

China's Regulations for Filing-based Administration of Overseas Securities Offerings and Listings by Domestic Companies: Impact on Listed Companies

中国境内企业境外发行证券和上市的备案管理规则：对已上市公司的影响

On 17 February 2023, the China Securities Regulatory Commission (**CSRC**) of the People's Republic of China (**PRC**) published the Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies (境内企业境外发行证券和上市管理试行办法) (**Trial Measures**) and five practising notes. These regulations took effect on 31 March 2023. Subsequently, on 16 May 2023, the CSRC published the sixth practising note which took effect on 16 May 2023. The Trial Measures and six practising notes (collectively, **Filing Regulations**) established a filing-based administration regime for direct and indirect overseas securities offerings and listings by domestic companies incorporated in Mainland China.

In certain circumstances, companies listed outside Mainland China (**Issuer**) may also be caught by the Filing Regulations. We highlight below the applicability of the Filing Regulations to such Issuers.

2023年2月17日，中国证券监督管理委员会（**证监会**）发布了《境内企业境外发行证券和上市管理试行办法》（《**试行办法**》）和五项适用指引，于2023年3月31日生效。随后，2023年5月16日，证监会发布了第六项适用指引，于2023年5月16日生效。《试行办法》和六项适用指引（统称为**备案规则**）建立了中国境内企业直接或间接到境外发行证券或将其证券在境外上市的备案管理制度。

在某些情形下，备案规则也可能适用于已经在中国大陆以外上市的公司。本文将讨论备案规则的适用性。

Applicability

适用范围

The Filing Regulations apply to securities offerings and listings by an Issuer which may be a company incorporated in Mainland China or a foreign incorporated company which meets **both** conditions below: 备案规则适用于满足以下两个条件的中国大陆或境外注册的上市公司：

- More than 50% of the Issuer's audited operating revenue, total profit, total assets **OR** net assets for the most recent accounting year is generated from domestic companies incorporated in Mainland China; **AND** 发行人最近一个会计年度经审计的营业收入、利润总额、总资产**或者**净资产的 50%以上来自中国境内企业；和
- The Issuer's principal business activities are conducted in Mainland China, its principal places of business are located in Mainland China, **OR** the senior management in charge of its business operations are mostly Chinese citizens or domiciled in Mainland China. 发行人的主要经营活动在中国境内开展或主要营业场所位于中国境内，**或者**负责经营管理的高级管理人员多数为中国公民或经常居住在中国境内。

The question whether the Filing Regulations apply is determined on a “substance-over-form” basis. In this context, real estate investment trusts (**REITs**) listed in an overseas exchange will also be covered by the Filing Regulations although a REIT is not technically a listed company.

认定备案规则是否适用，应遵循“实质重于形式”的原则。因此，在境外上市的房地产投资信托也适用该备案规则，虽然从技术角度来看，房地产投资信托并非上市公司。

An Issuer may be subject to the Filing Regulations if it engages in offering or listing activities which may include, without limitation:

发行人如进行境外发行上市活动，可能适用备案规则，该等活动包括但不限于：

- (a) **A new offering of the securities on the same stock exchange**, such as issue of equity shares, depository receipts, corporate bonds convertible to equity shares and other equity securities.
在同一境外交易所发行证券，例如，发行新股、存托凭证、可转换债券或其他股权类证券。

However, the filing requirements will not apply to an issue of securities for the purposes of the implementation of share incentives for employees, capitalisation of reserves to share capital, dividend in specie or share split.

但是，备案要求不适用于发行证券用于实施员工股权激励、公积金转为增加公司资本、以股代息、股份拆细的情形。

- (b) **A new offering or listing of its securities on a different stock exchange** outside Mainland China, such as a secondary or dual listing.
在其他中国大陆以外的证券交易所发行证券或将其证券在其他境外市场上市，例如，二次上市或双重上市。

- (c) **A reverse takeover** involving a target which is a domestic company incorporated in Mainland China.
涉及中国境内企业直接或间接境外上市的反向收购。

Filing procedures

备案程序

Under the Filing Regulations, the Issuer is required to or must designate its main operating entity in Mainland China to complete filing formalities. The documents required to be filed with the CSRC include, without limitation, a filing report and a legal opinion issued by PRC qualified lawyers (**PRC legal opinion**).

