

CHINA LEGAL REPORT

February 2010



Listing of Growth Enterprises on ChiNext Shenzhen (Second Board)

I. Introduction

October 30, 2009 was the first trading day of the new ChiNext Shenzhen. So far, 28 companies have been listed successfully on ChiNext Shenzhen, the first Chinese Stock Exchange established under the Interim Measures for the initial public offerings and listing on the Second Board. It is reported that about 200 companies have filed an application to be listed on ChiNext Shenzhen.

ChiNext listed companies are mainly engaged in the high-tech and pharmaceutical industry. Their performance is not outstanding. They, however, have a high growth potential. The most remarkable feature of ChiNext is the low barriers to be listed. It therefore has the potential to help young companies to access new capital. ChiNext is also considered as an important capital market instrument to adjust the industrial structure in China and to promote China's economic reform. From an investor's perspective, the risk of investing in ChiNext-listed companies is much higher than in companies, which are listed on the Main Board. In return the profits may also be much higher.

To ensure a success of the Second Board, Chinese regulators have strengthened laws & regulations, taken a series of steps aimed at curbing speculation and preventing abuse as well as repeatedly warned investors against the risks. The China Security and Future Commission (SFC, 证监会) will adopt innovative regulatory mechanisms to lead more businesses into the Second Board and to form optimal allocation of social capital to reach the "Growth Enterprises Market effect" (Report of CSRC, dated 24 November 09, in "China's Financial Services Forum for International Cooperation").

II. Applicable laws and regulations to the Second Board

On March 31, 2009, the China Securities Regulatory Commission ("CSRC") issued the "Interim Measures for the initial public offerings and listing on the Second Board" 《首次公开发行股票并在创业板上市管理暂行办法》. They came into effect on May 1, 2009. The Measures are the basic act for the Second Board and include detailed provisions on the conditions of issue, issuing procedures, information disclosure, supervision management, legal liability and other aspects.

The Shenzhen Stock Exchange issued the "Shenzhen Stock Exchange Second Board Stock Listing Rules" 《深圳证券交易所创业板股票上市规则》 ("ChiNext Listing Rules"), which contain provisions on the Company's information disclosure, sponsors ("保荐机构" officially used in the ChiNext Listing Rules for recommending institutions),

the board of directors, resolution of board of supervisors, suspension, resumption and termination of listing. They came effective on July 1, 2009.

China Insurance Regulatory Commission (「CIRC」) announced on 25 December 2009 the «Interim Measure for Insurance Funds Management (Draft for comments)» 《保险资金运用管理暂行办法》 with purpose of standardizing the use of Insurance Funds and limits the risk of Insurance Funds Investment. The Department of China Insurance Regulatory Commission collected the public written comments till January 4, 2010.

III. Listing Requirements for the Second Board (ChiNext)

According to the “ChiNext Listing Rules” of the Shenzhen Stock Exchange, any company, which meets the following requirements, will be given approval for an IPO on ChiNext:

- (a) The shares of the company have been issued;
- (b) The company's total share capital is not less than RMB 30 million
- (c) More than 25% of the total number of shares are used for the public offer; If the total equity of the company is more than RMB 400 million, publicly issued shares shall be in the ratio of 10% or more;
- (d) The shareholders of the company are not less than 200 persons;
- (e) Over the last three years, neither major violations of law and regulations, nor false financial and accounting reports have been made;
- (f) Other conditions required by the Shenzhen Stock Exchange.

Comparison of listing requirements between Main Board and Second Board rules¹:

Criteria of Requirements	The Second Board (ChiNext)	The Main Board (Shanghai Stock Exchange)
Subject Qualification	Lawfully established and continuing operation over three years; growth and innovative corporation	Lawfully established and existing corporation
Capital	Pre-IPO net assets of not less than RMB 20 million, after the release the total share capital of not less than RMB 30 million	Pre-IPO net assets of not less than RMB 30 million, after the release the total share capital of not less than RMB 50 million
Profit	<ol style="list-style-type: none"> 1. Consecutive profitable last two years, cumulative net profit of the latest two years of not less than RMB 10 million and continued growth; or 2. Profitable last year and the net profit of not less than RMB 5 million, the revenue of the last year of not less than RMB 50 million, or the revenue growth rate of the last two years of not less than 30%. (These criteria are selective.) 	<ol style="list-style-type: none"> 1. Last three fiscal years are positive and the cumulative profit of over RMB 30 million; 2. The net cash flows generated from operating activities over last three fiscal years of more than RMB 50 million in total; or over recent three fiscal year the operating revenues totaled more than RMB 300 million; 3. In the latest year there are no accumulated losses.
Asset	Net assets of not less than RMB 20 million.	The intangible assets of not more than 20% of the net assets.
Core Business	Over last two years core business has not been changed.	Over last three years core business has not been significantly changed.
Directors, Management and actual controller	Over last two years directors, senior managers and actual controller have not been changed.	Over last three years directors, senior managers and actual controller have not been changed.

