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# China News Alert Issue 83

## Headlines

### Revised Listing Rules issued

The Shanghai and Shenzhen stock exchanges have jointly issued new listing rules, which will come into force on 10 December 2004. The main amendments introduced include the following:

* the revised rules set out detailed provisions relating to information disclosure, including
  1. introduction of the concept of impartial disclosure,
  2. conditions under which listed companies may suspend or be exempt from information disclosure,
  3. information disclosure relating to resolutions passed at shareholders, directors and supervisors' meetings,
  4. disclosure thresholds for various types of transactions (such as acquisition and sale of assets, investments and guarantees) based on both relative and absolute transactional values and
  5. timing of disclosure of major events;
* under the revised rules, members of senior management will be required to sign a Declaration and Undertaking in relation to compliance with the new listing rules;
* the revised rules contain detailed provisions concerning periodical reporting by listed companies;
* the revised rules set out specific details of directors' duty to act in good faith and requirements relating to directors' due diligence, together with provisions relating to qualification requirements for independent directors;
* the revised rules set out specific requirements relating to the treatment of performance forecasts and adjustments to forecasts, and non-standard, unreserved auditor opinions;
* the revised rules extend the concept of "affiliated persons", and clarify the conditions under which affiliated parties are required to withdraw from voting on affiliated transactions; the amended rules also simplify the procedures for disclosing and reviewing routine affiliated transactions;
* the revised rules add provisions relating to the powers and duties of secretaries of listed companies, as well as setting stricter qualification requirements for secretaries;
* the revised rules simplify the suspension system by removing the requirement for suspension of share trading in the case of quarterly reports and certain periodical reporting (for example, under the revised rules, temporary suspension of trading will no longer be necessary in the case of announcements on profit allocation, rights issues and capitalisation issues); the amended rules also grant more power to the stock exchanges to suspend and lift suspensions on share trading and highlight the cautionary function of suspensions;
* the amended rules incorporate a revised version of the Rules for floating of convertible bonds and annul the previous rules on listing convertible bonds;
* the revised rules cancel certain previous financial thresholds for "delisting risk warnings" to investors; under the new rules, such warnings should be given when, for example, a listed company has made losses for two consecutive years;
* following the revision of the listing rules, the threshold for entry into "treatment" by listed companies has been raised.
* the new rules also incorporate guidelines and regulations recently adopted by the China Securities Regulatory Commission (CSRC) and the Shanghai and Shenzhen stock exchanges, including the Methods for acquiring listed companies, the Methods for disclosure of changes of shareholders of listed companies, the Provisional methods for sponsorship system for listing, revised Complementary rules for implementing methods for suspending transactions and delisting of loss-making listed companies, a Circular on problems related to floating of shares of acquired companies involved in tender offers, Guidelines on procedures following delisting of joint-stock companies, and a Circular on problems related to reinforcing risk warnings for listed companies liable to delisting.

### Mainland enterprises raise HK$861 billion capital in Hong Kong

Hong Kong has become a major overseas market for mainland enterprises seeking to raise capital, according to Ms. Dorothy Ma Chow, principal assistant for the Hong Kong Financial Services and the Treasury. As at the end of October 2004, mainland enterprises had raised a total of HK$861 billion in capital in Hong Kong.

Since 1993, when the first mainland enterprise was listed on the Hong Kong Stock Exchange, more than 280 mainland enterprises have been listed, accounting for one quarter of total listed companies. Mainland enterprises currently account for one half of gross trading volume on the exchange, and one third of total market value.

According to Ms. Ma Chow, Hong Kong, as a listing platform for mainland enterprises, not only provides broad financing channels for mainland enterprises, enhances their corporate governance, and builds up their international reputation, but also further develops the Hong Kong securities market. As at the end of October 2004, the Hong Kong stock market was the eighth largest in the world in terms of market value. Hong Kong is also the twelfth largest international banking centre and the sixth largest foreign currency trade centre in the world, and the second largest syndicated loan centre in Asia.

### CBRC Notice on opening of China's banking sector

The China Banking Regulatory Commission (CBRC) has issued a public notice on the further opening up of China's banking sector.

According to the Notice, from 1 December 2004, foreign-invested financial institutions are permitted to engage in renminbi businesses in five additional cities, namely Kunming, Beijing, Xiamen, Xi'an and Shenyang. Applications by foreign-invested financial institutions to engage in renminbi business must be prepared in accordance with the Regulation of the People's Republic of China Governing Foreign-funded Financial Institutions and implementing rules. The application must be filed with the relevant CBRC local office for preliminary review and will then be forwarded to CBRC headquarters for final approval. Foreign-invested financial institutions that have been authorized to operate renminbi businesses are automatically allowed to conduct renminbi businesses in the above five cities.

