

Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies

(Draft for Comments)

Article 1 This *Provisions* is formulated to, in the interest of safeguarding economic security and public interest, regulate the confidentiality and archives administration related to overseas securities offering and listing by domestic companies, and to support companies to offer and list securities in overseas markets pursuant to laws and regulations, in accordance with statutes including the *Securities Law of the People's Republic of China*, the *Law of the People's Republic of China on Guarding State Secrets*, the *Archives Law of the People's Republic of China*, the *Accounting Law of the People's Republic of China*, the *Law of the People's Republic of China on Certified Public Accountants*, the *State Security Law of the People's Republic of China* and the *Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Companies*.

Article 2 A domestic company that seeks to offer and list its securities in an overseas market, and the securities companies and securities service providers that undertake relevant securities business, shall strictly abide by applicable laws and

regulations of the PRC and this *Provisions*, enhance legal awareness of keeping state secrets and strengthening archives administration, institute a sound confidentiality and archives administration system, and take necessary measures to fulfill confidentiality and archives administration obligations. They shall not divulge any state secret or harm national security and public interest.

The domestic company in the preceding paragraph may refer to either one of the following entities: a domestic joint-stock company listed in an overseas market via direct offering, or a domestic operational entity of a company listed in an overseas markets via indirect offering; the securities companies and securities service providers in the preceding paragraph may include such that are incorporated domestically or overseas, and their member institutions, representative offices, joint ventures, partners and other associated agencies in the Chinese mainland.

Article 3 A domestic company that plans to, either directly or through its overseas listed entity, publicly disclose or provide to relevant entities or individuals including securities companies, securities service providers, and overseas regulators, documents and materials that contain state secrets or government work secrets, shall first obtain approval from competent authorities according to law, and file with the secrecy administrative department at the same level. Where there is ambiguity or

dispute over the identification of a state secret, a request shall be submitted to the competent secrecy administrative department for determination; where there is ambiguity or dispute over the identification of a government work secret, a request shall be submitted to the competent government authority for determination.

Article 4 A domestic company that plans to, either directly or through its overseas listed entity, publicly disclose or provide to relevant entities or individuals including securities companies, securities service providers, and overseas regulators, other documents and materials that, if divulged, will jeopardize national security or public interest, shall strictly fulfill relevant procedures stipulated by applicable national regulations.

Article 5 A domestic company shall provide documents or materials to securities companies or securities service providers in compliance with applicable national regulations on confidentiality, and provide at the same time a written statement of compliance with Articles 3 and 4 of this *Provisions*. Securities companies and securities service providers that receive such documents or materials shall retain the written statements for inspection.

Overseas accounting firms that provide auditing services for overseas securities offering and listing by domestic companies shall fulfill relevant procedures stipulated by applicable national regulations. Domestic companies shall not

provide accounting archives to overseas accounting firms whose procedures are incomplete.

Article 6 Where a domestic company, after fulfilling relevant procedures, provides to securities companies, securities service providers or other entities with documents or materials that contain state secrets or government work secrets, or other documents or materials that will be detrimental to national security or public interest if divulged, a non-disclosure agreement shall be signed between the provider and receiver of such information according to the *Law of the People's Republic of China on Guarding State Secrets*, this Provisions and other laws and regulations. Such agreement shall specify the obligations and liabilities on confidentiality held by such securities companies and securities service providers.

Securities companies and securities service providers shall keep safe the obtained documents or materials in compliance with national regulations on confidentiality and archives administration.

Article 7 Domestic companies, relevant securities companies or securities service providers that discover any divulgence or possible divulgence of state secrets shall immediately take remedies and report to relevant state organs and units, which shall then take response immediately and report timely to the secrecy administrative department.

Article 8 Domestic companies that provide securities companies, securities service providers, overseas regulators or other entities or individuals with accounting archives or copies of accounting archives that have important conservation value to the nation and the society shall fulfill due procedures in compliance with national regulations.

Article 9 Archives, including working papers, that have been produced in the Chinese mainland by securities companies and securities service providers for overseas securities offering and listing by domestic companies shall be retained in the Chinese mainland, and, without prior approval by competent authorities, must not be brought, mailed or otherwise transferred to outside the Chinese mainland, or transmitted to any institutions or individuals outside the Chinese mainland through any methods including via the use of information technologies. Where archives or copies of archives that have important conservation value to the nation and the society need to be transferred or transmitted to outside the Chinese mainland, relevant approval procedures stipulated by national regulations shall be followed.

Article 10 China Securities Regulatory Commission (hereinafter referred to as the CSRC), Ministry of Finance of the People's Republic of China, National Administration of State Secrets Protection, National Archives Administration of China and other competent authorities shall establish coordination

mechanism in conducting regulation, supervision and inspection pursuant to their respective statutory mandates over matters of confidentiality and archives administration concerning overseas securities offering and listing by domestic companies.

Article 11 Overseas securities regulators and competent overseas authorities may request to investigate, including to collect evidence for investigation purpose, or inspect a domestic company that has been listed or offered securities in an overseas market or securities companies and securities service providers that undertake securities business for such domestic companies. Such investigation and inspection shall be conducted under a cross-border regulatory cooperation mechanism, and the CSRC and competent authorities of the Chinese government will provide necessary assistance pursuant to bilateral and multilateral cooperation mechanisms. Before cooperating with the investigation and inspection by, or providing documents and materials to overseas securities regulators or other competent overseas authorities, such domestic companies, securities companies and securities service providers shall report to the CSRC or other competent authorities.

Article 12 Any entities or individuals that violate the *Law of the People's Republic of China on Guarding State Secrets*, the *Archives Law of the People's Republic of China* and other applicable laws and regulations shall be held legally liable by competent authorities. In cases of criminal offense, criminal

liabilities shall be pursued in accordance with law.

Article 13 This *Provisions* shall come into effect on the date of promulgation. The *Provisions on Confidentiality and Archives Administration for Overseas Securities Offering and Listing* (Announcement No. 29 [2009] of the China Securities Regulatory Commission) shall be simultaneously invalidated.

Courtesy Translation