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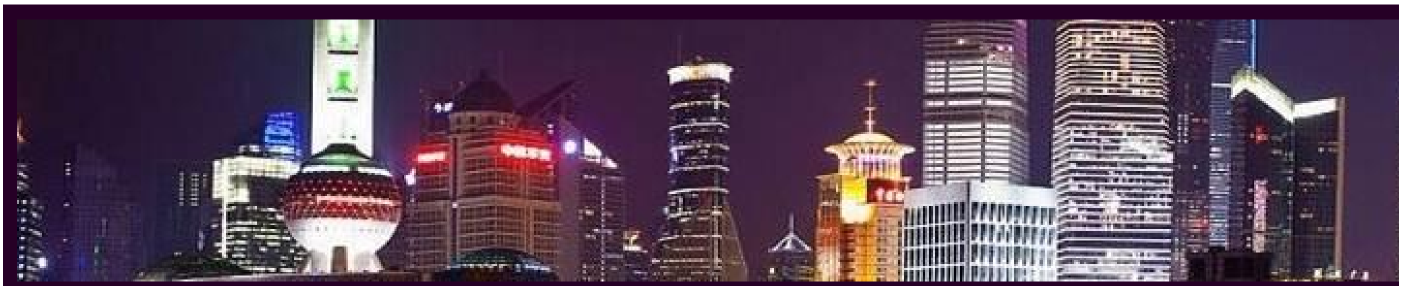
GRANDWAY LAW OFFICES



Newsletter

Update

March 31, 2024

Article(s)

Update

Shanghai Unveils Measures to Ease Burdens of SMEs in Tax, Employment and Financing

On March 29, 2024, Shanghai Municipal People's Government released the *Several Policy Measures of Shanghai on Reducing Corporate Burdens to Boost the Development of Small and Medium-sized Enterprises (SMEs)* (the "Policy Measures").

Highlighting 20 measures in five aspects, the Policy Measures clarify that, starting from April 2024, the charging standards on the inspection and testing of special equipment and the registration of home-made drugs will be reduced by 50 percent, respectively, and the charging standard on the registration of home-made Category II medical devices will be reduced by 65 percent. Starting from March 2024, the rate of enterprise contributions to employee's basic medical insurance would be cut by 1 percentage point for a limited period, and power generators would be encouraged to reduce monthly bilaterally negotiated power prices. Starting from March 2024, the pipeline transportation fee would be reduced by RMB 0.03 yuan per cubic meter, the LNG transportation fee at the Yangshan Port would be cut by RMB 0.02 yuan per cubic meter for a limited period, and Shanghai gas companies would cancel the original 5 percent of price increase for some users. Besides, the over-quota progressive mark-up water charges on non-resident users would be waived in 2024, more inclusive loans will be issued to micro and small businesses, and efforts will be made to have the balance of loans exceeding RMB 1.3 trillion yuan at the end of the year. The guaranteed policy financing fund for micro, small and medium-sized enterprises will be increased from RMB 10 billion yuan to RMB 20 billion yuan in stages, with guaranteed loans of up to RMB 4 million yuan to entrepreneurial organizations.

MIIT to Launch "AI Plus" Action to Boost New Industrialization

On March 26, 2024, the State Council Information Office held a press conference, inviting officials from the Ministry of Industry and Information Technology (MIIT), the Ministry of Commerce (MOFCOM), and the General Administration of Customs (GACC) to respectively give briefings on recent production, consumption, import & export data and policies in China.

The MIIT official said that the ministry will continue to push forward with the implementation of the Traditional Industry Technological Transformation and Upgrading Program, cultivate and strengthen emerging industries, promote the healthy and orderly development of new-generation information technology, intelligent connected vehicles, aviation and aerospace, biomanufacturing and other emerging industries, and make advance layouts for developing future industries; launch the "Artificial Intelligence Plus" Action this year to boost the deep integration of artificial intelligence and the real economy and boost new industrialization; and moderately advance the construction of 5G, computing power and other infrastructures to promote the large-scale application of industrial Internet. The official from MOFCOM said that MOFCOM will deepen international cooperation across the foreign trade supply chain, accelerate the promotion and application of electronic trade documents, and continue to solidly promote the construction of comprehensive cross-border e-commerce pilot zones. For its part, GACC will intensify facilitation and cost reduction efforts, accelerate the promotion of AEO international mutual recognition, continuously regulate charging practices on the import and export links, and duly introduce more enterprise-specific or industry-specific policy and other policy measures.

SAC Issues Action Plan for the Implementation of National Standardization Development Outline

On March 26, 2024, the Standardization Administration (SAC) released the *Action Plan for the Implementation of the Chinese National Standardization Development Outline (2024-2025)* (the "Action Plan").

Highlighting 35 plans in eight aspects, the Action Plan calls for making breakthroughs in key areas such as semiconductor materials, biotechnology, artificial intelligence, intelligent connected vehicles and wide application of the Beidou Navigation Satellite System, speeding up the development of important technical standards, and establishing and improving the standards for cross-border data transmission and security. It also stresses efforts to improve mechanisms for applying scientific and technological achievements, refine basic standard systems, develop standards for industrial integration, study and adopt standards for the Internet of Things, cloud computing, financing for small, medium and large-sized enterprises, and cross-border financial services, continue to improve the standard system for carbon peaking and carbon neutrality, and implement the standard internationalization initiative.

