

15 April 2022

International Division
China Securities Regulatory Commission

By Email: guojibu@csrc.gov.cn

Re: CSRC's Solicitation of Public Comments on Revision to the Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies

Dear Madam / Sir,

Hope this finds you well. The Asia Securities Industry and Financial Markets Association (ASIFMA)¹ thanks the China Securities Regulatory Commission ("CSRC") for the opportunity to share our recommendations and suggestions on the consultation around joint revision of the Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies (the "Provisions") by CSRC, Ministry of Finance of the People's Republic of China, National Administration of State Secrets Protection, and National Archives Administration of China.

1. INTRODUCTION

- 1.1. Our response consolidates the comments from our Equity Capital Markets Committee ("ECM") members which are investment banks with substantial experience in advising domestic companies in their overseas securities offering and listing.
- 1.2. We fully support the objectives of the joint revision of the Provisions, which are (i) supporting domestic companies to offer and list securities in overseas markets pursuant to laws and regulations, (ii) strengthening the confidentiality and archives administration concerning such overseas securities offering and listing by domestic companies, and (iii) enhancing cross-border regulatory cooperation. We believe that our comments are consistent with these objectives.

2. EXECUTIVE SUMMARY

- 2.1. Our comments are summarized below and further elaborated under paragraph 3 (Our Comments).

¹ ASIFMA is an independent, regional trade association with over 165 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive, and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

DEVELOPING ASIAN CAPITAL MARKETS

2.2. Clear Scope: In order to provide a clearer guidance on confidentiality and archives administration for the overseas securities listing and offering by relevant market entities, we suggest to (i) define, (ii) elaborate on the definition of, or (iii) provide examples for, as applicable, the following terms or concept:

- 2.2.1. archives;
- 2.2.2. working papers;
- 2.2.3. government work secrets;
- 2.2.4. public interest;
- 2.2.5. important conservation value to the nation and the society;
- 2.2.6. harm national security and public interest;
- 2.2.7. domestic companies (clarifying whether domestic companies include (i) those directly owned by a foreign company, such as DPC Dash, and (ii) those whose business operations in China only account for a minority (less than 50%) of the whole business operations, such as Prada and L'Occitane);
- 2.2.8. securities;
- 2.2.9. secrecy administrative department;
- 2.2.10. government authority;
- 2.2.11. relevant state organs and units;
- 2.2.12. competent authorities;
- 2.2.13. national regulations; and
- 2.2.14. remedies.

2.3. Home Jurisdiction: Please consider (i) limiting the scope of the obligations of “securities companies and securities service providers” outside the Chinese mainland under the Provisions to the extent that is in line with the obligations pursuant to the home jurisdictions of such securities companies and securities service providers, or (ii) excluding them from the requirements under Articles 6, 7, and 11 because they are regulated by the regulators in their respective home jurisdictions and are typically not subject to PRC laws and regulations.

2.4. Practicality: Please consider specifying that the scope of the documents, materials or archives is only limited to, confirmed by the relevant authorities, (i) that contain state secrets or government work secrets, or (ii) that, if divulged, will jeopardize national security or public interest. Otherwise, if the relevant scope includes all documents, materials, or archives, it may be unduly burdensome for securities companies and securities service providers to comply with the approval requirements under Article 9.

This is because in a securities offering and listing project, it is very common for an employee of a securities company or securities service provider to “produce” text, diagrams, photos, audio recordings or video recordings for purposes of project execution, including due diligence, prospectus drafting and submission drafting, and then “bring”, “mail”, “transfer” or “transmit” them to colleagues or external legal counsel to the securities company or securities service provider who are outside the Chinese mainland on a daily basis.

2.5. Clear Procedure: Please provide the detailed procedures or guidelines regarding (i) the approval and filing process, and the determination process for ambiguity or dispute under Article 3, (ii) disclosure, and documents or materials sharing under Article 4, (iii) the safekeeping requirements under Article 6, (iv) the due procedures under Article 8, (v) the approval process under Article 9 and (vi) the

reporting process under Article 11 so that the relevant parties may strictly comply with these requirements.

Such procedures or guidelines may include, but not limited to: (i) the information required, (ii) the format of the application, filing or reporting, (iii) the time required for the process, and/or (iv) the specific regulator and the point of contact for the process.

