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# China News Alert Issue 282

## Capital Markets

### Regulator: New listing norms soon

China's securities regulator is expected to unveil a draft of the new listing scheme soon, Fan Fuchun, vice-chairman of the China Securities Regulatory Commission (CSRC), said recently.

"The huge gap between the issuing price and the opening price set through collective bidding has to be addressed first and that's why we have suspended new initial public offerings (IPOs) for the time being," said Fan, also a member of the Chinese People's Political Consultative Conference.

In many cases, bids for new issues were in excess of their underlying value. For instance, PetroChina Company Limited (PetroChina) got listed on the A-share market in late 2007, with an opening price of 48.6 yuan. The scrip began to fall soon after listing and consequently many investors burnt their fingers.

"The opening price of PetroChina shares was exorbitant. Currently the price is around 10 yuan, which is much lower than the issuing price and nowhere near the opening price," said Fan.

The CSRC suspended new IPOs from September 2008. According to market researcher Wind Info, the floats of 36 companies, amounting to 1.84 billion shares have been delayed indefinitely.

"Once the listing issues are settled, we will try our best to resume IPOs as early as possible. However, we cannot come out with a specific timetable for IPOs now," he added.

"We have done lots of preparatory work for the revision, and will soon release the draft rules to elicit public opinion," he said.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2009npc/2009-03/07/content_7550313.htm) ([see archive](Regulator_New_listing_norms_soon.pdf))

### China to expand enterprise bond issuance to fund stimulus projects

China will expand the issuance of enterprise bonds to fund its massive stimulus projects, said Zhang Ping, minister of the National Development and Reform Commission (NDRC) recently.

Altogether 45 enterprise bonds worth more than 130 billion yuan (19 billion U.S. dollars) have been issued since the fourth quarter of last year, Zhang told a press conference during the parliament's annual session.

In addition, more than 50 enterprises have applied for bond issuance worth nearly 100 billion yuan and are waiting for approval, said Zhang.

Enterprise bonds in China often refer to bonds issued by state-owned enterprises and must be approved by the NDRC, China's top economic planner. They are in comparison to corporate bonds issued by listed companies, which are under the charge of the China Securities Regulatory Commission.

The country will also grant policy-related bank loans with a relatively long maturity and low interest rates to fund certain stimulus projects, said Zhang.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-03/06/content_10955760.htm) ([see archive](China_to_expand_enterprise_bond_issuance_to_fund_stimulus_projects.pdf))

### IPOs lose steam in February

The subdued sentiment in Chinese equity markets and regulatory constraints saw domestic initial public offerings (IPO) remaining tepid in February, with only two Chinese enterprises going public.

Both the companies made their listing debut on the main board of the Hong Kong stock exchange, and the total amount of money raised was over 16 times higher than that in January at $142 million, according to a report from investment research firm ChinaVenture.

"The recent strength in gold prices saw the Real Gold Mining offering oversubscribed by 67 times, making it the largest IPO in terms of financing amount in Hong Kong since last October, " the report said.

"Because of the IPO constraints in China's secondary market, and the ample liquidity as well as the abundance of international institutional investors in Hong Kong's equity market, many domestic firms chose to list on the latter bourse," said Xiao Lumin, analyst, ChinaVenture.

Since Sept 16, companies' public listing pace on the mainland exchanges has come to a halt, and over 30 companies that have been approved by the Issuance Examination Committee under China's securities watchdog are yet to be listed so far, according to Cai Junyi, analyst, Shanghai Securities.

"The current conditions have acted as a deterrant for domestic companies wanting to test IPOs waters, and instead propelled them to bank financing," said Wu Feng, analyst, TX Investment Consulting Co Ltd.

The central government's plan to resume the IPO market after a five-month hiatus is expected to open up a financing channel for companies.

Fan Fuchun, vice-chairman of China Securities Regulatory Commission, said recently that new share sales would restart "soon".

The spread between A shares and H shares of dual-listed companies have reached 150 percent, which indicates that companies may get a higher issuing price on mainland bourses, and more domestic companies will shift from Hong Kong to Shanghai or Shenzhen for listing.

[Source: China Securities Journal](http://www.cs.com.cn/english/markets/200903/t20090310_1783670.html) ([see archive](IPOs_lose_steam_in_February.pdf))

### First Chinese company listed on NYSE Amex market

China Green Agriculture Inc., the first Chinese company listed on the new New York Stock Exchange Amex market, opened for trading recently.

Green Agriculture, which produces and distributes humic acid based liquid compound fertilizer, is also the first Chinese company to list on NYSE Euronext markets in 2009.

"Today is an exciting milestone in the company's continued growth," said Tao Li, chief executive officer of China Green Agriculture.

"Since becoming a public company last year, we have devoted a great deal of resources to improving our corporate governance and level of oversight in order to meet the requirements of a more senior exchange," he added.

So far, NYSE Euronext has 66 companies listed from Greater China, including 56 companies from mainland China listed on the NYSE Euronext, 5 from Hong Kong on NYSE Euronext Markets, and 5 Taiwanese companies on NYSE Euronext Markets.