Shanghai Makes Clarifications for the Implementation of Preferential Stamp Tax Policy on Offshore Trade

To implement the *MOF and STA No.8 (2024) Document*, Shanghai Municipal Tax Service, State Taxation Administration and the other three departments in Shanghai jointly released the *Announcement on Matters Concerning the Pilot Implementation of Preferential Stamp Tax Policy on Offshore Trade in China (Shanghai) Pilot Free Trade Zone and Lin-gang Special Area* (the "Announcement "), which will take effect on April 1, 2024 and remain valid until March 31, 2025.

According to the Announcement, taxpayers who enter into the contract of offshore resale business carried out by the enterprises registered in China (Shanghai) Pilot Free Trade Zone and Lin-gang Special Area are eligible for the exemption from stamp duties. Resident and non-resident enterprises are identified based on their registered countries or regions. A taxpayer may get access to the preferential stamp tax policy on offshore trade through "self-assessment and application, with related materials retained for further reference", and it is legally responsible for the authenticity, completeness and legitimacy of the retained materials.

China Updates Two Sets of Guidelines Related to Outbound Transfer of Data and Personal Information

On March 22, 2024, the Cyberspace Administration of China (CAC) released the *Guidelines for Applying for Security Assessment for Outbound Transfer of Data (Second Edition) and the Guidelines for the Filing of Standard Contracts for Outbound Transfer of Personal Information (Second Edition)*, which detail the method, process and required materials for security assessment application for outbound transfer of data and the filing of standard contracts for outbound transfer of personal information, and streamline the documentation required from data processors.

The two Guidelines have incorporated some provisions of the Rules to Promote and Regulate Cross-border Data Flow, adjusted the definition of outbound transfer of data, and refined the application method and process. The filing of a standard contract for outbound transfer of personal information should be made via the application system for outbound transfer of data, according to the documents, which also improves the provisions with respect to the CAC's obligation of informing applicants.

China Supports High-quality Enterprises in Different Forms of Ownership in Taking out Loans from Abroad

OOn March 14, 2024, the National Development and Reform Commission (NDRC) released the *Circular on Supporting High-quality Enterprises in Taking out Medium and Long-term loans from Abroad to Boost the High-quality Development of the Real Economy (Exposure Draft)* (the "Circular"), which is open for public comments until April 13, 2024.

The draft Circular first specifies the conditions that an enterprise shall meet before being recognized as a high-quality one. Second, it eases foreign debt approval requirements and procedures, implementing special reviews on high-quality enterprises' applications for the registration of foreign debts. For international commercial loans for which the borrower is temporarily unable to provide the signed loan agreement, or for the overseas issuance of bonds for which the issuer is temporarily unable to determine the lead underwriter, it is allowed to handle the registration through self-commitment. Third, it keeps policy measures flexible and appropriate, supporting high-quality enterprises in various forms of ownership in taking out loans from abroad and vowing to adjust the conditions for the identification of high-quality enterprises in due course. Fourth, it improves ongoing and ex-post oversight to protect enterprises from foreign debt-related risks.

CSRC Steps up Supervision of Listed Companies and Crackdown on Financial "Bathing"

On March 15, 2024, the China Securities Regulatory Commission (CSRC) issued the *Opinions on Strengthening the Supervision of Listed Companies (for Trial Implementation)* (the "Opinions"), setting forth 18 requirements in 5 aspects.

In the Opinions, CSRC calls for strengthening the supervision of information disclosure and severely punishing earnings fraud, establishing a comprehensive punishment and prevention system against financial fraud, and intensifying legal supply for the supervision of listed companies, to promote the introduction of administrative regulations on the supervision of listed companies. It also vows to enhance the supervision and management of corporate governance, and severely punish major shareholders for encroaching on the interests of listed companies and third-party collusion in fraud, step up crackdown on financial "bathing", a practice is also known as financial "cleansing". Listed companies that are engaged in financial fraud by way of supply chain finance, financing trade, "false" transactions or "fictional orders" will also be punished in accordance with the law.

The Opinions further call for consolidating the responsibilities of listed companies and intermediaries, resolutely carrying out "double investigations on cases" involving audit and evaluation institutions, meting out heavier punishments on illegal cases such as collusion and fraud, and resolutely implementing such systems as suspension or prohibition of securities service business, revocation of practicing license, and imposition of practicing ban on intermediaries with major violations.

The Opinions also set forth regulations on the round-about reduction of holdings, calling for the establishment of a "1+2" system of rules with the administrative measures for holdings reduction as the core, supplemented by special provisions on the reduction of holdings by directors, senior executives, and venture capital funds, to strictly regulate the shareholding reduction behavior of major shareholders. According to the Opinions, CSRC will formulate guidelines for market value management of listed companies, conduct research on the inclusion of corporate market value management in the internal and external assessment and evaluation systems of listed companies, and strictly crack down on "pseudo-market value management" in accordance with the law.