Particularly, please confirm that the requirements under Article 9 are only applicable after the overseas securities offering and listing is complete or terminated and are not applicable when the execution of the overseas securities offering, and listing is ongoing.

3. OUR COMMENTS

For ease of reference, our detailed comments are set out in the table below.

Article	Excerpt of the Article (emphasis supplied)	Comments
2	A domestic company that <u>seeks to offer and list its securities</u> in an overseas market, and <u>the securities companies and securities service providers</u> ... shall ... enhance legal awareness of keeping <u>state secrets</u> ... They shall not divulge any <u>state secret</u> or <u>harm national security and public interest</u> ...	<ol style="list-style-type: none"> 1) Please confirm whether the Provisions apply to follow-on offerings in addition to the initial public offerings. 2) Please elaborate on the definition of “domestic company” to clarify whether domestic companies include (i) those directly owned by a foreign company, such as DPC Dash, and (ii) those whose business operations in China only account for a minority (less than 50%) of the entire business operations, such as Prada and L'Occitane. 3) Please define “securities”. Particularly, please confirm that “securities” only include equity securities (which exclude convertible bonds and bonds). We note that the Provisions references the Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Companies announced late last year, which states that it applies to equity-like securities (具有股权性质的证券). We think that the scope of the Provisions should be consistent. 4) Please consider limiting the scope of the obligations of “securities companies and securities service providers” outside the Chinese mainland under the Provisions to the extent that is in line with the obligations pursuant to the home jurisdictions of such securities companies and securities service providers because they are regulated by the regulators in their respective home jurisdictions and are typically not subject to PRC laws and regulations. 5) Please clarify the specific scope of “securities companies and securities service providers” – whether a securities company or securities service provider only involves in the selling or distributing of relevant securities will be captured by the

		<p>definition of “securities companies and securities service providers”.</p> <p>6) Are “government work secrets” excluded from Article 2 on purpose? If so, please elaborate the reason.</p> <p>7) Please specify or provide examples on the actions or scenarios which may lead to “harm national security and public interest”.</p> <p>8) What are the differences among: “<u>harm</u> national security and public interest” in Article 2; “<u>jeopardize</u> national security or public interest” in Article 4; and “<u>detrimental</u> to national security or public interest” in Article 6?</p>
3	<p>A domestic company that plans to ... <u>publicly disclose</u> or provide to relevant entities or individuals ... documents and materials that contain <u>state secrets</u> or <u>government work secrets</u>, <u>shall first obtain approval</u> from <u>competent authorities</u> according to law, and <u>file with the secrecy administrative department</u> at the same level. Where there is ambiguity or dispute over the identification of a state secret, a request shall be submitted to the competent <u>secrecy administrative department</u> for determination; where there is ambiguity or dispute over the identification of a government work secret, a request shall be submitted to the <u>competent government authority</u> for determination.</p>	<p>1) Please consider deleting “publicly disclose” because such action is a breach covered by other relevant laws. It is not necessary to mention “publicly disclose” in Article 3 and it may lead to misunderstanding that for onshore listings, documents and materials that contain state secrets or government work secrets may be publicly disclosed without approval from competent authorities because no such requirement is specified for onshore listings.</p> <p>2) Please define “government work secrets”. What is the difference between “state secrets” and “government work secrets”? In particular, please consider clearly specifying and limiting the scope of “government work secrets” to the extent that is reasonable because such scope can be quite broad.</p> <p>3) Please consider providing an explicit safe harbor regarding the requirements of obtaining approval and filing for archives that are typical for standard due diligence in an overseas securities offering and listing. Otherwise, it will be difficult for a domestic company to comply with such requirements because the listing regulators may from time to time ask for additional disclosure or information during the vetting or review process and the relevant documents and materials may need to be provided to securities companies, securities service providers, and overseas regulators.</p> <p>4) Please define “competent authorities”.</p> <p>5) Please define “secrecy administrative department” and “government authority” or provide examples.</p> <p>6) A detailed procedure regarding the approval and filing process is required for compliance with Article 3.</p> <p>More specifically, please clarify the timing of such approval and filing process. Are they required to be done prior to any public or confidential filing of the listing application or submission to the listing regulator?</p>

