose its social responsibility report discloses or voluntarily discloses its Sustainable Development Report, there is no

need to disclose its social responsibility report again.

DCM:

In terms of ESG certification in the debt capital market, the internationally accepted standards are the *Green Bond Principles* published by the International Capital Market Association and the *Climate Bonds Standard* published by the Climate Bonds Initiative. In the PRC, the most popular type of certified ESG bonds is the green bonds, and the governing rules are the *Green Bond Endorsed Projects Catalogue* issued by the PBOC and the *China Green Bond Principles* issued by the CSRC. Other than green bonds, the PRC regulators have launched other types of ESG bonds, including but not limited to social responsibility bonds, sustainable development bonds, sustainable development-linked bonds and poverty alleviation bonds and have published corresponding requirements for each type of ESG bonds.

Even though the requirements for each type of ESG bonds vary, they share some common standards and principles. First and foremost, the regulation all focuses on the use of proceeds from the bond offering. For instance, all proceeds raised from green bond offering should be used for the construction, operation, merger, supplementing the liquidity need or refinancing the existing indebtedness of green projects in the green industry. The selection standards for relevant green projects shall be properly disclosed. Secondly, there are requirements on the management of the proceeds raised. The issuer shall open an escrow account to supervise the use of proceeds and ensure that such use is in line with the description in the disclosure document. Moreover, the ESG bond issuer is subject to a continuous information disclosure obligation so long as the ESG bond remains outstanding, including the periodic disclosure of the use of proceeds and the operation performance of the selected projects. For third party assessment, it is also recommended that the issuer engage an independent institution to issue assessment report on the ESG standards.

The history of ESG bonds in the PRC dates back to 2010. Between 2010 and 2015, the volume of ESG bond offering was relatively small. However, in recent years, the ESG bond offerings have been booming, with green bonds being the absolutely dominant type of ESG bonds. In 2023, the issuances of sustainable development bonds and sustainable development-linked bonds are also increasing. In the future, it is anticipated that the ESG bonds will further diversify and better adapt to the transformation of the Chinese economy.

19. What are the typical offering structures for issuing debt securities in your jurisdiction? Does the holding company issue debt securities directly or indirectly (by setting up a SPV)? What are the main purposes for issuing debt securities indirectly?

Typically, the issuers issue debt securities directly in the debt capital market of the PRC, and the use of SPV is not very common. However, SPV structure is also used in certain scenarios, such as the issuances of Panda Bonds (as defined below) and asset-based securities ("ABS").

Panda Bonds refer to the bonds issued in the onshore PRC debt market by overseas institutions, including foreign government institutions, international development institutions, financial institutions, and non-financial enterprises. Some foreign issuers are frequent issuers in the international bond market, and have a mature issuance structure. Therefore, they expect to adopt the same issuance structure for their global bond issuances, i.e. issuing bonds through an SPV with credit enhancement provided by the holding company. Typical examples are Mercedes-Benz and BMW. Such issuance structure has been accepted by PRC regulatory authorities.

In an ABS offering, an SPV is set up to issue securities and the securities are backed by the cash flow generated by certain underlying assets. Types of underlying assets include enterprise accounts receivable, creditor's rights under lease, credit assets and beneficial interests in trust and other property rights, real estate property or income right. The advantages of adopting SPV structure in ABS issuance include: to segregate risks between the holding company and the SPV, to stimulate the liquidity of the underlying assets, and to optimize the financial performance of the holding company in its financial reports.

20. Are trust structures adopted for issuing debt securities in your jurisdiction? What are the typical trustee's duties and obligations under the trust structure after the offering?

