

**China - State Council Regulations for
Domestically-Listed Shares Held
Overseas of Companies Limited by
Shares, 1995**

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State Council Regulations for Domestically-Listed Shares Held Overseas of Companies Limited by Shares (Promulgated by Decree No.189 of the State Council on December 25, 1995)

Article 1

With a view to standardizing the issuance and transaction of domestically listed shares held overseas of companies limited by shares, and protecting legal rights and interests of the investors, the following regulations are formulated in accordance with related stipulations in the Company Law of the People's Republic of China (hereinafter referred to as the Company Law).

Article 2

Subject to approval of the Securities Committee of the State Council, a company limited by shares (hereinafter referred to as a Company) may issue domestically-listed shares to be held overseas; however, when the total face value of the issuance of such a nature exceeds US\$30 million, the Securities Committee shall report to the State Council for approval.

Domestically-listed shares held overseas as indicated in the preceding paragraph, refer to issuance of domestically-listed shares when a Company is established by means of share placement, or when a Company increases its capital.

The total value of the issuance of domestically-listed shares held overseas, to be approved by the Securities Committee of the State Council, shall be within the scale defined by the State.

Article 3

Domestically-listed shares held overseas issued by a Company shall take the form of registered share certificates, the face value to be denominated in Renminbi (Chinese Yuan), which are subscribed and traded in foreign currencies, and listed on domestic securities exchanges.

The Company which issues domestically-listed shares held overseas shall issue shares to domestic investors (hereinafter referred to as A-shares), if any, in the form of registered share certificates.

Article 4

Investors in domestically-listed shares held overseas are limited to:

(1) Natural persons, legal persons and other organizations of foreign countries;

(2) Natural persons, legal persons and other organizations in Hongkong, Macao and Taiwan in China; 14

(3) Chinese citizens with permanent residence permits in foreign countries; or 15

(4) Other investors in domestically-listed shares defined by the Securities Committee of the State Council. 16

For the purpose of subscription or transaction of domestically-listed shares held overseas, such investor shall present valid identity and qualification documents. 17

Article 5 18

Holders of domestically-listed shares held overseas shall enjoy rights and perform obligations equivalent to the rights and obligations of holders of A-shares, as provided in the Company Law. 19

The Company may incorporate specific provisions in its Articles of Association on matters concerning the rights and obligations of shareholders. 20

Article 6 21

The Articles of Association of the Company is binding on the Company, its shareholders, directors, supervisors, managers and other senior management personnel. 22

The directors, supervisors, managers and other senior management personnel of the Company are obliged to act in good faith and with diligence for the Company. 23

Other senior management personnel as indicated in the first and second paragraphs of this article refer to chief financial officers, secretaries of the board of directors and other persons specified by the Articles of Association of the Company. 24

Article 7 25

The Securities Committee of the State Council and its executive organ for supervision and regulation, the China Securities Regulatory Commission (hereinafter referred to as the CSRC), shall exercise regulation and supervision over the issuance and transaction of domestically-listed shares held overseas, and other related activities in accordance with law and administrative regulations. 26

Article 8 27

Issuance of domestically-listed shares held overseas when a Company is established by means of share placement shall satisfy the following conditions: 28

(1) The share capital shall be used in line with industrial policies of the State; 29

(2) The placement shall conform to State regulations concerning investment in and 30

establishment of fixed assets projects;

(3) The placement shall conform to State regulations concerning foreign investment utilization; 31

(4) The total value of shares subscribed by the promoters shall be no less than 35% of the total value of issuance; 32

(5) Investment by the promoters shall be no less than RMB 150 million yuan; 33

(6) The amount of shares for public offer shall be more than 25% of the total amount of shares of the Company; or more than 15% of the total if the total share capital exceeds RMB 400 million yuan; 34

(7) The existing enterprise which is reorganized to form the Company, or the State enterprise which is the major promoter of the Company, shall have no record of serious law violation for the past 3 years; 35

(8) The existing enterprise which is reorganized to form the Company, or the State enterprise which is the major promoter of the Company, shall have registered profits for the past 3 years running; and 36

