

China Legal Briefing*283

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I. Establishment of the Beijing Stock Exchange (BSE)

The Beijing Stock Exchange (BSE), the third stock exchange established in China, completed its incorporation procedure on September 3, 2021, and officially started operation on November 15, 2021. Similar to the ChiNext board of Shenzhen Stock Exchange (ChiNext) and the Science and Technology Innovation Board (Star Market) of Shanghai Stock Exchange, the BSE adopts the registration system originated from the United States. In addition, BSE is the first stock exchange in China that takes the legal form of a limited liability company. By contrast, the other two are state-owned non-profit organizations directly governed by the China Securities Regulatory Commission (CSRC).

BSE, ChiNext and Star Market have their own histories, focuses and promulgated regulations specifically applicable to the companies listed therein. Generally speaking, ChiNext-listed companies are normally in the mature stage of the growth period, they are mainly enterprises that embody a combination of traditional industries with new technologies and new business models. Innovative and emerging companies are targets of both BSE and Star market, but the latter has higher entry standards and focuses on semiconductors, new materials, biological medicine, environmental protection and new energy sectors. BSE, on the other hand, mainly serves and supports innovative small and medium enterprises in advanced manufacturing and modern service industries.

For the short term, the new exchange might lead to a diversion of capital from Star Market and ChiNext. But from a long-term perspective, it's prevalently believed that BSE will offer small businesses with more options and higher flexibility. The new exchange will alter the capital markets landscape in mainland China, which has long been dominated by the two financial hubs of Shanghai and Shenzhen. Whether or not BSE will shape the traditionally known political center of China into one of the pillars in its financial and service industry still remains to be seen.

II. Amendments to the “Civil Procedure Law of the PRC”

On December 24, 2021, the Standing Committee of the National People's Congress has decided to amend the Civil Procedure Law of the People's Republic of China. This decision has been adopted at the 32nd Session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China. Such Amendments came into force on January 1, 2022.

The Amendments bring about the following key changes:

- (1) Online legal proceedings conducted through information network platform will be adopted and granted the same legal force as offline legal proceedings.
- (2) The court will be allowed to serve a litigation document by electronic means through which the receipt of the document can be confirmed.
- (3) The application of sole-judge proceedings will be more strictly limited.
The sole-judge proceedings shall not be applied to cases involving national interest or public interest, cases receiving public attention or having large social impact, cases of new types of facts or issues, complicated cases and other cases the trial of which by a single judge is inappropriate.
- (4) Normally, in a summary procedure the trial shall be completed within three months after the case is accepted. Pursuant to the Amendments, an extension of one month under the summary procedure, if needed, can be granted with the approval of the president of the court.
- (5) Several supplementary regulations have been added on to the small claims procedure, including but are not limited to:
 - A judgment under the small claims procedure shall be concluded in one court session and be pronounced in court.
 - The small claims procedure shall not be applied to cases involving personal relationship, property right confirmation or foreign related cases.
 - Normally, a case under the small claims procedure shall complete the trial within two months after the case is accepted. Pursuant to the Amendments, an extension of one month under the summary procedure, if needed, can be granted with the approval of the president of the court.

III. The China Securities Regulatory Commission (CSRC) solicits comments on draft rules for overseas listing

On December 24, 2021, the China Securities Regulatory Commission (CSRC), promulgated the Administrative Provisions of the State Council on the Overseas Issuance and Listing of Securities by Domestic Enterprises and the Administrative Measures for the Record-filing of the Overseas Issuance and Listing of Securities by Domestic Enterprises (collectively, the "Draft Rules for Overseas Listing") for public comments.

The key issues addressed by the Draft Rules for Overseas Listing, which could directly affect enterprises with plans for overseas listing or market participation and thus should attract their interests include but are not limited to:

- The clarification of the meaning "domestic" in the context of an indirect listing of a domestic enterprise.
- An official recognition of the overseas listing of VIE structure enterprises as compliant with domestic laws and regulations.
- The codification of the CSRC and the State Council's power, through its subordinate departments, to require domestic enterprises to suspend or terminate overseas offering and listing, and to even revoke an already completed filing under certain circumstances.
- The right for overseas securities regulatory authorities to request the CSRC under the State Council for assistance when conducting investigation and evidence collection on overseas public offering and listing, and on other related activities of domestic enterprises.

With the Draft Rules for Overseas Listing, the CSRC aims to alleviate previous concerns and worries in the market and restore the market confidence and vitality. The CSRC stated that despite the various amendments to the regulatory system for overseas listing, the relevant policy and management will not be tightened up. The CSRC further expressed that the direction of expanding the opening-up and the attitude of supporting overseas listing activities of enterprises will not change. On the other hand, the reality in the financial market has given us different observations – many domestic enterprises are now going with or shifting back to being listed in Hong Kong instead of in an overseas stock exchange.

IV. Draft amendment to the “PRC Company Law”

On December 24, 2021, the thirteenth session of the Standing Committee of the Eighth National People's Congress released the draft amendment to the PRC Company Law (Draft Amendment) for public feedback and opinion. With nearly 70 articles materially changed, the Draft Amendment contains important revisions regarding the protection of the legitimate rights and interests of creditors, the director's, the supervisor's and senior manager's obligations of fidelity and diligence towards the company, as well as the introduction of single-member joint stock company. In the following, some preliminary comments regarding certain key issues are provided.

(1) Creditor's right to request the shareholders to fully contribute the registered capital

According to Article 48 of the Draft Amendment, creditors are granted the right to request the shareholder of a company to fully contribute the registered capital regardless of the time-limit for contribution as prescribed in the Articles of Association. This will give creditors a direct legal basis to claim an “advanced contribution” by the shareholder and thus improve the liquidity of the company, i.e the debtor. However, it's not yet clear if sufficient mechanism has been established in practice to ensure that such advanced contribution can and will be directly used to clear the claims of the creditors.

(2) The company's obligation to notify the shareholder to pay the capital contributions

Article 46 of the Draft Amendment requires a limited liability company to check and verify the shareholder's payment of capital contributions. The company is expressly empowered to urge the shareholders to make capital contribution strictly on schedule. Where a shareholder fails to fulfill its obligation of capital contribution, it shall be deprived of its shareholder's right to the extent of the capital contributions that has not been paid. In this case, the company shall cancel the shareholder's right by transferring the shares or reducing the registered capital. Whether or not this means that the company, can against the shareholder's will and the Articles of Association, unilaterally decides on

capital reduction and/or share transfer, remains unclear.

(3) Strengthening the liabilities of the directors, supervisors and senior managers of a company

The Draft Amendment aims to enhance the regulation of the directors, supervisors and senior managers of a company in order to make sure the proper performance of the obligations of fidelity and diligence.

Article 183 of the Draft Amendment specifies the preconditions for the directors, supervisors or senior managers to enter into a contract or a transaction with the company. Article 207 of the Draft Amendment for the first time expressly stipulates the liability of the directors, supervisors and senior managers for distributing profits in violation of the company law. These amendments aim to set up a higher standard for duty of care, fidelity and diligence for the directors, supervisors and senior managers of a company. On the other hand, it remains equally important to clearly define the scope of such duties amongst directors, supervisors and senior managers so that liabilities, once incurred, can be accurately and properly attributed.

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