		<p>7) A detailed procedure regarding the determination process for ambiguity or dispute is required for compliance with Article 3.</p> <p>8) Please consider having CSRC as the overall coordinator for the approval, filing and request process and adding a relevant clause in the draft Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Companies issued on 24 December 2021.</p>
4	<p>A domestic company that plans to ... publicly disclose or provide to relevant entities or individuals ... <u>other documents and materials</u> that, if divulged, will <u>jeopardize</u> national security or <u>public interest</u>, <u>shall strictly fulfill relevant procedures stipulated by applicable national regulations</u>.</p>	<p>1) Please elaborate on the specific criteria for “other documents and materials” to be captured by “if divulged, will jeopardize national security or public interest”. In addition, please consider limiting the scope of such “other documents and materials” to those which have been confirmed by the relevant authorities as “if divulged, will jeopardize national security or public interest”.</p> <p>2) Please define the term “public interest”.</p> <p>3) Please consider providing an explicit safe harbor regarding the requirements of the relevant procedures for archives that are typical for standard due diligence in an overseas securities offering and listing.</p> <p>4) Please define “relevant procedures” and provide the list of “applicable national regulations”.</p>
5	<p>A domestic company shall provide documents or materials to securities companies or securities service providers in compliance with <u>applicable national regulations</u> on confidentiality, and provide at the same time a <u>written statement of compliance</u> with Articles 3 and 4 of this Provisions ...</p>	<p>1) Please provide the list of “applicable national regulations”.</p> <p>2) Please consider limiting the scope of the documents or materials to only the information that are confirmed as state secrets or government work secrets by the relevant authorities. Otherwise, it may increase the difficulty for securities companies or securities service providers to conduct due diligence and record keeping. For example, is the written statement required every time a document or material is provided to securities companies or securities service providers?</p>
6	<p>Where a domestic company ... provides to securities companies, securities service providers or other entities with ... or <u>other documents or materials</u> that will be <u>detrimental</u> to national security or public interest if divulged, a <u>non-disclosure agreement</u> shall be signed ...</p> <p>Securities companies and securities service providers shall keep safe the obtained</p>	<p>1) Please consider limiting the scope of the documents or materials to only the ones that are confirmed as state secrets or government work secrets by the relevant authorities. <u>Alternatively</u>, please elaborate and clearly set out the specific criteria for “other documents and materials” to be captured by “will be detrimental to national security or public interest if divulged” <u>and</u> consider limiting the scope of such “other documents and materials” to those <u>which have been confirmed by the relevant authorities</u> as “will be detrimental to national security or public interest if divulged”.</p> <p>2) Please provide a list of specific points that are expected to be covered by such non-disclosure agreement to help the relevant parties strictly comply with the Law of the People’s Republic of</p>

	documents or materials <u>in compliance with national regulations</u> on confidentiality and archives administration.	<p>China on Guarding State Secrets, the Provisions and other laws and regulations. A typical non-disclosure agreement contains carve-outs such as disclosure permitted under applicable laws and regulations.</p> <p>3) Please specify the list of applicable “national regulations”.</p> <p>4) Regarding the safekeeping requirement, please consider excluding securities companies and securities service providers which do not have operations in the Chinese mainland because it may not be practical for them to comply with such requirement.</p> <p>5) Detailed guidelines regarding the safekeeping requirements are required for compliance with Article 6.</p>
7	Domestic companies, relevant securities companies or securities service providers that discover any divulgence or possible divulgence of state secrets shall immediately take <u>remedies</u> and <u>report to relevant state organs and units</u> ...	<p>1) Please provide examples on such “remedies”.</p> <p>2) Please consider specifying that Article 7 does not apply to securities companies and securities service providers which are outside the Chinese mainland because they are regulated by the regulators in their respective home jurisdictions and are typically not subject to PRC laws and regulations.</p> <p>3) Please define “relevant state organs and units”. We suggest that there should be only one point of contact to avoid miscommunication.</p>
8	Domestic companies that provide ... <u>accounting archives or copies of accounting archives that have important conservation value to the nation and the society</u> shall ...	<p>1) What is the purpose of specifying both “accounting archives” and “copies of accounting archives”?</p> <p>2) Please consider removing “accounting archives that have important conservation value to the nation and the society” from the scope of the Provisions unless such concept can be clearly defined. Alternatively, please clarify the specific scope of “important conservation value to the nation and the society” in Articles 8 and 9.</p> <p>3) What is the difference between “conservation value to the nation and the society” used in Articles 8 and 9 and “national security and public interest” used in Articles 2, 4 and 6?</p>
9	<u>Archives, including working papers, that have been produced in the Chinese mainland</u> by securities companies and securities service providers for overseas securities offering and listing by domestic companies shall be <u>retained in the Chinese mainland</u> , and, without <u>prior approval</u> by <u>competent authorities</u> , must not be	<p>1) Please confirm that the requirements under Article 9 are only applicable after the overseas securities offering and listing is complete or terminated and are <u>not</u> applicable when the execution of the overseas securities offering, and listing is ongoing. Otherwise, it may be unduly burdensome for securities companies and securities service providers to comply with Article 9.</p> <p>2) Please clearly and specifically define “archives” and “working papers”.</p>

