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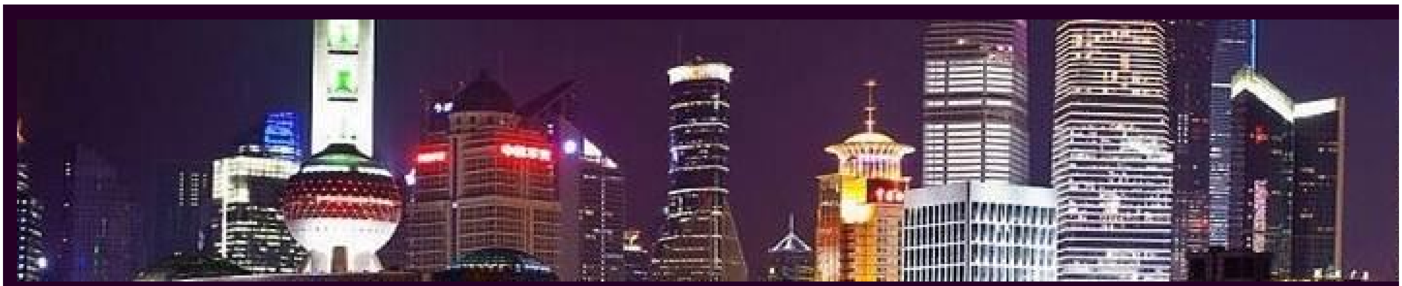

Newsletter

Update January 31, 2025

Update

CSRC Released "Action Plan for Promoting the High-Quality Development of Index-Based Investment in the Capital Market"

On January 26, 2025, the China Securities Regulatory Commission (CSRC) released the "*Action Plan for Promoting the High - quality Development of Index - based Investment in the Capital Market*" (the "Action Plan"), effective immediately. The Action Plan put forward relevant measures in aspects such as continuously enriching the index fund product system, accelerating the optimization of the development ecosystem of index-based investment, strengthening supervision, and preventing risks.

The Action Plan proposed to optimize the registration and issuance arrangements for Exchange-Traded Funds (ETFs). This includes establishing a fast-track registration mechanism for stock ETFs, implementing coordinated registration of ETFs and their feeder funds for mature broad - based index products, and continuously improving the counter-cyclical adjustment mechanism for ETF registration. It also aims to comprehensively improve the ETF operation mechanism. A comprehensive assessment will be carried out to revise and improve the operation mechanism covering all aspects of ETF issuance, listing, trading, market - making, delisting, and information disclosure. Specific measures include promptly promoting the transformation of the full-physical subscription and redemption model for cross-market ETFs, prudently studying and promoting the launch of the Broad-based ETF Connect platform, normalizing the ETF aggregated subscription business, and clarifying the regulatory requirements for ETF products regarding short - term trading, share reduction, and stake-holding disclosure.

Antitrust Guidelines for the Pharmaceutical Sector Issued, Establishing a Full-Chain Regulatory System

On January 23, 2025, the State Council Anti-Monopoly and Anti-Unfair Competition Committee issued the *Antitrust Guidelines for the Pharmaceutical Sector* (the “Guidelines”), effective immediately, targeting prominent monopoly issues in the pharmaceutical sector. The Guidelines cover the production and business activities of all pharmaceutical fields, including traditional Chinese medicine, chemical drugs, and biological products, establishing a full-chain regulatory system for pre-event, in-event, and post-event supervision.

The Guidelines further detail typical monopoly agreement behaviors in the pharmaceutical sector in the chapter on monopoly agreements, explicitly prohibiting pharmaceutical operators from jointly setting prices, dividing sales markets, restricting the production or supply of pharmaceuticals, and other actions to effectively regulate related issues. In the chapter on abuse of market dominance, the Guidelines prohibit behaviors such as unduly raising drug prices through multiple layers of invoicing, delaying or stopping drug supply to gain unfair competitive advantages, and hold accountable parties involved in illegal activities in related distribution links, thereby increasing the specificity and authority of law enforcement. The issuance of the “Guidelines” helps pharmaceutical sector operators deepen and unify their understanding and recognition of the application of the Anti-Monopoly Law in this field. The rules are comprehensive, clear, and explicit, helping pharmaceutical companies effectively prevent and mitigate legal risks, and jointly create a market environment of fair competition in the pharmaceutical sector.