As from 1 December 2004, foreign bank branches located in China's western and north-eastern areas will enjoy more relaxed profitability requirements when applying to carry out renminbi business. In particular, in reviewing applications, the CBRC will assess the profitability of all Chinese branches of the foreign bank on a consolidated basis, rather than the profitability of the applicant branch only. The CBRC is also to provide expedited review and approval procedures for applications by foreign banks to set up new establishments or offer new lines of businesses in China's western or north-eastern areas.

With effect from 1 December 2004, foreign banking institutions wishing to set up representative offices in China should submit application documents directly to the CBRC headquarters with a copy to the CBRC local office at the same location as the proposed representative office. From the same date, each CBRC local office is empowered to review and approve the change of the chief representative of a foreign bank representative office.

From 1 January 2005, foreign banks, after filing a prior report with the relevant CBRC local office, may engage in insurance agency business within the permissible client and business scope.

Up to the end of October this year, 105 foreign banks have been authorized to conduct renminbi businesses, of which 61 were approved to conduct renminbi business with domestic-funded enterprises. At the same time, 13 foreign banks have been authorized to launch online banking businesses in China, 24 to establish derivative instrument businesses, and five to set up QFII custody businesses.

## Capital Markets

### CSDC issues rules for opening securities accounts

China Securities Depository and Clearing Corporation (CSDC) has issued Detailed implementing rules for special legal persons to open securities accounts, which regulate the opening of securities accounts by securities, trust and insurance companies, investment and social securities companies, and Qualified Financial Institutional Investors (QFIIs).

Under the rules, securities companies engaging in portfolio management are permitted to open individual securities accounts for each portfolio management plan. Similarly, trust and insurance companies may open individual accounts for each trust or insurance product. Securities investment may open accounts for each rented seat exclusively for fund trading. Fund management companies engaged in securities investment management for specific customers can open accounts for each customer's securities investments. National social security funds may open accounts for each portfolio. Enterprise annuity funds may open accounts according to annuity plans. A maximum of ten securities accounts may be opened for a single enterprise annuity plan (except where otherwise approved by the CSRC and the Ministry of Labor and Social Security). QFIIs may open securities accounts according to related provisions adopted by the CSRC.

## Taxation

### Trades of closed-ended funds to continue to be exempt from taxes

The Ministry of Finance and the State Administration of Taxation have jointly promulgated a "document" which provides that as of 1 January 2003, trades of closed-ended funds will be exempt from stamp duty for investors (both individuals and institutions). The exact effective period of the document is not defined.

The first China closed-ended fund was launched in 1998, prompting the Ministry of Finance and State Administration of Taxation to issue the Notice on Taxes of Security Investment Funds, which provided that fund trades would be exempt from stamp duty for the investors before the end of 1999. In 2000 and 2001, the Ministry of Finance and State Administration of Taxation decided to postpone the temporary tax exemption to the end of 2000 and 2001 respectively. The two authorities have yet to promulgate specific regulations on the tax exemption, which has nonetheless been applied in practice.

## WTO

### Progress on market opening under WTO

The following is a summary of China's market opening measures pursuant to its WTO commitments:

