



## Newsletter

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May 31, 2024

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## Update

### **China to Implement Digital Transformation of SMEs in Pilot Cities**

On April 30, 2024, the Ministry of Finance released the *Circular on the Work for the Digital Transformation of Small and Medium-sized Enterprises (SMEs) in Pilot Cities in 2024* (the “Circular”), to be effective on April 30, 2024.

The Chinese government will select about 35 cities to carry out the pilot work in 2024. To meet the demands of SMEs, it will accelerate the digital transformation of SMEs, strengthen digital empowerment, and promote the optimization and upgrading of industrial and supply chains by giving priority to SMEs using special and sophisticated technologies to produce novel and unique products that urgently need digital transformation, according to the Circular, which instructs selected cities to choose SMEs in the key links of the industrial chain for the pilot work. The document also highlights the importance of applying AI large models, big data, blockchain and other technologies in R&D design, visual quality inspection, parameter optimization, energy consumption management, intelligent sorting and other scenarios.

### **SAMR Issues Interim Rules on Countering Online Unfair Competition**

On May 11, 2024, the State Administration for Market Regulation (SAMR) released the *Interim Provisions on Countering Online Unfair Competition* (the “Interim Provisions”), which have 43 articles in five chapters and will take effect on September 1, 2024.

The Interim Provisions strengthen platforms’ responsibilities, and comb through and list online unfair competition behaviors. First, they clarify how traditional unfair competition behaviors such as false promotion are displayed online, and regulate hot issues such as artificial credit rating raising through click farming to realize the full coverage of regulation. Second, the Interim Provisions refine online unfair competition behaviors as regulated by the Anti-unfair Competition Law, with the manifestation and determination factors of traffic hijacking, improper interference, and malicious incompatibility specified. Third, the Interim Provisions regulate the new types of unfair competition behaviors committed with technical means such as illegal data acquisition, discriminatory treatment and others. It also includes miscellaneous Provisions to provide a regulatory basis for new issues and behaviors.

### **SAMR to Issue Measures for Credit Information Repair in Market Regulation**

On May 11, 2024, the State Administration for Market Regulation (SAMR) released *Measures for Credit Information Repair in Market Regulation (Exposure Draft)* (the “Measures”), inviting public opinions until June 10, 2024.

The Measures put records of enterprises being included into or removed from the List of Enterprises for Abnormal Operations that are widely concerned in the practice, as well as information on self-publicized administrative penalties, random inspection results and other related negative information into the scope of credit information repair. It contains provisions on the repair of credit information by business entities that have been included in the List of Enterprises with Serious Violations and Dishonesty, as well as the provisions on the repair of credit information by reorganized enterprises. It also shortens the period of publicity for other administrative penalty information from six months to three, and shortens the time limit for credit repair concerning the List of Enterprises with Serious Violations and Dishonesty and administrative penalties from 15 working days to five.

### **China Issues New Rules on the Contracting of Foreign Projects**

On May 17, 2024, the Ministry of Commerce (MOFCOM) released the *Measures for the Administration of the Filing and Approval of the Contracting of Foreign Projects* (the “Measures”). The Measures will come into effect on July 1, 2024, while the old Measures (MOFCOM No.455 (2017) Document) will be simultaneously rescinded.

Consisting of 49 articles in seven chapters which include General Provisions, Filing Management, Project Approval Management, Information Reporting, Supervision and Promotion, and Legal Liability, the Measures specify that ‘contracting of foreign projects’ refers to the contracting of overseas construction projects by enterprises registered within the territory of China, including engineering consulting, surveying, design, supervision, construction, procurement and installation, operation and maintenance,

etc. The Measures emphasize that enterprises should regularly report, in line with the principle of “mandatory reporting for all filed and approved projects”, the follow-up progress of their contracted projects to the competent department for commerce, the Chinese embassies (consulates) or acting embassies (consulates) in the countries where the projects are located.

### **China Unveils Measures to Promote Regulated and Healthy Development of the Tendering and Bidding Market**

The Chinese government released on May 8, 2024 the *Guidelines on Innovating and Improving Systems and Mechanisms to Promote Regulated and Healthy Development of the Tendering and Bidding Market* (the “Guidelines”) implemented on May 2, 2024.

Consisting of 20 articles in nine chapters, the Guidelines call for moving faster to revise the Public Bidding Law, the Government Procurement Law and related regulations, and improve and unify the basic and implementation rules for tendering and bidding. It urges to optimize the tendering and bidding process, explore fair competition indicators for the tendering and bidding market, and revise the model texts of bidding documents concerning survey, design, supervision, construction and general contracting. It plans to subject State-owned enterprises’ organization of bidding and participation in tendering to the operation and investment accountability system for stricter administration, and roll out and implement national unified technical standards and data specifications for electronic tendering and bidding. It is clarified that projects that must be tendered according to the law would be subject to a whole-process electronic transaction, and electronic guarantee (insurance) would be promoted for the payment of bid bonds, performance bonds and project quality bonds. The Guidelines also stress reserving quotas, improving bid evaluation standards and raising down payment ratios to provide more support for the participation of small and medium-sized enterprises.

### **Chinese Domestic Companies Transferring Offering and Listing to Overseas Stock Exchanges Required to Meet Filing Requirement**

On May 7, 2024, the China Securities Regulatory Commission (CSRC) issued the *Guidelines on the Application of Regulatory Rules - Overseas Offering and Listing No.7: Regulatory Requirements for Domestic Companies Transferring Offering and Listing from Overseas OTC Market to Overseas Stock Exchanges* (the “Guidelines”).

