

CSRC Announcement [2023] No. 44

The *Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies* is hereby released, to be effective as from 31 March 2023.

China Securities Regulatory Commission
Ministry of Finance of the People's Republic of China
National Administration of State Secrets Protection
National Archives Administration of China
Date: 24 February 2023

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

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 activities by domestic companies, either in direct or indirect form (hereinafter collectively referred to as overseas offering and listing), and to support companies' overseas offering and listing 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 *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies*.

Article 2 Domestic companies that seek overseas

offering and listing, and the securities companies and securities service providers that undertake relevant businesses shall strictly abide by applicable laws and regulations of the People's Republic of China 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 leak any state secret and working secret of government agencies, or harm national security and public interest.

The domestic companies in the preceding paragraph may refer to either one of the following entities: a joint-stock company incorporated domestically that conducts direct overseas offering and listing, or a domestic operating entity of a company that conducts indirect overseas offering and listing; the securities companies and securities service providers in the preceding paragraph include such that, either incorporated domestically or overseas, undertake businesses related to overseas offering and listing by domestic companies.

Article 3 A domestic company that plans to, either directly or through its overseas listed entity, publicly disclose or provide to relevant individuals or entities including securities

companies, securities service providers and overseas regulators, any documents and materials that contain state secrets or working secrets of government agencies, 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 according to law; where there is ambiguity or dispute over the identification of a working secret of government agencies, a request shall be submitted to the competent 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 individuals and entities including securities companies, securities service providers and overseas regulators, any other documents and materials that, if leaked, will be detrimental to national security or public interest, shall strictly fulfill relevant procedures stipulated by applicable national regulations.

Article 5 A domestic company that provides documents and materials to securities companies and securities service

providers shall abide by applicable national regulations on confidentiality in handling such documents and materials, and provide at the same time to the securities companies and securities service providers a written statement on the company's implementation of the requirements in Articles 3 and 4 of this *Provisions*. The securities companies and securities service providers shall retain such written statement for inspection.

Article 6 Where a domestic company, after fulfilling relevant procedures, provides to securities companies, securities service providers and other entities with any documents and materials that contain state secrets or working secrets of government agencies, or any other documents and materials that will be detrimental to national security or public interest if leaked, 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*, other laws and regulations and this *Provisions*. 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 and materials in compliance with national regulations on confidentiality and archives administration. The information systems and devices used to store, process or transmit such documents and materials should meet the criteria stipulated by applicable national regulations. Securities companies and securities service providers that publicly disclose or provide to overseas regulators or other relevant entities or individuals such documents and materials shall fulfill relevant procedures pursuant to Articles 3 and 4 of this *Provisions*.

Article 7 Domestic companies, securities companies or securities service providers that discover any leakage or possible leakage of state secrets, working secrets of government agencies or any other documents and materials that, if leaked, will be detrimental to national security or public interest, shall immediately take remedies and report to relevant state organs and units. The state organs and units receiving such reports shall then respond immediately and report timely to the secrecy administrative department and other relevant departments.

Article 8 A domestic company that provides accounting archives or copies of accounting archives to any entities including securities companies, securities service providers and

overseas regulators and individuals shall fulfill due procedures in compliance with applicable national regulations.

Article 9 Working papers produced in the Chinese mainland by securities companies and securities service providers in the process of undertaking businesses related to overseas offering and listing by domestic companies shall be retained in the Chinese mainland. Where such documents 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 (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 will establish coordination mechanism to perform regulation, supervision and inspection pursuant to their respective statutory mandates over matters of confidentiality and archives administration concerning overseas offering and listing by domestic companies.

Article 11 Where an overseas securities regulator and a competent overseas authority requests to inspect, investigate or collect evidence from a domestic company concerning its

overseas offering and listing, or to inspect, investigate, or collect evidence from the domestic securities companies and securities service providers that undertake relevant businesses for such domestic companies, such inspection, investigation and evidence collection shall be conducted under a cross-border regulatory cooperation mechanism, and the CSRC or other competent Chinese authorities will provide necessary assistance pursuant to bilateral and multilateral cooperation mechanisms. The domestic company, securities companies and securities service providers shall first obtain approval from the CSRC or other competent Chinese authorities before cooperating with the inspection and investigation by the overseas securities regulator or competent overseas authority, or providing documents and materials requested in such inspection and investigation.

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 in the process of overseas offering and listing shall be held legally liable by competent authorities, and referred to the judicial organ to be investigated for criminal liability if suspected of committing a crime.

Article 13 This *Provisions* shall come into effect on 31 March 2023. The *Provisions on Confidentiality and Archives Administration for Overseas Securities Offering and Listing* (Announcement No. 29 [2009] of CSRC) shall be simultaneously invalidated.