The total global market capitalization of NYSE Euronext-listed companies from the mainland China is 1.1 trillion U.S. dollars, and 1.2 trillion for all companies from Greater China.

[Source: China Securities Journal](http://www.cs.com.cn/english/markets/200903/t20090310_1783722.html) ([see archive](First_Chinese_company_listed_on_NYSE_Amex_market.pdf))

## Corporate & Commercial

### China further facilitates foreign investment inflow

China announced new measures recently to facilitate foreign investment in China. The Ministry of Commerce issued two documents giving more power to its local offices at the provincial level on approving foreign investment projects.

The new policies take effect on March 6, 2009.

Incorporation and changes of foreign-funded investment companies with the registered capital of or below 100 million USD will be subject to the approval from commerce authorities of the province where the company is registered.

In another document, local commerce offices, together with local taxation, foreign exchange and industry departments, will review maximum 100 million USD or 50 million USD mergers and acquisition deals -- depending on whether the deal is under the encouragement and permission category or limited category defined by the government -- in which foreign investors buy out a domestic company.

One-off capital increase by more than 100 million USD still has to be approved by the Ministry of Commerce.

Alterations of foreign-funded investment companies established under the approval of the Ministry of Commerce will be subject to the approval of commerce authorities of the province where the company is registered.

But alterations involving one-off capital increase by more than 100 million USD or change of investors still have to be approved by the Ministry of Commerce.

Cases that will not be approved for foreign-funded investment companies, for example, investors or companies with records of misconducts in China, are also stated in the document.

It also requires that particular investment projects are still subject to procedures in line with relevant regulations.

If an enterprise funded by an investment company or an enterprise jointly funded by an investment company and other investors has at least 25 percent of foreign currency denominated investment by foreign investors -- including the investment companies and other overseas investors, then the enterprise is regarded as a foreign funded company and enjoy all favorable policies due.

Application for lifting supervision on equipment imported by foreign-funded companies ahead of designated time of lifting such supervision is no longer necessary.

Foreign-funded enterprises will register their newly built subsidiaries in China at the local commerce authorities, instead of applying for approval from the Ministry.

Provincial commerce departments and national economic and tech development zones will decide the application of incorporation and alterations of foreign-funded companies which are under the encouragement category of the foreign investment catalog.

Establishment of overseas subsidiaries of foreign funded companies is subject to both the approval of the provincial commerce departments or municipal commerce departments authorized by provincial governments, and written consent of the business and commerce counsellor's offices of the Chinese embassy or consulate in that country or region.

Local commerce departments also have the rights of approving foreign investment on auto sector.

Alterations of foreign-funded enterprises -- except capital increase up to a certain amount or equity transfer from the Chinese side to foreign investors -- will be reviewed and approved by local commerce offices.

The document also explains M&A deals which have to be applied to other government departments or involve anti-monopoly reviews. Projects subject to existing rules in line with industrial polices are also stated in the document.

Local commerce departments are required to submit the approved projects to the Ministry of Commerce.

Provincial commerce authorities include those in provinces, autonomous regions, municipalities, Xinjiang Production and Construction Corps, cities specifically designated in the state plan and minor provincial cities (Ha'erbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu, Xi'an).

[Source: People.com](http://english.people.com.cn/90001/90778/90857/90862/6612919.html) ([see archive](China_further_facilitates_foreign_investment_inflow.pdf))

### Chinese lawmaker urges smoother access of private firms to infrastructure projects

A Chinese lawmaker has proposed to ensure a smoother access of the country's private sector to projects of infrastructure and public utilities as impediments remain to be removed.

There remain various difficulties and problems when private firms want to access projects of infrastructure and public utilities, You Xiaoping, deputy head of the China

Petroleum and Chemical Industry Association, said recently on the sidelines of the annual parliamentary session.

"This is the situation in reality despite the fact the central government has made it clear that non-state capital is also welcomed in such projects," he said.

More than 95 percent of the country's petroleum and natural gas exploration in terms of industrial output were from state-owned or state-controlled enterprises in 2007, according to You.

The figure for power generation was more than 90 percent, and nearly 50 percent for transport equipment manufacturing, he added.

Private firms should be encouraged to invest in these key industries, You said, adding this would help reduce monopoly in certain sectors, improve the efficiency of resource allocation, and boost domestic demand.

Supplementary policies for smoother access of private firms should be adjusted to build a more fair market environment, You said.

He said it is also necessary to create a supervision system to prevent private firms from chasing after short-term profits in their participation of such projects directly linked to welfare of the public.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-03/08/content_10966806.htm) ([see archive](Chinese_lawmaker_urges_smoother_access_of_private_firms_to_infrastructure_projects.pdf))

## IPR

### Feedback Sought for the Draft Amendment to the Implementing Provisions for the Patent Law

The Legislative Affairs Office of the State Council released on March 9, 2009 the Draft Amendment to the Implementing Provisions for the Patent Law of the People's Republic of China (Draft for Reading) and the relevant explanations for public input. The public-input process is scheduled to conclude on March 31, 2009.