Five Departments Jointly Propose 20 Policies to Pilot the Promotion of Institutional Opening-up in the Financial Sector

On January 22, 2025, the People’s Bank of China (PBC) published the *Opinions on Piloting the Adoption of International High Standards to Promote Institutional Opening-up in the Financial Sector in Conditional Pilot Free Trade Zones (Ports)* (the “Opinions”) on its website, with effect from January 16, 2025.

The Opinions propose 20 policy measures in six aspects: allowing foreign financial institutions to provide new financial services similar to those of Chinese financial institutions, making decisions within 120 days on the applications for related services by financial institutions, supporting the lawful cross-border purchase of certain types of foreign financial services, facilitating the transfer of funds for foreign investors' related investments, improving arrangements for cross-border financial data flows, and comprehensively strengthening financial regulation. These Opinions will be piloted first in the pilot free trade zones of Shanghai, Guangdong, Tianjin, Fujian, and Beijing, as well as the Hainan Free Trade Port and other cooperation platforms with significant external opening-up tasks.

SSE, SZSE and BSE Released ESG Report Preparation Guidelines

On January 17, 2025, the Shanghai Stock Exchange (SSE), the Shenzhen Stock Exchange (SZSE), and the Beijing Stock Exchange (BSE) issued the *Guidelines on Preparation of Sustainability Report* (the "Guidelines"), with effect from January 17, 2025. The Guidelines aim to standardize and enhance the preparation and disclosure of Environmental, Social, and Governance (ESG) reports by listed companies across their respective markets.

Among them, the two Guidelines issued by SSE are: *SSE Self-regulatory Guidelines No.4 for Listed Companies-Preparation of Sustainability Report* and *SSE Self-regulatory Guidelines No.13 for Listed Companies of STAR Market-Preparation of Sustainability Report*. These Guidelines help listed companies to further clarify how to establish a governance structure and management system compatible with sustainable development, as well as how to identify important issues and carry out specific disclosure work by providing specific work methods, disclosure points and sample texts.

In addition, the SZSE issued *SZSE Self-regulatory Guidelines No.3 for Listed Companies-Preparation of Sustainability Report and SZSE Self-regulatory Guidelines No. 3 for Listed Companies of GEM Board-Preparation of Sustainability Report*, and the BSE issued the *Guidelines for Preparation of Sustainability Reports for Listed Companies on the Beijing Stock Exchange*.

Shanghai Optimizes CIT Preference Eligibility Accreditation for Key Industries in Lingang New Area

Three departments, including the Shanghai Municipal Finance Bureau, have jointly issued the revised *Administrative Measures for Accreditation and Recognition of Preferential Corporate Income Tax for Key Industries in the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone (PFTZ)* (the "Administrative Measures"), with effect from January 1, 2025.

The *Notice on Corporate Income Tax Policies for Key Industries in Lingang New Area of the China (Shanghai) Pilot Free Trade Zone* (Cai Shui [2020] No. 38) specifies the policy of reducing CIT at a rate of 15% for five years from the date of establishment for enterprises in key industries in the Lingang New Area in the key areas of integrated circuit, artificial intelligence, biomedicine, civil aviation etc.

The revised Administrative Measures for Accreditation optimize the basic conditions that enterprises need to meet continuously in order to enjoy the tax incentives. Generally, the five conditions remain unchanged, among which item (a) has been optimized from "registered in the new area since January 1, 2020 and within less than 5 years (excluding enterprises moving into the new area from other regions)" to "registered in the new area for less than 5 years (excluding enterprises moving into the new area from other regions)".