(9) Other requirements of the Securities Committee of the State Council. 37

Article 9 38

When a Company applies for issuance of domestically-listed shares held overseas for capital increase, the following conditions shall be satisfied other than those provided in paragraphs (1), (2), and (3) of Article 8 of these Regulations: 39

(1) Shares issued by the Company in its latest public offer have been fully subscribed; the share capital has been used in line with the objective set for the placement; and the capital in operation has generated good returns; 40

(2) Net assets value of the Company is no less than RMB 150 million yuan; 41

(3) The Company has no record of serious law violation since the last issuance to the time of the current application; 42

(4) The Company has registered profits for the past 3 years running, to be counted on a continuous basis if the Company was resulted from reorganization of an existing enterprise, or if a State enterprise is major promoter for the Company; and 43

(5) Other requirements of the Securities Committee of the State Council. 44

A Company established by promotion shall meet requirements provided in paragraph (6) of Article 8 of these Regulations when it applies for issuance of domestically-listed shares held overseas for its initial capital increase. 45

Article 10

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Issuance of domestically-listed shares held overseas shall follow such application procedures:

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(1) The promoters or the Company shall submit the application to People's Government at the level of provinces, autonomous regions, or cities directly under the Central Government, or to competent enterprise management authorities under the State Council, who shall in turn recommend the application to the Securities Committee of the State Council;

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(2) The Securities Committee of the State Council shall consult related departments under the State Council to select the Companies eligible for issuance of domestically-listed shares held overseas;

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(3) The selected Companies then present documents to CSRC for examination as provided in Article 11 and Article 12;

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(4) the Companies found to be qualified by the examination by CSRC may only issue domestically-listed shares held overseas upon approval by the securities Committee of the State Council, or upon approval by the State Council as provided in paragraph 1 of Article 2 of These Regulations.

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Article 11

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When a Company is established by means of share placement, it shall submit the following documents to the CSRC for application for issuance of domestically-listed shares held overseas:

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(1) Application report;

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(2) Names or titles of the promoters, the amount of shares subscribed by the promoters, types of their investment and certificate of investment verification;

55

(3) Resolution passed at the meeting of promoters giving consent to public offer of domestically-listed shares held overseas;

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(4) Written approval for establishment of the Company by departments authorized by the State Council, or People's Government at the level of provinces, autonomous regions or cities directly under the Central Government;

57

(5) Written recommendation by the competent enterprise management authorities under the State Council, or People's Government at the level of provinces, autonomous regions or cities directly under the Central Government;

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(6) Notice of Pre-Examination of the Name of Enterprise issued by registration authorities;

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(7) Draft Articles of Association;

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(8) Prospectus;

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- (9) Feasibility study for the use of share capital; and written approval for the establishment of fixed assets project given by related departments if the share capital will be used in a fixed assets project to approval; 62
- (10) Financial statements for the past 3 years of the existing enterprise or of the state enterprise who is the major promoter of the Company, audited by Certified Accountants and their firm; and auditing report signed and sealed by more than two Certified Accountants and their firm; 63
- (11) Assets Appraisal Report signed and sealed by more than two professional appraisers; written confirmation by authorities in charge of State assets, and written approval concerning State equity where State assets are involved; 64
- (12) Legal Comments signed and sealed by more than two lawyers and their firm; 65
- (13) Underwriting plan and underwriting agreement for share placement; and 66
- (14) Other documents required by CSRC. 67

Article 12 68

The Company shall submit the following documents to the CSRC while applying for issuance of domestically-listed shares held overseas to increase the share capital: 69

- (1) Application report; 70
- (2) Resolution passed at the shareholders' meeting giving consent to public offer of domestically-listed shares held overseas; 71
- (3) Written approval for a new issuance by departments authorized by the State Council, or the People's Government at the level of provinces, autonomous regions or cities directly under the Central Government. 72
- (4) Written recommendation by competent authorities under the State Council, or the People's Government at the level of provinces, autonomous regions or cities directly under the Central Government; 73
- (5) Business license of the Company issued by registration authorities; 74
- (6) Articles of Association of the Company; 75
- (7) Prospectus; 76
- (8) Feasibility study for the use of the share capital; and written approval for the establishment of a fixed assets project by related departments if the share capital will be used for a fixed assets project subject to approval; 77
- (9) Financial statements of the Company for the past three years audited by Certified Accountants and their firm and auditing report signed and sealed by more than two Certified Accountants and their firm. 78
- (10) Legal Comments signed and sealed by more than two lawyers on related legal matters; 79

