



Newsletter

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July 11, 2019

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Update

SSE to Label 11 Types of Trading Behaviors on SSE STAR Market as Abnormal Transactions

The Shanghai Stock Exchange (“SSE”) issued the Detailed Rules for Real-time Surveillance of Abnormal Transactions of Stocks on the STAR Market (the “Rules”) on 14th June, immediately effective from the date of issuance.

Major contents of the Rules include:

- (1) Specific requirements on trading mechanism;
- (2) Criteria of identifying abnormal volatility;
- (3) Criteria on surveillance of abnormal trading behaviors;
- (4) Regulatory responsibilities for detecting abnormal trading behaviors.

The Rules provide clarity on the criteria to calculate the range of effective quoted prices and its scope of application, comprehensive and detailed provisions on conditions under which a temporary trading suspension will be triggered during the trading hours as well as the length of a trading suspension, and the requirement that the prices quoted on the basis of the market price level shall include the limited protective prices acceptable by investors.

Eleven types of typical abnormal trading behaviors was identified as abnormal transactions by the rules, including bogus price quotations, intentionally driving up or forcing down stock prices, sustaining the controlled maximum price growth (drop), self-trading (i.e. a transaction in which the seller and the buyer are the same party), unusual quotation speed of

stocks with seriously abnormal volatility, and qualitatively and quantitatively describe these types of trading behaviors.

CAC Invites Comments on Measures for Security Assessment for Cross-border Transfer of Personal Information

The Cyberspace Administration of China (“CAC”) has recently issued the Measures for Security Assessment for Cross-border Transfer of Personal Information (Draft for Comment) (the “Draft”) for public consultation by July 13, 2019.

According to the Draft, a security assessment shall be conducted where a network operator intends to provide the personal information collected during its business operations within the territory of China overseas.

The Draft established that the network operator shall report the cross-border transfer of personal information to the provincial-level cyberspace regulator at its locality to organize a security assessment before the personal information leaves China. It is not to set an administrative license for personal information cross-border transfer, but to use the power of regulators to enforce the Cybersecurity Law. If the transfer is likely to undermine national security or harm public interest or make it difficult to effectively guarantee the safety of personal information, the cross-border transfer shall be banned. A security assessment shall be conducted again every 2 years or when the purpose, type or storage time of the transferred personal information changes.

The Draft also provided that cyberspace regulators may order network operators to suspend or cease the cross-border transfer of personal information, under any of the given circumstances, such as a data leakage and data misuse.

CSRC Officially Releases Measures for Supervision and Administration of Futures Companies

The China Securities Regulatory Commission (“CSRC”) has recently revised and issued the Measures for Supervision and Administration of Futures Companies (the “Measures”), immediately effective from the date of issuance.

Revisions contained in the Measures are mainly on 5 aspects:

First, major shareholders of futures companies, particularly the controlling shareholders and the largest shareholders, will be required to have higher qualifications. The Measures clarify the requirements for the going-concern period and the sustainable profitability. And extra provisions concerning capital contribution, relativity of major business and operating capacity are added.

Second, shareholders’ administration of futures companies is tightened and their obligations are intensified. Specifically, the Measures provided regulatory requirements for related-party transactions between shareholders, actual controllers, among other related parties and futures companies. Rules with respect to the reporting of material events by shareholders and actual controllers are improved.

Third, management of futures companies' domestic branches and subsidiaries and overseas business establishments are improved. The Measures require futures companies to establish and improve their compliance risk control system for domestic branches, subsidiaries and overseas operating institutions.

Fourth, requirements concerning the management of clients' accounting-opening and trading behaviors by futures companies are improved.

Fifth, provisions concerning information system management of futures companies are improved, and an institutional requirement for compliance operation of information systems is made clear.

CSRC and FCA Jointly Announce the Launch of Shanghai-London Stock Connect

The China Securities Regulatory Commission (“CSRC”) and the UK Financial Conduct Authority (“FCA”) have recently made a Joint Announcement (the “Announcement”).

The Announcement expressly states that the CSRC and the FCA have approved the launch by the Shanghai Stock Exchange (“SSE”) and the London Stock Exchange (“LSE”) of a new scheme on issuing depository receipts, the Shanghai-London Stock Connect (the “Stock Connect”).

The Announcement further states the principle that the Stock Connect will comprise eastbound and westbound limbs, describing that under the eastbound limb, eligible companies listed on the LSE will be able to issue Chinese Depository Receipts (CDRs) to Chinese investors and apply for them to be listed on the SSE's Main Board, and under the westbound limb, eligible companies listed on the SSE will be able to issue Global Depository Receipts (GDRs) to UK and global investors and apply for them to be listed on the LSE's Main Market.

In addition, the Announcement notes that, in the initial stage, qualified securities institutions in each of the two markets may conduct cross-border conversion business in relation to CDRs and GDRs. Meanwhile, capital flow under the Shanghai-London Stock Connect will be subject to a maximum cross-border quota, which includes eastbound aggregate quota of RMB 250 billion and westbound aggregate quota of RMB 300 billion.

China Will End Ownership Limits for Foreign Investors in Securities, Futures and Life Insurance

China will be moving up its scheduled plan in lifting the country's foreign capital limits in industries such as life insurance, securities, and futures according to China's Premier Li Keqiang’s speech at the World Economic Forum in the northeastern Chinese city Dalian on July 2. In addition, the restrictions on market access for foreign investors on value-added telecommunications and transportation sectors will also be reduced by 2020. China had originally planned to lift the foreign capital limits in 2021, the accelerating decision is considered as a sign of being open up its market more.

Li also said that China will open up the bond market in both directions and will not resort to competitive currency devaluation. The government will keep the RMB exchange rate stable at an appropriate and balanced level.