SAFE to Optimize the Management of Funds for Overseas Listings by Domestic Firms

On January 14, 2025, the State Council Information Office held a series of press conferences on "the Effectiveness of High-Quality Development of China's Economy" to introduce the financial support for high-quality economic development.

Regarding interest rate policy, the relevant person in charge of the central bank said that the central bank will continue to strengthen the implementation of interest rate policy, focusing on rectifying the illegal high-interest-rate solicitation through "manual supplementary interest", and optimize public deposits and interbank demand deposit interest rate self-discipline management. Also, the central bank will maintain the basic stability of the RMB exchange rate at a reasonable equilibrium level and accelerate bank capital replenishment. At the same time, the central bank will strengthen cooperation with fiscal policy, guiding financial institutions to increase credit resources and optimize the credit structure.

In terms of foreign exchange management policies, the relevant person in charge of the Foreign Exchange Bureau said that it will continue to promote the policy of facilitating trade foreign exchange receipts and payments for high-quality enterprises; it will better support the collection of export proceeds, and simplify the procedures for foreign exchange payments for logistics, warehousing, and returns; it will study canceling the registration of upfront costs for foreign direct investment and domestic reinvestment; it will optimize the management of funds for the overseas listing of domestic enterprises, simplify the foreign exchange registration of overseas listings, and duly adjust upwards the amount of facilitated financing for science-and-technology-based enterprises.

CSRC Issues Interpretation of Takeover Rule for Listed Companies

On January 10, 2025, the China Securities Regulatory Commission (CSRC) issued the *Opinions No.19 on the Application of Securities and Futures Laws — Opinions on the Application of Articles 13 and 14 of the Administrative Measures on Acquisition of Listed Companies* (the "Opinions"), with immediate effect.

The Opinions provide detailed interpretations of Articles 13 and 14 of the *Administrative Measures on Acquisition of Listed Companies*. The key clarifications are as follows: (i) Threshold Calculations: The increases or decreases of 5% or 1% referenced in Articles 13 and 14 explicitly refer to integral multiples of 5% or 1%, respectively; (ii) Passive Shareholding Adjustments: Investors are not required to fulfill disclosure or sale restriction obligations when their shareholding ratio passively crosses the specified thresholds due to changes in the listed company's share capital. Instead, the listed company is responsible for announcing such changes; (iii) Retroactive Application: The new interpretation takes effect immediately upon its release. For past violations discovered after implementation, the principle of "from the old to the new and from the light" will apply.

China to Promote High-Quality Development of Government Investment Funds

On January 2, 2025, the General Office of the State Council issued the *Guiding Opinions on Promoting* *the High-Quality Development of Government Investment Funds* (the "Opinions"), specifying 25 items across eight areas, with immediate effect.

The Opinions point out that government investment funds should focus on major strategies, key areas, and weak links where the market cannot fully play its role. They should attract and drive more social capital, support the construction of a modern industrial system, and accelerate the cultivation and development of new productivity. According to the investment direction, government investment funds are mainly divided into industrial investment funds and venture capital funds.

The Opinions emphasize that government investment funds should not be established solely for investment promotion purposes. It encourages the removal of restrictions on the registration location of government investment funds and their managers. The Opinions also optimize the adjustment mechanism for the government's contribution ratio, and encourages the reduction or elimination of the required return investment ratio. Moreover, the Opinions strictly prohibit local governments from using illegal debt financing to contribute to the fund. Local governments must not create new local government hidden debts, nor force state-owned enterprises and financial institutions to contribute to the fund or make advances.

Article(s)

Legal and Procedural Requirements for Distributing Dividends from the WFOE to Its Overseas Shareholders
by Esther Lin

This article summarized the legal and procedural requirements for distributing dividends from a Wholly Foreign-Owned Enterprise (WFOE) to its overseas shareholder. Understanding these requirements is essential for ensuring compliance with Chinese tax, foreign exchange, and corporate governance regulations.