按照备案规则，发行人或发行人指定的一家主要境内运营实体负责向证监会备案。需提交给证监会的备案文件包括但不限于备案报告和中国法律意见书。

The filing timeline for a scenario listed in (a) to (c) above is as follows:

就上述(a)至(c)项所列情形进行备案的时间要求如下：

- For scenario (a), the filing with the CSRC must be done within **three working days after the relevant offering is completed**.

就上述(a)项所列情形，应当在相关发行完成后**3个工作日内**向证监会备案。

- For scenarios (b) and (c), the filing with the CSRC must be done within **three working days after the relevant application for the offering or listing is submitted** in the relevant overseas market.
就上述(b)和(c)项所列情形，应当在境外提交相关发行上市申请文件后**3个工作日内**向证监会备案。

If the filing documents are complete and in good order, the CSRC will, within 20 working days after receiving the filing documents, complete the filing procedure and publish the filing results on its website.

备案材料完备、符合相关要求的，证监会自收到备案材料之日起 20 个工作日内办结备案，并通过网站公示备案结果。

In addition, after completing an offering or listing of its securities, the Issuer is required to report to the CSRC within **three working days** after the occurrence and announcement of any of the following material events:

如发行人在发行证券或将其证券上市后发生下列重大事项，应当自相关事项发生并公告之日起**3个工作日内**向证监会报告具体情况：

- A change of control;
控制权变更；
- An investigation or penalty imposed by an overseas securities regulator or other relevant competent authority;
被境外证券监督管理机构或者有关主管部门采取调查、处罚等措施；
- A change of listing status (such as a change from secondary listing to dual listing) or transfer of listing platform (such as from Catalist to Mainboard), which does not involve an issue of shares; and
转换上市地位（如二次上市转为双重上市）或者上市板块（比如从凯利板转到主板），且不涉及发行股份；
和
- A voluntary or mandatory delisting.
主动或者强制终止上市。

If there is a material change to the Issuer's principal business after the completion of an offering or listing of its securities, such that the CSRC filing requirements are no longer applicable, the Issuer is required to submit a special report and a PRC legal opinion to the CSRC within **three working days** after the occurrence of such change.

如发行人在中国境外发行证券或将其证券上市后，主要业务经营活动发生重大变化，不再属于备案范围，应当自相关变化发生之日起**3个工作日内**，向证监会提交专项报告及中国法律意见书。

Consequences of non-compliance

违规后果

In the event of a violation of the Filing Regulations, the CSRC may order rectification, issue warnings, impose fines and inform the relevant overseas securities regulators *via* the cross-border securities regulatory cooperation mechanism. A fine between RMB 1,000,000 and RMB 10,000,000 may be imposed on the non-compliant company and a fine between RMB 500,000 and RMB 5,000,000 may be imposed on the person directly responsible for the violation. If the violation by a company is directed by its controlling shareholder or actual controller, a fine between RMB 1,000,000 and RMB 10,000,000 may be imposed on the controlling

shareholder or actual controller, and a fine between RMB 500,000 and RMB 5,000,000 may be imposed on the person directly responsible for the violation.

违反备案规则的，证监会可责令改正、给予警告、处以罚款、通过跨境监督管理合作机制通报境外证券监督管理机构。对违规的企业可处以的罚款为人民币 100 万元至 1000 万元，对直接责任人员可处罚款人民币 50 万元至 500 万元。如企业的违规由其控股股东、实际控制人指使，对其控股股东、实际控制人可处以的罚款为人民币 100 万元至 1000 万元，对直接责任人员可处以的罚款为人民币 50 万元至 500 万元。

If there is a serious violation of the Filing Regulations, the CSRC may ban the relevant responsible person from the securities market, and criminal liability may result.

严重违反备案规则的，证监会可对有关责任人员采取证券市场禁入的措施。构成犯罪的，依法追究刑事责任。

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following Partners:

如果您希望获得有关上述或任何其他法律领域的信息或协助，可联系您通常合作的王律师事务所的合伙人或以下任何一位合伙人



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