CSRC Introduces New On-site Inspection Rules on IPO Applications, Adding "Unannounced Inspection" Mechanism

On March 15, 2024, the China Securities Regulatory Commission (CSRC) released the revised *Provisions on On-site Inspection of IPO Applicants* (the "Provisions"), which will take effect from the date of release.

The latest revision has merged the existing internal operational specifications to form five chapters, including General Provisions, Identification of Companies for the Inspection, Organization and Implementation, Supervision and Administration, and Supplementary Provisions, with a total of 39 articles. The revised Provisions stress the principle that "responsibility starts with the IPO application", stipulating that in the inspection process, those that withdraw their IPO applications shall be thoroughly investigated and that the withdrawal of IPO applications does not affect the implementation of inspection work, nor does it affect the handling of problems found during inspections in accordance with laws and regulations. An "unannounced inspection" mechanism has been added, which allows inspection agencies to directly carry out, subject to the approval of their institutional heads, inspections without notifying the objects of inspection in advance when major emergency matters arise or when there is clear evidence indicating that such advance notification may affect the inspection effect.

Article(s)

Regulation on Chinese Offshore USD Bonds Issuance

by Sophie Chen

The issuance of Chinese offshore USD bonds is subject to both domestic and foreign regulation. The main domestic regulators include the National Development and Reform Commission ("NDRC") and the State Administration of Foreign Exchange ("SAFE"). As for foreign regulation, the regulations vary depending on the issuance scope/target audience, with oversight falling under one of three models: registration with the United States Securities and Exchange Commission ("SEC") rules, 144A, or Regulation S ("Reg S").

I. Domestic Regulation

1. Issuance Regulation by NDRC

NDRC implements an examination and registration system for the issuance of Chinese offshore USD bonds, with supervision conducted before, during, and after the issuance process.

According to the *Administrative Measures for Examination and Registration of Medium and Long-term Foreign Debts of Enterprises* issued by NDRC in 2023, prior registration is required for the issuance of offshore bonds. Domestic enterprises issuing offshore bonds with a term of more than one year must apply to NDRC for examination and registration before issuance and obtain an "Enterprise Borrowing offshore bonds Examination and Registration Certificate". Chinese offshore USD bonds with a term of 364 days or less are exempt from obtaining such a certificate.

During and after the issuance, the supervision takes the form of reporting obligations. After borrowing each offshore bond, an enterprise shall report borrowing information to the registration authority within 10 working days through the online system, including key operational indicators and bonds borrowing status. Within 10 working days after the expiry of the validity period of the "Enterprise Borrowing offshore bonds Examination and Registration Certificate", the enterprises shall report the corresponding offshore debt borrowing situation. The enterprises shall also report to the registration authority through the online system by the 5th working day before the end of January and July each year on the use of offshore bonds, interest and principal repayment status, planning and arrangement, as well as key operational indicators.

NDRC has established both positive and negative lists for the use of offshore bonds, allowing funds to be used to cover offset losses, but prohibiting the funds from being used to increase local government hidden debts and for speculation or speculation purposes.

2. Issuance Regulation by SAFE

SAFE supervises the inflow and outflow of funds. According to the *Notice of State Administration of Foreign Exchange on Promulgation of the Administrative Measures on Registration of Foreign Debt* issued by SAFE in 2013, after the issuance of Chinese offshore USD bonds, it is necessary to register information with the local foreign exchange administration regarding the signing, withdrawal, repayment, and foreign exchange settlement of the offshore bonds. According to the *Provisions on Foreign Exchange Control for Cross-border Guarantees* issued by SAFE in 2014, after signing a domestic guarantee foreign loan contract, the guarantor shall file the registration of the domestic guarantee foreign loan.

II. Foreign Regulation

Foreign Regulation of Chinese offshore USD Bonds is not tiger, with no approval required for issuance. Under Reg S, the investor is limited to Qualified Institutional Buyers ("QIBs") outside the United States, including the United States investors who have offshore affiliates or offices. The disclosure requirements are less stringent compared to other regulations. Under Rule 144A, the investor is limited to QIBs both within and outside the United States while individual investors within the United States are excluded. There are no statutory disclosure requirements, but market practice usually falls between Reg S and SEC standards, requiring compliance with Section 10b-5 of the Securities Exchange Act of 1934, focusing on securities-related fraud and deception. SEC issuance has the widest investor scope, which shall comply with Form F-1 or F-3 registration statement, which are the most stringent.

Issuers may choose to issue under Reg S, 144A, or SEC rules individually or under both Reg S and 144A. Initially, Chinese offshore USD bonds were mainly purchased by QIBs in the U.S., and the issuance method was mainly 144A. After the Asian financial crisis, there was a significant withdrawal of overseas capital, leading to the emergence of Reg S issuance, which has now become the mainstream method. However, Reg S issuance excludes QIBs within the United States, usually resulting in lower liquidity and higher issuance costs compared to 144A.

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