I. <u>Tax Compliance Requirements</u>

1. Enterprise Income Tax (EIT):

Before distributing dividends to the overseas shareholders, the WFOE is required to pay EIT in accordance with the *PRC Enterprise Income Tax Law*, and to complete the settlement and payment of EIT. The applicable EIT rate depends on the WFOE's annual profit:

(1) 5% EIT rate: Applies to small and low-profit enterprises with annual profits of less than RMB 3,000,000. This preferential rate is designed to support smaller businesses and encourage economic growth;

(2) 25% EIT rate: The standard rate for enterprises with annual profits of RMB 3,000,000 or above.

2. Withholding Tax (WHT):

When distributing dividends to overseas shareholders, the WFOE is required to withhold and pay withholding tax at a standard rate of 10%, unless a reduced rate applies under a relevant double taxation treaty (DTT) between China and the shareholder's country of residence. For example:

(1) China-Singapore DTT: A reduced WHT rate of 5% applies if the Singaporean shareholder holds at least 25% of the WFOE's shares and meets other treaty conditions.

(2) China-Hong Kong DTT: Similarly, the rate may be reduced to 5% if the Hong Kong shareholder qualifies as the beneficial owner and meets the treaty conditions.

To apply for a reduced rate, the overseas shareholder must submit a DTT tax relief application to the tax authorities, providing supporting documents such as a tax residency certificate issued by the shareholder's home country.

3. Tax Completion Certificate

Before remitting dividends overseas, the WFOE must obtain a Tax Completion Certificate from the tax bureau, verifying that all tax obligations, including EIT and WHT, have been settled. This certificate is required for foreign exchange conversion and remittance.

II. SAFE and Bank Regulatory Requirements

Under the current State Administration of Foreign Exchange (SAFE) policy, the WFOE can directly complete the SAFE filing at the bank where its account is opened. To transfer dividends overseas, the bank generally requires the following documentation:

1. Shareholder's Resolution: A formal resolution passed by the shareholders agreeing to the dividend distribution;

2. Audit Report or Special Report: A report issued by a qualified accounting firm confirming the WFOE's financial status and profitability;

3. Certificate of Foreign Exchange Business Registration;

4. Proof of the source of funds for dividend distribution and details of distribution (the bank will examine the reasonableness of the WFOE's business income);

5. Application for offshore remittance (depending on the requirements of specific banks)

6. Tax Completion Certificate;

7. Shareholding Structure Diagram: A clear and updated diagram showing the WFOE's current shareholding structure;

8. Other documents that may be required by the bank.

Once the bank receives the above materials, it will submit the transaction information to SAFE for filing approval. Upon approval, the bank will convert the dividend funds into foreign currency and remit them to the overseas shareholder's designated account, with "Dividend Distribution" noted in the remittance memo.

III. Time Limit

The time required for the dividend distribution process varies depending on the region and the complexity of the WFOE's business. The process typically includes the following stages:

1. Preparation Stage: Involves profit accounting and drafting the shareholder's resolution, which usually takes 1-2 weeks.

2. Tax Declaration and Approval: The time required for tax declaration and approval can range from 1-3 months, depending on the WFOE's business complexity and the efficiency of the local tax authority.

3. Foreign Exchange Approval: The bank's review and SAFE's filing approval generally take 4-8 weeks. In special cases, if additional information or verification is required, the process may be delayed by several months until all requirements are met.

IV. Conclusion

Distributing dividends from a WFOE to overseas shareholders involves multiple regulatory steps, including tax compliance, foreign exchange filings, and bank approvals. By carefully preparing documentation and ensuring adherence to PRC laws and regulations, WFOEs can efficiently complete the process while mitigating risks of regulatory non-compliance. Consulting with tax and legal professionals can further streamline the procedure and help address any complexities arising from cross-border dividend remittances.

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