

CSRC Rules for Direct Overseas Listing

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Guidelines on Documents and Procedures for Submission for Issuing Shares and Listing Overseas of Companies Limited by Shares (“the Guidelines”) has just been promulgated by the China Securities Regulatory Commission (“the CSRC”).

The Guidelines abolished “456 requirements” for China’s domestic companies’ listing overseas. Major requirements, such as net assets of RMB 400 million, IPOs not less than USD 50 million, and preceding year’s net profit of at least RMB 60 million are now eradicated.

The Guidelines also streamline the procedure for applying for listing overseas. It is now simple and the filing process less rigorous.

The CSRC’s promulgation is seen as an encouragement to Chinese enterprises for direct listing overseas and to ease equity financing pressure on the mainland’s A-share stock market.

To date there are more than 800 enterprises waiting for CSRC’s approval for initial public offerings in the A-share market. The target for tapping this source of equity financing soars to about RMB 500 billion in total according to a recent report from Ernst & Yong.

While offering “the carrots”, namely the Guidelines, the CSRC at the same time uses “the sticks”: it has begun the examination over the financial statements of the enterprises in the waiting list, and that will possibly lead to the disqualification of some enterprises.

Both the carrots and the sticks are used in the expectation that the pressure on the A-share market will be eased.

It is too early to predict the outcome of the capital markets resulting from the Guidelines.

Firstly, though the A-share market has been in depression for the past two years, it enjoys a relatively high P/E ratio, which is much higher than that of many overseas stock markets.

Secondly, few of the companies waiting for the outcome of their application to the A-share market will make the switch for overseas listing as they have incurred insurmountable expenses in their application.

Thirdly, due to the financial scandals and non compliance with listing requirements committed by some Chinese companies listed overseas, the securities watchdogs of some foreign markets, such as the US Securities and Exchange Commission, the stock exchanges in Singapore, London and Ontario in Canada have become stricter and more cautious in the management and supervision over the Chinese enterprises listed overseas.

On one hand, CSRC relaxes rules for listing overseas; on the other hand, the Chinese enterprises are daunted with the overseas capital markets' lack of confidence in them.

Currently many Chinese enterprises prefer the so-called "red-chip mode" for their listing overseas to the listing merely in the name of the domestic enterprise, so as to escape from the "456 requirements" as well as the scrutiny from the CSRC.

Under the red-chip mode, the Chinese enterprises usually set up overseas companies in the BVI or tax havens and use one of the overseas companies as the entity to be listed overseas.

As long as there is no merger and acquisition within a corporate group involving related entities or persons as specified in the Order No. 10 (that is "*Provisions on Foreign Investors' Merger with and Acquisition of Domestic Enterprises*") of the Ministry of Commerce ("MOFCOM"), the domestic enterprises/persons can manage to complete the listing overseas in the name of an overseas company.

Such an arrangement will not subject to the examination and approval of the MOFCOM and the CSRC.

CSRC had issued some orders in the past to provide possible supervision over the listing overseas via red-chip mode. However, CSRC has not enforced them.

By relaxing the rules for listing overseas, the CSRC, to some degree, encourages domestic enterprises to be listed overseas. Inevitably, there will be uncertainties as listing overseas is still subjected to the approval of the CSRC.

Therefore, it is anticipated that the promulgation of the Guidelines will facilitate, but not to a large degree, Chinese enterprises for direct Chinese enterprises overseas listing. Perhaps, market forces will predict the outcome that the Guidelines will deter Chinese enterprises from relatively complicated red-chip structure for their listing overseas.