



## Newsletter

Update

September 27, 2021

- **China Expand the Pilot Scope of Red-chip Enterprises for Domestic Listing**
- **CSRC Drafts 13 Regulatory Documents for Beijing Stock Exchange**
- **Regulators and Stock Exchanges Release Regulatory Documents about Issuance and Underwriting of New Shares under Registration System**
- **SSE Releases Guidelines on the Stock-Pledge Repo Transactions**

Article(s)

- **China's Cross-Border E-Commerce under RCEP**

## Update

### **China Expand the Pilot Scope of Red-chip Enterprises for Domestic Listing**

On September 17, 2021, the China Securities Regulatory Commission (“CSRC”) issued the "Announcement on Expanding the Pilot Scope of Red-chip Enterprises for Domestic Listing" to further enhance the inclusiveness of the capital market, support high-quality red-chip enterprises to issue securities on the domestic capital market.

In addition to Internet, big data, cloud computing, artificial intelligence, software and integrated circuits, high-end equipment manufacturing, and biomedicine industries as specified in the "Notice", the Pilot Scope now also includes the following sectors: new generation of information technology, new energy, new materials, new energy vehicles, and green red-chip enterprises in high-tech industries and strategic emerging industries such as environmental protection, aerospace, and marine equipment. Moreover, red-chip enterprises with national strategic significance can also apply to be included in the pilot program without being subject to the aforementioned industry restrictions.

### **CSRC Drafts 13 Regulatory Documents for Beijing Stock Exchange**

On September 17, 2021, China Securities Regulatory Commission (“CSRC”) drafted 13 documents about the contents and formats for share listing, equity refinancing, continued supervision, and private issuance of convertible bonds by companies to be listed on the Beijing Stock Exchange, and released the draft documents on September 17, 2021 to gather public opinions until October 2, 2021.

CSRC has generally transferred related regulations for the Select Layer of the Third Board Market, and highlighted the role of the Beijing Stock Exchange in service innovation-oriented small and medium-sized enterprises. These documents have clarified requirements on information disclosure contents and formats for listed companies' IPO prospectus, fundraising prospectus, share issuance report, annual report, interim report, statement of change of equity, acquisition report, and restructuring report. Besides, CSRC has also drafted two documents related to the contents and formats about private issuance of convertible bonds by companies to be listed on the Beijing Stock Exchange, to gather public opinions.

## **Regulators and Stock Exchanges Release Regulatory Documents about Issuance and Underwriting of New Shares under Registration System**

On September 18, 2021, in response to new problems like some offline investors are "colluding to bid IPO prices", China Securities Regulatory Commission ("CSRC") revised the Special Provisions on Offering and Underwriting in the Initial Public Offerings of Securities on the ChiNext, to be implemented from September 18, 2021.

The revised regulation has scrapped the link between IPO pricing and subscription arrangement and the number of special announcements on investment risks, and deleted a provision about the quoted issuance price range. At the same time, Shenzhen Stock Exchange has released the Implementation Rules on Offering and Underwriting in the Initial Public Offerings of Securities on the ChiNext (2021 Amendment). Shanghai Stock Exchange revised and released on September 18, 2021 the Implementation Measures for the Issuance and Underwriting of Stocks on the Sci-tech Innovation Board, Applicable Guidelines No.1 for Issuance and Underwriting Rules on the Sci-tech Innovation Board - Initial Public Offering of Stocks.

## **SSE Releases Guidelines on the Stock-Pledge Repo Transactions**

On August 27, 2021, Shanghai Stock Exchange drafted and released the No.1 Guidelines on the Stock-Pledge Repo Transactions - Risk Management, to be implemented from January 1, 2022. The guidelines are applicable to stock-pledge repo transactions conducted by securities companies. A securities company carries out stock-pledge repo transactions shall take serving the real economy as the main goal, preventing business risks and standardizing business operation. At the same time, it shall implement centralized and unified management of stock-pledge repo transactions, and establish a sound management system, operation process and risk identification, evaluation and control system to ensure that risks are measurable, controllable and bearable. The guidelines also stipulate the management of both parties in the stock pledge repo transactions, the use and source of capital, business continuity management, and internal control at securities companies.