The regulator said that in accordance with articles 1 and 2 of the Trial Measures on Overseas Securities Offering and Listing by Domestic Companies, overseas offering and listing refers to offering and listing activities in overseas stock exchanges, and listing of domestic companies in overseas OTC market is out of scope for the filing requirement. According to Article 16 of the Trial Measures, domestic companies seeking IPOs or listing in overseas markets shall file with the CSRC within three working days after submitting the relevant application overseas, and offering and listing in other overseas markets than where it has offered and listed shall be filed with the CSRC within three working days after submitting the relevant application overseas.

Under the Circular on the Filing Management for Domestic Enterprises Seeking Offering and Listing in

Overseas Market, domestic companies that have submitted application to overseas markets other than where it has offered and listed but do not get approval from overseas regulator stock exchanges since the effective date of the Trial Measures (i.e. March 31, 2023) shall file with the CSRC before completing offering and listing procedures.

### **SAMR Approves Release of Important National Standards**

The State Administration for Market Regulation (SAMR) recently approved the release of some important national standards, covering production, living, green sustainability and other fields.

These standards are intended to unleash consumption potential, promote the quality improvement and upgrading of the manufacturing sector, ensure gas safety, lead in the development of emerging and future industries, support green and low-carbon economic development, and improve the quality of living. Of the standards, three involve evaluation of green manufacturing, management of green supply chain in manufacturing enterprises, and requirements for information traceability and disclosure; six are for intelligent toilet, audio and video and measuring of energy consumption of relevant devices, and six are for fire shutters, fire alarm controllers, point smoke detectors, fire emergency lighting and evacuation indication systems. There are also three standards concerning medical interpreting, evaluation of indoor LED display light comfort, and interactive application interface of smart TV.

### **CSRC Issues Stricter Provisions Calling for Listed Securities Companies to Regulate Their Financial Statement Preparation and Disclosure**

On May 10, 2024, the China Securities Regulatory Commission (CSRC) released the revised *Provisions on Tightening the Supervision and Administration of Listed Securities Companies* (the revised “Provisions”), with immediate effect. The move aims to implement the new “National Nine Articles” issued for the capital market.

The revised Provisions call on listed securities companies to improve their corporate governance, tighten their internal control and risk management, and regulate their financial statement preparation and disclosure. It is clarified that, in preparing and disclosing financial statements, a listed securities company shall comply with the provisions of the Accounting Standards for Enterprises and applicable information disclosure rules, and fairly reflect its financial conditions, operating results and cash flows. The revised Provisions also instruct listed securities companies to regulate the management of their shareholders and actual controllers, stressing that shareholders, shareholders’ actual controllers and other affiliates of a listed securities company shall not encroach on capitals or assets of the company through illegal connected transactions or external investment or harm the legitimate rights and interests of the company in other ways.

# Article(s)

## **The Supervisory System under the New Company Law**

*by Sophie Chen*

The New Company Law will come into effect on July 1, 2024 (“New Company Law”), which includes significant adjustments to the setup, powers, and responsibilities of supervisors and the supervisory board. This article will focus on these updates and their implications for the supervisory system under the New Company Law.

### **I. Cancellation of the Supervisor**

The current Company Law (2018 revised) requires limited liability companies to set up either a supervisory board or supervisor(s), which has been revised by the New Company Law.

For limited liability companies, if the company is relatively small in scale or has few shareholders, it can appoint a single supervisor instead of forming a supervisory board. Furthermore, if the above conditions are met and all shareholders unanimously agree, the company can forgo appointing a supervisor. Additionally, if a limited liability company establishes an audit committee composed of directors to perform the duties of the supervisory board, it can also opt not to set up a supervisory board or supervisor(s).

For companies limited by shares, an audit committee composed of directors can replace the supervisory board or supervisors. However, different from limited liability companies, at least one supervisor is still required in cases of small scale or few shareholders.

### **II. Adjustment of Power and Responsibilities**

The new Company Law, while retaining the seven powers and responsibilities of the supervisory board from the current Company Law, adds that the supervisory board can request directors and senior management to submit reports on their duties. Directors and senior management must truthfully provide relevant information and materials to the supervisory board and must not obstruct the supervisory board or supervisors from exercising their powers.

In companies where the audit committee replaces the supervisory board, the audit committee shall exercise the powers of the supervisory board. However, the new Company Law does not clarify how limited liability companies that do not set up an audit committee or supervisory board/supervisors shall exercise these powers.

The New Company Law provides specific explanations for the fiduciary duty and duty of diligence of supervisors. These include the following prohibited actions: embezzling company property; misappropriating company funds; opening accounts to store company funds in their personal name or in the name of another individual; using their authority to accept bribes or receive other illegal income; taking commissions for transactions conducted by the company for personal gain, disclosing company

secrets without authorization, engaging in other behaviors that violate their fiduciary duty to the company. Regarding related-party transactions that supervisors are prohibited from engaging in, the New Company Law explicitly includes supervisors and their close relatives, enterprises directly or indirectly controlled by supervisors or their close relatives, and other related parties associated with the supervisors.

Additionally, the New Company Law grants directors the authority to promptly call for the payment of registered capital, while also increasing the liability of directors and supervisors in cases where shareholders withdraw their capital contributions. The current Company Law only required other shareholders, directors, senior management, or actual controllers who assisted in the withdrawal of capital to bear joint and several liabilities. In contrast, according to the New Company Law, if shareholders withdraw their capital contributions after the company is established and this causes losses to the company, the responsible directors, supervisors, and senior management should all bear joint and several liabilities with the shareholders. However, the new Company Law does not clarify what constitutes “responsible” behavior in this context.

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