Article(s)

Development in Protection of Intellectual Property Rights in China

by Lea Li; Jenny Chu

The recent development in protection of intellectual property (“IP”) rights in China, especially the IP related inbound investments, generally involves major changes in three legislations. The first major change is the adoption of the new Foreign Investment Law (“FDI Law”) which sets the principle of consistency between domestic and foreign investment. The second and third major changes linked to the FDI Law were recently revised Trademark Law and Regulations on the Administration of the Import and Export of Technology with regard to the protection of IP rights.

I. Adoption of the New Foreign Investment Law

The FDI Law was adopted on March 15, 2019 and shall come into force on January 1, 2020. Increasing protection of IP rights are considered as one of the bright spots of FDI Law and benefits both foreign investors and foreign invested entities (“FIE”).

The FDI Law attaches importance on the issue of forced technology transfer, providing that no administrative organs nor their employees may force such transfers through administrative measures. This is an important provision, however, it is

not the most significant content of the IP rights protection frame built by FDI Law.

Moreover, the FDI Law stipulates that China protects the IP rights of foreign investors and FIEs, and protects the lawful rights and interests of owners of IP rights and relevant right holders; and as to infringements of IP right, China strictly holds the infringers legally liable according to the law.

II. Amendment of the Trademark Law

Trademark Law was amended on April 23, 2019. Its new provisions (“Amendment of Trademark Law”) make it clear that a bad faith application for trademark registration for a purpose other than use shall be rejected by the Trademark Office. The Amendment of Trademark Law made several moves involving the control of trademark squatting in China, establishment of penalty system for trademark agency and strengthen of punishment for trademark infringement.

1. Control of Trademark Squatting in China

The Amendment of Trademark Law grants the Trademark Office the power to declare invalidation of the registered trademark on the ground that there is no true use purpose, and rights for anyone to file an objection of a bad faith application to the Trademark Office or the Trademark Appeal Board after the publication of preliminary approved trademark, which will effectively control the phenomenon of trademark squatting in China.

2. Establishment of Penalty System for Trademark Agency

The Amendment of Trademark Law explicitly prohibited the trademark agency from applying for the trademark on behalf of the client when it knows or should know the trademark application is lack of use purpose.

the Amendment of Trademark Law also adds the punitive measures. For trademark agency malicious registration, the administrative punishment such as warning and fine will be imposed to the trademark agency or applicant who is defined to make a bad faith application for trademark registration. For malicious litigation over a trademark, the punishment will be imposed by the court.

3. Strengthen of Punishment for Trademark Infringement

The Amendment of Trademark Law strengthened the punishment for trademark infringement. The legal maximum compensation was increased from 3 million yuan to 5 million yuan. The amount of punitive damages for malicious trademark infringement was increased from “more than one time and less than three times” to “more than one time and less than five times”.

With regard to counterfeit registered trademark goods, the Amendment of Trademark Law adds the provisions of disposal measures and stipulates that the court can order the destruction or prohibition of the relevant commodities, materials and tools according to the application of the obligee.

The Amendment of Trademark Law marks China's increasing emphasis on trademark protection and China indeed provides more legal protection for trademarks. Specific detailed regulations are to be issued support the implementation of the Amendment of Trademark Law.

III. Amendment of Regulations on the Administration of the Import and Export of Technology

The FDI Law also triggers the amendment to Regulations on the Administration of the Import and Export of Technology (“Amendment of Regulations”). This Amendment of Regulations deletes three controversial provisions, all of which are mandatory provisions of technology import situations including transfer of technology by foreign parties and patent licenses or technical services provided by foreign entities. This Amendment of Regulations is intended to protect the Chinese

technology importer from imbalanced contractual provisions and is likely meant to partly implement the pre-establishment national treatment of Foreign Investment Law. The Amendment of Regulations mainly contains the following changes.

1. Indemnity for Third-party Claims

The technology transferor/licensor is not required to be liable for any third party infringement claims against the transferee/licensee resulting from the use of the transferred or licensed technology in accordance with technology import contracts, thus the parties are free to negotiate the allocation of infringement liabilities regarding third-party claims.

2. Ownership of Improvements in Technology

The results of any improvements in the technology no longer mandatorily belong to the party that makes the improvements. The parties can stipulate in the technology import contract that the improvements in the technology shall belong to the technology owner but not for free (otherwise may be unenforceable under the Contract Law in China).

3. Restrictions on Transfer and Licensing Conditions

The Amendment of Regulations stipulates that the technology import contracts shall not contain any of the following restrictions which illegally monopolize technology or impair technological progress.

- i. The transferee/licensee must accept incidental provisions that are not essential to the importing of the technology, including the purchase of unnecessary technology, raw materials, products, equipment or services;
- ii. The transferee/licensee is required to pay fees for the usage of or bear related obligations for technology where the patent rights have expired or have been declared invalid;
- iii. The transferee/licensee is prohibited from improving the technology provided by the assignor or that restrict the assignee from using the improved technology;
- iv. The transferee/licensee is prohibited from obtaining from other sources the technology similar to or that competes with the technology provided by the assignor;
- v. Unreasonable restrictions on the channels or sources that the transferee/licensee may procure raw materials, parts, products or equipment from;
- vi. Unreasonable restrictions on the quantity, type or sale price of the transferee/licensee's products;
- vii. Unreasonable restrictions on the transferee/licensee's export channels for products that are produced using the imported technology.

The technology companies can now negotiate and allocate risk in these aspects by contract with the removal of the above provisions which were a sticking point in the negotiations between foreign technology exporters and Chinese technology importers for a long time. The Amendment of Regulations follows the national strategy to encourage technology transfer into China, an area which has seen exponential growth under active government initiatives.

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