The Draft for Reading suggested revising the provisions from nine aspects, including name of the existing implementing rules of the Patent Law, documents for applying for patents, procedures for patent application and examination and approval, simplification of charging items and procedures, modification of compulsive licensing systems, use of the patent rights, awards for the inventors or designers, protection of the patent rights.

The sixth session of the 11th Standing Committee of the National People's Congress, the parliament, approved on December 27, 2008 the Decisions on Revising the Patent Law of the People's Republic of China, which will take effect on October 1, 2009.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5486) ([see archive](Feedback_Sought_for_the_Draft_Amendment_to_the_Implementing_Provisions_for_the_Patent_Law.pdf))

## Other

### MIIT Tightens Control over Software Products

Beginning on April 10, 2009, the localized products of the imported software, which are developed and produced in China, shall be entitled to the relevant preferential policies after the copyright owners and the original developers process the registration and record-filing for the parts developed in China.

Under the Measures for Administrating the Software Products (Measures) released by China's Ministry of Industry and Information Technology (MIIT) on March 9, 2009, software product manufacturers must specify name, version number, copyright owner, registration number of the software, name and address of the software manufacturers (importers) as well as the production date on packing of the software products provided to the users.

The Measures also stipulated that the software developers and manufacturers are eligible to directly sell or entrust the agencies to sell their software products.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5482) ([see archive](MIIT_Tightens_Control_over_Software_Products.pdf))

### Chinese lawmakers disagree on courts' leniency towards enterprises in distress

China's highest court has ordered that courts should exercise prudence in using forceful measures on enterprises that are in distress due to the impact of the global financial crisis.

The move is meant to provide a caution against the social impact of rising unemployment and bankruptcy, but it has spared off hot debates among deputies to the ongoing annual session of the National People's Congress, China's legislative body.

"I agree with the policy which is beneficial to enterprises' long-term development," said lawmaker Zou Xiaoshan, also deputy board chairwoman of the Shijiazhuang Changshan Textile Group in northern Hebei Province.

"The decision has been made with consideration of the prevailing situation," Zou said, adding exercising prudence does not mean inaction towards suspect companies.

The Supreme People's Court President Wang Shengjun said in his report to the NPC session that courts at all levels should "prudently use such compulsory measures as sealing up, impounding or freezing assets of companies," and should "promptly offer judiciary advisories to help enterprises in operational difficulty tide over economic woes."

Wang said Chinese courts had promulgated regulations "offering judicial guarantee which safeguards the country's financial security and a stable and relatively fast economic growth."

Analysts believe the rationale underlining the policy is that law enforcement should disrupt businesses as little as possible during the global economic downturn.

Zou said few businessmen intentionally deferred payment and it's futile for courts to seal up companies if no money could be paid by them.

"Workshops and machines are of no use to obligees if they cannot be sold and converted into cash."

Companies were still able to maintain normal operation if the courts did not immediately seal them up, she said.

Zou said courts' compulsory measures which brought enterprises' operation to a standstill could "add insult to injury." She suggested using mediation under the framework of the law so as to offer some "buffering time" to enterprises.

However, lawmaker Peng Xuefeng, director of the All China Lawyers Association, believed the policy "goes against the spirit of fairness and justice inherent in the law."

"Prudent handling of companies suspected of illegalities must not be over-emphasized," he said, adding the law is "a balancer of overall economic relations" and judicial organs should always remain neutral.

"Judicial policies should not go beyond legal principles even in extraordinary time."

He said although prudent handling of entrepreneurs could "temporarily alleviate business pressure caused by lawsuits," creditors' legal interest would be neglected and losses would fall on those creditors which had hoped to seek relief via legal procedures.

"In the long run, it will affect a normal market order featuring fair competition." Earlier this year, Guangdong authorities promulgated "ten measures" helping local enterprises go through financial difficulties, including discreetly dealing with cases of dereliction of duty of company heads and staff holding key positions.

Local procuratorates should discuss with relevant departments and enterprise leaders and "cautiously choose a proper time to handle such cases," according to the measures.

Observers believe it comes as concern grows over the health of China's export-oriented economy. Many companies in Guangdong, a major export base, are struggling with over capacity, which leads to unemployment.

Peng said, "Prudent handling of company owners suspected of breaking the law is not a good option to solve current disputes resulted from financial woes."

Market economy was fundamentally "an economy ruled by law" and the economic development in the long run especially needed an integral legal guarantee, he said, adding there was no place for sentiment in judicial organs.

Cong Bin, an NPC Standing Committee member, said in the current financial crisis, courts should "act according to reality and their capability."

He said courts' compulsory measures on enterprises who could not pay their debts could lead to social instability, because they may hurt employees' interest and result in unemployment.

"But prudent use of compulsory measures must not be abused in dealing with the current crisis," Cong said, adding the will of the law must not yield to the will of an individual for a temporary need.

"How to exercise the role of the courts in promoting growth, employment and stability within the frame of the law will be test of the wisdom of all parties concerned," he said.

[Source: China Securities Journal](http://www.cs.com.cn/english/ei/200903/t20090312_1786888.html) ([see archive](Chinese_lawmakers_disagree_on_courts_leniency_towards_enterprises_in_distress.pdf))

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