## Article(s)

### **China's Cross-Border E-Commerce under RCEP**

*by David Zou*

Digital trade is, and will continue to be, a key economic growth factor during and after Covid-19. The Regional Comprehensive Economic Partnership (RCEP) with 15 Asia-Pacific nations (each a "Member") also aims to enhance cross-border e-commerce among Members. This article will analyze what it takes for China to adapt its cross-border e-commerce regime to the RCEP requirements.

## **1. E-commerce Market Entry**

Chapter 8 covers e-commerce market entry under which China committed no more than 50% equity ratio. This is actually less than what China currently allows foreign investors under its domestic regulations. China's Ministry of Industry and Information lifted the foreign equity ratio up to 100% on June 19, 2015 by issuing "Circular on Lifting Foreign Equity Ratio Restriction in Online Data Processing and Transaction Business (Operating E-Commerce)". China needs to clarify its policy stances. It is expected that further liberalization will be first implemented in the free trade zones such as Hainan Island or Shanghai Lingang New Area.

## **2. No Local Data Storage Requirements**

Chapter 12 is dedicated to e-commerce providing that "No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that Party's territory." However, a Member can implement measures requiring a foreign firm to locate computing facilities within its territory for public policy or security interest reasons and such measures shall not be disputed by other Members. This exception could be a contentious point in the future. At present, a foreign e-commerce operator is best to store its customers' data in China or the designated telecommunication operators' data centers in Hong Kong to ensure stable platform services to its customers in China. The potential lifting of such requirements by China will significantly reduce the costs and concerns of foreign e-commerce operators entering the Chinese market.

## **3. No Limitation on Cross-border Transfer of Information**

Cross-border E-commerce operators rely on big data. Restriction on data transfer will impede cross-border e-commerce. Members shall not prevent cross-border transfer of information by electronic means for conduct of e-commerce. Members also agree to maintain the current practice of not imposing customs duties on electronic transmissions. However, RCEP's position is weakened by allowing Members to impose national regulatory restrictions as long as they are applied in a non-discriminatory way. China has set of laws and regulations governing the outflow of data and information which are often troublesome to some Western countries and big tech companies. Conceivably, such regulations will mostly stay in place. Nevertheless, China needs to streamline its regulations and practices on cross-border information flow.

## **4. Protection of Data as Property Interest**

Chapter 10 on investment protection covers e-commerce data. A Member government's act which adversely impacts the tangible or intangible property rights or interest is considered expropriation, whether directly through formal transfer of title or outright seizure or indirectly. Members must conduct such expropriation for public purpose such as protection of public health, safety, public morals, the environment, and even real estate price stabilization, in a non-discriminatory manner, through due legal process, and pay fair compensation. Thus, data accumulated from e-commerce operation in China by foreign investors will be protected from unjustified expropriation under RCEP. Chinese courts have already recognized data as legally protected property interest. Clear regulation is warranted.

## **5. Coordinated Efforts against Digital Fraud and Privacy Invasion**

Consumer confidence and cyber security is essential for a well-functioning online market. RCEP requires Members to implement measures to protect e-commerce users' personal information transferred between Members, to deal with unsolicited or 'spam' messages, to protect online consumers from fraud and misleading conduct, and to share best practice for dealing with cyber security. Members will undoubtedly have a daunting job of combating cross-border on-line fraud. Members may set up a joint law enforcement regime to enhance cooperation, information sharing, and

anti-fraud successes.

## **6. Dispute Resolution**

Regretful that RCEP's dispute settlement mechanism does not apply to e-commerce disputes under Chapter 12. If Members cannot resolve e-commerce dispute through consultation, then it moves to the RCEP Joint Committee for further discussion. However, the joint Committee does not have the power to impose any decision. Thus, a Member could get away with discriminating against specific foreign firms. Yet, RCEP mandates Members to review the application of Chapter 19's dispute settlement mechanism to Chapter 12's e-commerce dispute. Chapter 19 will only apply to those Members that have agreed to its application.

In sum, despite RCEP's provision on cross-border e-commerce, it still has many "loopholes" requiring further negotiation, liberalization, and Members' adaption. China needs to further reform its domestic rules and make necessary concessions to promote RCEP e-commerce regime. Much can be expected now that China also indicated its intention to join CPTPP which has higher requirements on cross-border e-commerce.

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