	<p>brought, mailed, or otherwise transferred to outside the Chinese mainland, or transmitted to any institutions or individuals outside the Chinese mainland ... Where archives or copies of archives that have important conservation value to the nation and the society need to be transferred or transmitted to outside the Chinese mainland, relevant approval procedures stipulated by <u>national regulations</u> shall be followed.</p>	<p>3) Please consider specifying that the archives are only limited to, confirmed by the relevant authorities, (i) that contain state secrets or government work secrets, or (ii) that, if divulged, will jeopardize national security or public interest. Otherwise, it may be unduly burdensome for securities companies and securities service providers to comply with Article 9.</p> <p>This is because in a securities offering and listing project, it is very common for an employee of a securities company or securities service provider to “produce” text, diagrams, photos, audio recordings or video recordings for purposes of project execution, including due diligence, prospectus drafting and submission drafting, and then “bring”, “mail”, “transfer” or “transmit” them to colleagues or external legal counsel to the securities company or securities service provider who are outside the Chinese mainland on a daily basis.</p> <p>4) Please clarify the specific scope of “Archives, including working papers, that have been produced in the Chinese mainland”:</p> <ul style="list-style-type: none"> a. do they include supporting documents obtained during on-site due diligence such as tax filing documents or supporting documents made for on-site due diligence such as interview minutes? b. do they include a working product by employees of overseas securities companies, who are physically in the Chinese mainland together with those who are outside the Chinese mainland? <p>5) The obligations of securities companies and securities service providers under Article 9 overlap with the domestic company’s obligations under Articles 3 to 6. If a domestic company fulfils such obligations and obtains the approval from relevant regulators, it would be unduly burdensome to also require securities companies and securities service providers to retain the same information in the Chinese mainland.</p> <p>6) If CSRC is of the view that approvals are required for transmission of any working papers for all overseas listings, please consider making such approval ready to be given on an expedited basis if the domestic company’s industry is not a sensitive industry.</p> <p>7) Please specify the list of “competent authorities”.</p> <p>8) Please provide the list of “national regulations”.</p> <p>9) A detailed approval procedure is required for compliance with Article 9, including (i) the information required, (ii) the format of the application for the approval, and (iii) the time required for obtaining the approval.</p>
10	China Securities Regulatory Commission (hereinafter	Please elaborate on “respective statutory mandates over matters of confidentiality and archives administration” so that the relevant

