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FINANCE

China Says Complying VIE Companies Can List Overseas

By Yue Yue and Han Wei

The CSRC is seeking public opinion on the draft rules until Jan. 23.

China's top securities regulator said domestic companies can use the variable interest entity (VIE) structure to list overseas as long as they comply with related requirements, as the regulator spells out updated rules for offshore share sales.

"Under the premise of complying with domestic laws and regulations, companies with VIE structure that meet compliance requirements can go to overseas listing after filing with regulators," said the China Securities Regulatory Commission (CSRC) in a statement.

The CSRC late Friday published a set of draft rules to regulate overseas share sales of Chinese companies. The rules, open for public comment until Jan.23, will improve the regulatory system for overseas listing and enhance coordination among regulators, said the CSRC.

The new rules aim to provide a regulatory framework to guide Chinese companies to raise funds overseas if they choose, rather than tightening controls on overseas share sales, the commission said in **a statement (link in Chinese)** presented in question-and-answer format on its website.

Overseas listing of Chinese companies is currently supervised under a 1994 policy document, which has become outdated, said the commission.

Key points of the draft rules

• Companies are barred from overseas share sales in five circumstances: if they are violating national laws and rules; if overseas listings could threaten national security; if involved in major disputes over assets or core technology; if major shareholders are investigated for corruption or convicted in the last three years; if senior management are investigated or punished for major violations

• Companies may be ordered to divest domestic assets to prevent their overseas IPO from harming national security

• Companies seeking overseas share sales should file with the CSRC within three days after they submit listing documents to overseas market regulators, including approval from related industry regulators.

• Companies are defined as domestic and should follow the new rules if they have over 50% of revenue, profit, and assets coming from the China market over the past financial year, if their main management team consists of Chinese nationals, or their main business operating venue is based in China.

• Chinese securities firms sponsoring domestic companies' overseas share sales should file with the CSRC.

There has been speculation that Chinese regulators were planning to ban companies from going public on overseas stock markets through VIE structures amid the country's heightened crackdown on big tech companies. CSRC officials earlier denied such reports and said they were formulating new policies to regulate how such structures can be used

VIEs are mostly used by China's tech firms to seek listing on overseas stock markets.

In **VIE structures,** a China-based operating company typically establishes an offshore shell company in another jurisdiction, such as the Cayman Islands, to sell stock to public shareholders. The shell company enters into contracts with the China-based operating company, then sells shares on a foreign exchange. The profit of the operating company is consolidated into the holding company.

Prominent Chinese companies that have raised capital abroad using VIE structures include Alibaba Group Holding Ltd., Tencent Holdings Ltd. and JD.com Inc.

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Such structural arrangements developed mainly because some sectors are restricted or prohibited by the Chinese government from foreign investment, such as scientific research, education, health, culture, entertainment, and sports. Foreign investors cannot directly invest in such domestic assets and businesses through equity control. But by using VIE structures such companies can meet the requirements of Chinese law on foreign investment.

The draft policy will establish a registration system for overseas listings with different requirements applied on different types of overseas financing plans. The new rules will be applied on new listings and not affect previous ones, said the CSRC.

The CSRC will take the lead in the supervisory system for overseas listing, in coordination with other regulatory bodies. Companies subject to securities and data reviews for overseas listing plans should file for related reviews before registering with the CSRC.

Chinese regulators are stepping up scrutiny of domestic companies' offshore listings since ride-hailing giant Didi Global's rushed offering in New York. The company was **placed under investigation** days after its $4.4 billion U.S. initial public offering.

The CSRC also vowed to enhance cross-border supervisory cooperation with

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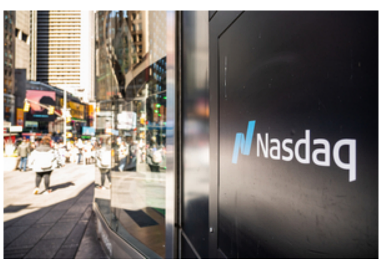

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