(11) Underwriting plan and underwriting agreement for the share placement; and 80

(12) Other documents required by CSRC. 81

Article 13 82

The interval between the issuance of domestically-listed shares held overseas and issuance of A-shares by the Company may be less than twelve months. 83

Article 14 84

The Company shall engage Certified Accountants and their firm in accordance with State requirements to carry out auditing or review of its financial statements. 85

Article 15 86

The Company shall carry out accounting procedures and make out financial statements in accordance with related State regulations. 87

The Company shall provide explanations for adjustments in its financial statement disclosed to investors in its domestically-listed shares held overseas according to accounting rules of other countries or territories; 88

Article 16 89

A Company which issues domestically-listed shares held overseas shall disclose information to the public according to law, and stipulate details of the place and means of such disclosure in its Articles of Association. 90

Article 17 91

Written information disclosed by a Company which issues domestically-listed shares held overseas shall be produced in Chinese; where a foreign translation is required, a text in a universal foreign language shall be provided. Where the Chinese text disagrees with texts in foreign languages, the Chinese text shall prevail. 92

Article 18 93

A Company which issues domestically-listed shares held overseas shall authorize domestic securities brokerages established upon the approval by the People's Bank of China and approbation by the CSRC to the major underwriters one of the major underwriters. 94

Article 19 95

A Company which issues domestically-listed shares held overseas shall open foreign exchange accounts with domestic banks authorized for foreign exchange operation, in accordance with related State regulations on foreign exchange control. 96

Major underwriters for the domestically-listed shares held overseas shall credit the amount of collected share capital to the foreign exchange account of the issuing company within the period specified in the underwriting agreement. 97

Article 20 98

Transactions of domestically-listed shares held overseas through agent shall be handled by securities brokerages established upon the approval of the People's Bank of China and approbation of the CSRC. 99

Article 21 100

The holder of domestically-listed shares held overseas may authorize agents to exercise his rights; and the agents shall provide valid documents of authorization when acting on behalf of the shareholder. 101

Article 22 102

The equity holder of domestically-listed shares held overseas may register the shares in the name of a nominal holder. 103

The equity holder of domestically-listed shares held overseas shall disclose information about the change of holder according to law. 104

Article 23 105

Transaction, retention, liquidation and settlement, transfer and registration of domestically-listed shares held overseas shall be carried out in conformity with laws, regulations and related stipulations by the CSRC. 106

Article 24 107

Subject to approval by the State Council, domestically-listed shares held overseas and its derivative forms may be circulated and transferred outside China. 108

Derivative forms as indicated in the preceding paragraph refer to subscription certificate and over-seas share deposit receipt. 109

Article 25 110

The company shall calculate and declare the dividends and other payment to holders of domestically-listed shares held overseas in Renminbi (Chinese Yuan), and make the payment in foreign currencies. Management of the share capital in foreign currencies, payment of dividends and other items in foreign currencies shall be carried out in accordance with State regulations concerning foreign exchange control. 111

Where the Articles of Association stipulate exchange and payment through other agents, the exchange and payment to shareholders may be conducted according to the Articles of Association. 112

Article 26 113

Dividends and other income from the domestically-listed shares held overseas may be remitted out of China after tax payment according to law. 114

Article 27 115

The Securities Committee of the State Council may enact detailed implementing rules for these Regulations. 116

Article 28 117

These Regulations shall enter into force on the day of its promulgation. With its promulgation, the Rules for Special Renminbi Shares of Shanghai City, promulgated by Shanghai Municipal People's Government on November 22, 1991, and the Rules for Special Renminbi Shares of Shenzhen City, promulgated by Shenzhen Municipal People's Government on December 5, 1991, are nullified on the same date. 118

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