	<p>referred to as the CSRC), Ministry of Finance of the People’s Republic of China, National Administration of State Secrets Protection, National Archives Administration of China and other competent authorities shall establish coordination mechanism in conducting regulation, supervision and inspection pursuant to their <u>respective statutory mandates over matters of confidentiality and archives administration</u> concerning overseas securities offering and listing by domestic companies.</p>	<p>parties may better understand and comply with the relevant regulation, supervision, and inspection.</p>
11	<p>... Such investigation and inspection shall be conducted under a cross-border regulatory cooperation mechanism, and the CSRC and competent authorities of the Chinese government will provide necessary assistance pursuant to <u>bilateral and multilateral cooperation mechanisms</u>. Before cooperating with the investigation and inspection by, or providing documents and materials to overseas securities regulators or other competent overseas authorities, <u>such domestic companies, securities companies, and securities service providers shall report to the CSRC or other competent authorities</u>.</p>	<ol style="list-style-type: none"> 1) Please specify the “bilateral and multilateral cooperation mechanisms”. 2) Please confirm whether the reporting requirement under Article 11 is applicable to the following scenario – a domestic company appoints an auditor in a jurisdiction outside the Chinese mainland, and the subject matter of the investigation or inspection is limited to the work done by such auditor. 3) Please consider limiting the scope of Article 11 to <u>accounting firms</u> only. This is consistent with the spirit of the response to the third question in Officials of Relevant CSRC Department Answered Reporter Questions dated 2 April 2022, which provides that “...referencing international common practice in cross-border <u>audit oversight cooperation</u>...” and “[t]he modification demonstrates the open attitude that Chinese regulators have consistently held towards <u>audit oversight cooperation</u> and the alignment of the Provisions with international common practice...”. 4) <u>Alternative to comment 3 above</u>: please consider excluding securities companies and securities service providers <u>outside the Chinese mainland</u> from the scope of the reporting requirement because they are regulated by the regulators in their respective home jurisdictions and are typically not subject to PRC laws and regulations. <p>In addition, the Chinese version of the Provisions provides that “...境内有关企业、证券公司和证券服务机构，在配合境外证券监督管理机构或境外有关主管部门调查...”. Please confirm that such language means that “...such <u>domestic</u> companies, <u>domestic</u> securities companies, and <u>domestic</u> securities service providers...”.</p>

		<p>5) In any event, please consider specifying that keeping in mind the purpose of the rules, the application of the provisions would not go beyond documents or materials (i) that contain state secrets or government work secrets, (ii) that, if divulged, will jeopardize national security or public interest, or (iii) that have important conservation value to the nation and the society.</p> <p>6) <u>Alternative to comments 3 and 4 above</u>: please consider limiting the scope of the obligations of “securities companies and securities service providers” outside the Chinese mainland under Article 11 to the extent that is in line with the obligations pursuant to the home jurisdictions of such securities companies and securities service providers.</p> <p>The reporting requirement under Article 11 may conflict with any secrecy obligations imposed by overseas regulators prohibiting the securities companies and securities service providers from disclosure to other regulators. For example, if Securities and Futures Commission of Hong Kong requests to investigate or inspect a domestic company that has been listed in Hong Kong, and the securities companies and securities service providers who provided services to the issuer, such securities companies and securities service providers will be subject to secrecy obligations under the regulations of their home jurisdictions, which may or will conflict with the reporting requirement under Article 11.</p> <p>7) Please define “competent authorities”.</p> <p>8) A detailed reporting procedure is required for compliance with Article 11, including (i) the information required, and (ii) format of the reporting.</p> <p>9) Please confirm that other than reporting to CSRC, no additional approval is required before cooperating with or providing documents to the overseas regulators.</p> <p>Please note that Clause 177 of PRC Securities Law provides that unless approved by CSRC, companies cannot provide overseas regulatory authority any relevant documents or materials.</p>
12	<p><u>Any entities or individuals</u> that violate the Law of the People’s Republic of China on Guarding State Secrets, the Archives Law of the People’s Republic of China and other applicable laws and regulations shall be held <u>legally liable</u> by competent authorities ...</p>	<p>1) Please confirm that Articles 3 to 6 focus on the domestic companies’ obligations rather than the obligations of securities companies and securities service providers.</p> <p>2) Please elaborate on the specific scope of “legally liable”.</p>

It would be most appreciated if you could consider the suggestions and concerns mentioned above and we are most honored to be given the opportunity to contribute to this consultation.

We look forward to future engagement on these important issues in greater detail. Should you have any questions, please do not hesitate to contact me via email (lchao@asifma.org) or via telephone (+852 9826 8020).

Sincerely,

A handwritten signature in black ink, appearing to be 'Lyndon Chao', with a long horizontal flourish extending to the right.

Lyndon Chao
Managing Director and Head of Equities
Asia Securities Industry and Financial Markets Association