* **general**: the overall tariff level will be reduced to 10.1% in 2005; the average tariff of industrial products will be reduced to 9.3%, while the tariff on agricultural products will be reduced to 15.6%; all non-tariff measures will be cancelled and the transitional period for major service sectors such as banking, securities, insurance and distribution will be ended on a step-by-step basis;
* **automobiles**: from 1 January 2005, China will cancel quotas on car imports; additionally, the tariff on cars will be reduced to 30% and the tariff on automotive components will be reduced to 13%; from 1 July 2006, the tariff on cars will be reduced to 25% and the tariff of automotive components will be reduced to 10%;
* **agriculture**: tariffs on agricultural products will be reduced to 15.35% and quotas on wheat and corn will be set at 10.7% and 6% of domestic production respectively;
* **banking**: China will open up renminbi businesses in Kunming, Beijing, Xiamen and other cities; in 2006, the limitations on ownership, operation and establishment form of foreign banks, including restrictions on establishing branches and issuing business licenses, will be cancelled;
* **securities**: since its entry into the WTO, China has allowed foreign-invested enterprises with foreign ownership of up to 33% to set up companies engaged in fund management of domestic security investments; three years after WTO entry, the permitted foreign ownership of invested securities enterprises will be increased to 49%; foreign security firms are also allowed to set up joint ventures, of which foreign capital can not exceed one third of the minority shareholding; foreign-invested joint ventures are permitted to engage in consignment of A shares, and consignment and transaction of B and H shares, corporate bonds, and the launching of funds.
* **insurance**: after 2005, China will cancel regional restrictions on insurance businesses, allow foreign insurance companies to provide health insurance, group insurance and pension/annuities, cancel compulsory reinsurance requirements, reduce total assets requirements for foreign-funded broker firms and permit foreign insurance companies to set up foreign-owned insurance broker firms;
* **telecommunications**: since China's entry into the WTO, foreign service providers have been permitted to set up telecommunications joint ventures in Shanghai, Guangzhou and Beijing, and provide telecommunications services in and around these cities; the foreign capital of the joint venture at that time could not exceed 25%. In the first year after China's entry into the WTO, the geographical scope for engaging in telecommunications business was extended to include 17 cities, while the maximum foreign ownership limit was increased to 35% (which limit will be increased to 49% three years after China's entry into the WTO). China will cancel regional restrictions on basic telecommunications services, and permitted foreign capital ownership will be increased to 49% in 2007.
* **retail**: within three years after WTO entry, foreign service providers will be permitted to engage in retailing of pharmaceutical, pesticide, agricultural and film products; restrictions on franchising and wholesale or retail without fixed sales locations are cancelled;
* After 2005, wholly foreign-owned enterprises may be established in the construction, tourism and transportation sectors.

## Corporate & Commercial

### Reform of state-owned assets management system

Mr Li Rongrong, director of the State-owned Assets Supervisory and Administration Commission (SASAC) outlined a series of reforms made to the state-owned asset management system, at a press conference held by the State Council Information Office. The main achievements referred to by Mr Li included the following:

* establishment of a preliminary organizational framework for state-owned asset management regulators: to date, the establishment of provincial SASAC branches has been completed, and the establishment of municipal SASAC branches is ongoing; SASAC branches in some provinces and cities have made reforms and adjustments to state-owned asset management companies;
* strengthening of various laws and regulations governing supervision and administration of state-owned assets, including the promulgation of the Provisional rules for supervision and administration of state-owned assets in May 2003; on the basis of these rules, SASAC has issued 32 supporting regulations and guidelines concerning restructuring of state-owned enterprises, transfer of property rights and performance assessment. At the same time, SASAC has put in order 257 laws, regulations and documents relating to supervision and administration of state-owned assets;
* establishment of performance assessment systems: by the end of October 2004, the SASAC had signed agreements with 187 central enterprises regarding the assumption of responsibility for business performance in 2004; assessment on incumbent chiefs in charge of central enterprises has also been formally initiated; in addition, SASAC has regularised remuneration of chiefs, and improved data collection relating to state-owned assets and the evaluation system for enterprise performance; certain provinces and cities have also set up preliminary budgetary systems for state-owned capital;
* strengthening of the role of the board of supervisors: SASAC is currently in the process of revising Provisional rules for boards of supervisors of state-owned enterprises;
* improvement of basic management of state-owned assets, including auditing of state-owned enterprises and the implementation by enterprises of the new Enterprise Accounting system;
* stricter supervision of trading of state-owned assets.

According to Mr Li, asset stripping during management buy outs (MBOs) of state-owned enterprises have been curbed to a certain extent. Nonetheless, a major obstacle in the reform of the state-owned assets management system remains the "self-sale" to management of state-owned assets for less than market value during the MBO process. SASAC has issued two documents relating to MBOs, namely

1. the Opinions on regulating restructuring of state-owned enterprises and
2. Provisional methods for transferring state-owned property rights of enterprises.

These documents set out the problems occurring in the process of restructuring state-owned enterprises and transfer of state-owned property.

### Petroleum Industry to Open to Private Enterprises

In line with its WTO commitments, China is to open its crude oil retail market by the end of 2004, and its crude oil wholesale market two years later.

Due to high market entry barriers, relatively few private enterprises have been able to penetrate the crude oil market in China. Successful entrants include Hubei Tianfa and Dalian Shide. Huebi Tianfa is a listed company which holds the third license for wholesale of refined crude oil (the first two licences are held by are held by Sinopec and PetroChina respectively). Dalian Shide plans to invest tens of billions of yuan in a petrochemical project through cooperation with a Saudi Arabia-based company.