It is not very common to adopt trust structures for issuing debt securities in the PRC. Trust structure only applies to ABS, where the initiator shall entrust a trustee (normally a financial institution) to manage the underlying assets, and the trustee shall issue securities to investors in the form of ABS. Thereafter, the underlying property becomes trust property and is independent from the property of the initiator, the trustee or other institutions providing

services in the securitization transaction. During the life of the ABS, interest will be paid out of the cash flow generated from the underlying assets. Generally speaking, the trustee's duties include: (1) representing the SPV to purchase the underlying assets from the initiator; (2) declaring earnings and transferring them to the investors and conducting temporary management of such funds; (3) assisting with the information disclosure of asset portfolio on a regular basis and ensuring the authenticity and adequacy of the reports provided to the investors; and (4) announcing events of default and taking corresponding relief measures to safeguard the interests of investors.

21. What are the typical credit enhancement measure (guarantee, letter of credit or keep-well deed) for issuing debt securities? Please describe the factors when considering which credit enhancement structure to adopt.

The typical credit enhancement measure for issuing debt securities include joint liability guarantee, mortgage and pledge, and credit risk mitigation ("CRM") instruments.

Joint Liability Guarantee

Joint liability guarantee is the most widely used credit enhancement instrument in the PRC debt securities market. It is a joint and several liability guarantee given on an unconditional and irrevocable basis.

Mortgage and Pledge

Land, real properties, stocks, and other types of rights can be mortgaged or pledged in order to provide credit enhancement for certain bond issuances. However, it may be difficult to realize the value of the mortgaged or pledged assets.

CRM Instruments

In recent years, CRM instruments have been used more frequently in the debt securities market in the PRC. CRM instruments include credit risk mitigation agreement, credit risk mitigation warrant, credit default swap and credit-linked note issued by NAFMII, as well as credit protection contracts and credit protection vouchers issued by the stock exchanges. CRM instruments are in essence more of an insurance to the bonds, and can be created by banks, securities companies, guarantee companies and other financial institutions.

When considering which specific credit enhancement measure to adopt, the following factors will be taken into

consideration: (1) the shareholding structure of the issuer, e.g. joint liability guarantee is normally provided by shareholders or controllers of the issuer; (2) the composition of the issuer's asset, e.g. whether there are any suitable assets to be mortgaged or pledged; (3) the issuer's credit relationship with banks; and (4) the cost difference between different types of credit enhancement measures.

22. What are the typical restrictive covenants in the debt securities' terms and conditions, if any, and the purposes of such restrictive covenants? What are the future development trends of such restrictive covenants in your jurisdiction?

Generally speaking, there are no restrictive covenants in the debt securities' terms and conditions. In the PRC, the issuer's main obligations under the debt securities are to pay and repay the interest and the principal as scheduled, and to comply with the information disclosure requirements as stipulated by relevant laws and regulations and as agreed in the offering circular.

23. In general, who is responsible for any profit/income/withholding taxes related to the payment of debt securities' interests in your jurisdiction?

In general, the investor shall be responsible for paying the income taxes relating to the payment of interests of debt

securities in the PRC. Under PRC laws, the enterprise income tax is pre-charged on a monthly basis, and settled on a yearly basis based on the profit and loss of the taxpayer. Therefore, the investors should bear the income taxes based on its actual profit and loss on a yearly basis. There are some exceptions to the general rule, e.g. the foreign investors investing in the debt securities market are now exempted from paying income taxes.

24. What are the main listing requirements for listing debt securities in your jurisdiction? What are the continuing obligations of the issuer after the listing?

For bonds issued through public offering, there is no such concept as "listing of the debt securities" in the PRC bond market. As introduced in question #1, there are different debt markets in the PRC and each market has its own registration, issuance and trading rules and procedures, which combined together constitute a holistic set of bond offering rules in the PRC. Any bond offered through public offering can be circulated and traded in market. For bonds issued through private placement, the issuer can apply for listing and trading of the bonds in market. The applicant should prepare a set of application documents, including the listing application letter, the listing agreement and other necessary documents, and should complete the procedures requested by the regulatory authorities in order to list the bonds. In addition, there are no other specific continuing obligations for the issuer after the listing.

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