¹ According to „Listing Rules of Shanghai Stock Exchange“ 《上海证券交易所股票上市规则》, "Interim Measures for the initial public offerings and listing on the Second Board" 《首次公开发行股票并在创业板上市管理暂行办法》, "Shenzhen Stock Exchange Second Board Stock Listing Rules" 《深圳证券交易所创业板股票上市规则》

As the comparison shows, the financial qualifications set by the Second Board Rules are lower than those under the Main Board Rules. The Second Board Rules have no requirements on cash flow, nor do they require that the ratio of intangible assets to net asset in the last financial reports is not higher than 20 %. Furthermore, the requirement that the assets and liability structure shall be reasonable, as set forth under the Main Board Rules, is not required in the Second Board Rules, either.

IV. Listing Procedure

The ChiNext Listing Rules provide that an issuer, who applies to the Exchange for listing its IPO shares shall prepare a listing announcement in accordance with relevant regulations.

The Listing Rules further provides that an issuer, who applies to the Exchange for listing its IPO shares, shall submit the following documents:

- (1) Listing report (listing application);
- (2) The resolutions of the board of directors and the shareholders general meeting with respect to its listing application;
- (3) Photocopy of the company's business license;
- (4) The articles of association of the company;
- (5) The financial reports of the company for the most recent three years audited in accordance with the law by any CPA firm with the qualification for practice in securities- and futures-related business;
- (6) Sponsorship agreement and the letter of listing sponsorship produced by a sponsor;
- (7) Legal opinion issued by a law firm;
- (8) Capital verification report produced by a CPA firm with the qualification for practice in securities- and futures-related business;

- (9) Document evidencing the registration of all its shares with China Securities Depository and Clearing Corporation Limited Shenzhen Branch (hereinafter, the clearing company);
- (10) Report on the shareholdings of directors, supervisors and senior management and the Declaration and Undertaking with regard to Directors, Supervisors, Senior Management or the Controlling Shareholder and De Facto Controller);
- (11) Relevant information about the person who is intended to be appointed or has been appointed as the board secretary by the issuer;
- (12) The undertaking as prescribed in rules 5.1.6 and 5.1.7;
- (13) Document evidencing the lock-up of the shares issued and held before the public offering;
- (14) The financial information newly added during the period since the public offering up to the listing pursuant to relevant regulations, and a statement on relevant material events, if applicable;
- (15) The latest prospectus;
- (16) Listing announcement; and
- (17) Other documents as required by the Exchange.

An issuer and its directors, supervisors and senior management shall guarantee that the listing application documents submitted to the Exchange are true, accurate and complete and free from false representations, misleading statements and major omissions. The shares issued by an issuer before the public offering shall not be transferred within one year since the listing of its shares.

The Stock Exchange will make a decision whether or not to grant an approval within seven trading days upon receiving the full set of listing application documents. Under special situations, the Exchange may at its discretion withhold making a decision. The Exchange has a Listing Committee, which reviews the listing application and issues its

opinion based on independent and professional judgment. The Exchange makes its decision on the listing application based on the opinion of the Listing Committee.

V. Insurance funds are not allowed to buy shares listed on the Second Board

China Insurance Regulatory Commission (“CIRC”) announced on December 25, 2009 the «Interim Measure for Insurance Funds Management (Draft for comments)». According to the draft, shares listed on the Second Board and special treatment stocks² are classified as forbidden investment areas for insurance funds. Nor shall insurance group invest in shares of non-financial enterprises.

VI. Relevancy of the Second Board in the Chinese economy

The establishment of the Second Board helps to speed up change in the pattern of economic development and the effective use of resource allocation function. It shall encourage more people to engage in innovative and entrepreneurial activities. It would therefore help to promote the much needed development of high techniques of China's industry. The introduction of the Second Board can also attract more overseas students and young entrepreneurship.

Furthermore, the establishment of the Second Board is consistent with the government's main agenda, namely to maintain social stability. China is facing an unemployment crisis, and small-and medium-sized companies generate roughly 80% of jobs in the economy. Through having these companies capitalized, China intends to keep unemployment numbers under control. The Second Board, therefore, serves a vital social goal, as well.

² The following shares are defined as special treatment stocks: 1. Shares of a listed company with financial or other abnormalities, which can be resulting in termination of listing, which in turn exposes the investor to a higher risk; or 2. Shares of companies, whose prospects are difficult to be judged and, therefore, the investment interests may be impaired.

VII. Digression: International Board on Shanghai Stock Exchange

With the successful launch of the Second Board, the discussion of creating an International Board has been gradually rising in the Chinese financial market.

Till now, there are only very few and difficult methods for foreign investors to achieve the aim of listing on the Chinese Stock Market, namely through either establishment of a foreign-funded joint stock company (hereinafter „FFJSC“) or transformation of another enterprises into a FFJSC³. But according to optimistic Chinese financial experts the so-called International Board, which is planed particularly for overseas- and foreign invested foreign enterprises to be listed in China, will likely be launched in 2010 on Shanghai Stock exchange, depending on the development of the market. HSBC and Bank of East Asia have already been named as being amongst the first companies to be listed on the International Board of the Shanghai Stock Exchange.

The most important requirement of listing on the International Board will be the actual business development of the company within China and not only a simple act of financing, according to vice director Liu Xiaodong of Shenzhen Stock Exchange.

Shanghai government officials recently said that, although the general framework of the International Board has been formed, supporting measures related to the issuance, listing, settlement, regulatory and other systems still need to be studied. International Board Listing Rules are being developed. Many of the details of the rules, however, have not really finalized.

³ Further information please see the China Legal Report, May 2008, Wenfei Attorneys-At-Law Ltd, www.wenfei.com

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