Reforms to the Chinese energy sector will enable qualified enterprises will be permitted to enter the market. The Decisions on reform of investment system by State Council, which was approved by the State Council in July 2004, specifically requires diversification of investors.

### SEPA releases Circular on the importation of waste materials

The State Environmental Protection Administration of China (SEPA) has released a Circular on reinforcing examination and approval on the importation of prohibited waste materials, requiring regions and environmental protection bureaus at all levels to strictly review applications for importation of waste products. The Circular also prohibits the importation of seven categories of waste products for use in processing, namely

1. slag, scruff, oxide skin and other wastes,
2. steel casting die from end-of-life vehicles, and waste hardware and electrical appliances, for the purpose of steel recovery
3. cement copper,
4. end-of-life vehicles for the purpose of copper recovery
5. waste wire for the purpose of aluminum recovery
6. ships and other floating structures for disassembly and
7. calx and residue with content of vanadium pentoxide above 10%.

The circular requires environmental protection bureaus at all levels to strictly review applications from product processors for the importation of waste products. In setting annual import quotas, provincial environmental protection bureaus must take into consideration enterprises' annual processing capacity and actual production levels. In principle, annual import quotas should not exceed the actual imported amounts of the previous year. Environmental protection bureaus must also regularly inspect processing enterprises to evaluate processing capacity, actual processing levels and pollution prevention measures. Enterprises failing to meet stipulated requirements will be required to implement the necessary within a certain period of time.

Finally, the Circular introduces the principle of proximity in the selection of ports for imported waste products, whereby every letter of approval on import of waste products must specify a particular import port.

### Opinion on linking coal and electricity prices to be adopted

It is anticipated that the Opinion on establishing the link between coal and electricity prices will be adopted soon. The Opinion will set out two core formulae relating to

1. linking electricity and coal prices and
2. linking electricity sale prices and the supply prices of electricity power plants.

Under the formulae, the determinants of electricity supply price for electricity power plants will include, in addition to coal price, standard coal consumption and caloric value. In addition to the supply price of electricity power plants, the determinants of electricity sale prices will include transmission and distribution loss rate.

It is understood that the Opinion will use the comprehensive mining price of January to May 2004 as the basis for coal price and electricity price linkage. It is forecast that the price of the electricity per kilowatt-hour (KWh) for industrial and commercial electricity will increase by 7.6 centi on average, as a result of the linkage.

It is also understood that the National Development and Reform Commission (NDRC) has ordered the China Coal Transport and Sale Association, Zhongneng Electric Power Fuel Co. Ltd. and various price control authorities to respectively supervise, analyze and produce statistics on coal price, with the aim of establishing a long term coal price information and indicator system, providing details of trading volume and prices, and to determine statistical standards, pricing points and reporting systems.

Pursuant to the Opinion, coal and electricity prices will be linked on a semi-annual basis. It is understood that electricity prices will be adjusted using the linkage formula if the average coal price increases or decreases by 5% in a particular semi-annual period. Otherwise, the price will not be adjusted until the aggregate change in coal price exceeds 5% in the next period.

The price of the electricity used in agriculture and large and medium fertilizer plants will not be subject to linkage pricing. In addition, domestic electricity prices may be adjusted at most once a year.

## Other

### China increases quota on renminbi brought into and taken out of China

The People's Bank of China has announced that, from 1 January 2005, the quota for renminbi brought into and taken out of China will be increased from RMB6,000 to 20,000. According to the Rule on Management of Renminbi of the People's Republic of China, and the Rules on Management of National Currency Brought into and taken out of China, the People's Bank of China may adjust quotas, after considering the economic development of China and the exigencies of its foreign relations.

### Customs reminder to travellers carrying foreign currency into or out of China

Customs officials have issued a reminder to people leaving and entering China of the following requirements under the Temporary Rules on Management of Carrying Foreign Currencies Home and Abroad:

* outbound visitors do not need to apply for a licence if the amount of foreign currency to be carried is no more than US$5,000;
* visitors should apply to a bank for a licence if the amount foreign currency to be carried is between US$5,000 and US$10,000;
* visitors should submit applications to the relevant local foreign exchange administration if the amount foreign currency exceeds US$10,000 (in which the licence granted should carry seals of the State Administration for Foreign Exchange);
* inbound travellers carrying in excess of the above mentioned quotas of foreign currency should submit written application to customs for approval.

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