

## **Securities Law of the People's Republic of China (2019 Revision)**

### **❖ Background**

After four and a half years and four rounds of deliberations, on December 28, 2019, the 15th session of the Standing Committee of the 13th National People's Congress deliberated and adopted the revised Securities Law of the People's Republic of China (2019 Revision) ("New Securities Law"). The New Securities Law comes into force on March 1, 2020.

As a basic law for regulating the Chinese securities market, the New Securities Law deepens the reform of the securities market and the implementation of the following legislative principle enriched in the past several years: on the one hand, adapting the legal system to the changing environment, and on the other hand, carrying forward innovation and early trial through legislation.

### **❖ Summary**

#### **✧ Carrying out the registration of public offering of securities**

According to the Article 9 of the New Securities Law, ‘the public offering of securities shall meet the conditions prescribed by laws and administrative regulations, and shall be legally reported to the securities regulatory authority of the State Council or the department authorized by the State Council for registration’, which means that the current legal requirement of registration implemented for the Science and technology innovation board will be fully enforced in all sectors of securities (main board, small and medium-sized board and Growth Enterprises Market board).

#### **✧ Adding a special chapter on information disclosure**

The New Securities Law adds a special chapter on information disclosure, revising and integrating the previous provisions in order to be consistent with the existing listing rules of the Shanghai and Shenzhen stock exchanges, the Measures for

the Administration of the Issue and Trading of Corporate Bonds and the Management Measures on Information Disclosure of Listed Companies.

Meanwhile, the Article 84 and 85 of the New Securities Law add two scenarios ("failure to disclose" and failure of an issuer and its controlling shareholders, actual controlling party, directors, supervisors, senior management personnel etc. to perform public commitments) to 'false records, misleading statements or material omissions' as reasons for holding information disclosure obligors civilly liable.

✧ **Adding a chapter on the protection of investors**

The New Securities Law adds a chapter on the protection of investors. New provisions include:

1) Reforming the system of representative legal action within the framework of the Civil Procedure Law. As per the Article 95 of the New Securities Law, where a number of investors file the same type of civil compensation lawsuits pertaining to misrepresentation etc., a representative may be appointed to participate in the legal proceedings; an investor protection organization entrusted by more than 50 investors may participate in the lawsuit as a representative and register with a People's Court on behalf of the rights holders who are confirmed by a securities registration and settlement organization, except the investors who clearly state that they are unwilling to participate in the lawsuit. The aforementioned provisions based on the Article 54 of the Civil Procedure Law constitute a positive change permitting 'implied opting-in' and 'express opting-out' by investors concerned where investor protection institutions participate in litigation as representatives. This arrangement makes it more convenient for investors to safeguard their rights and interests and helps prevent abuse of the right to take legal action, which has been found with the traditional system of class action.

2) Strengthening the protection of "ordinary investors". By taking account of comprehensive factors, the Article 89 of the New Securities Law categorizes investors into "ordinary investors" and "professional investors". Where a dispute arises between an ordinary investor and a securities company, the securities company shall prove that its conduct conforms to the relevant regulations and conveys no misleading or fraudulent information, otherwise it shall bear the corresponding liabilities. The Article 94 further stipulates that if an ordinary investor and the securities company have a securities business dispute, the securities company shall not reject the ordinary

investor's request for mediation.

✧ **Increasing penalties for violations of securities regulations and laws**

The New Securities Law increases the penalties for violations of securities regulations and laws mainly by changes in the three aspects below:

1) Raising substantially the maximum amounts of fines in order to increase the cost of breaking the law. For instance, where an issuer conceals important facts or fabricates significant false contents in its announced securities offering documents and the securities have been issued, the upper limit of the fine is increased from 5% to 100% of the illegally raised funds.

2) Enlarging the regulatory scope. For instance, the Article 181 of the New Securities Law widens the concept of misrepresentation from 'failing to meet the conditions for issuance and obtaining approval by fraudulent means' to 'concealing important facts or fabricating significant false contents in securities offering documents'. It means legal liabilities shall be borne in case of misrepresentation, even if the conditions for issuance are met or the approval is not obtained yet.

3) Setting stricter requirements for controlling shareholders and actual controlling parties. For example, the Article 24 of the New Securities Law adds the buyback obligation of controlling shareholders and actual controlling parties: 'where the issuer of the shares conceals important facts or fabricate significant false contents in securities offering documents such as the prospectus etc, and the shares are issued and listed, the securities regulatory authority of the State Council may order the issuer to make a buyback of the securities, or order the accountable controlling shareholder(s) and the actual controlling party to make a buyback of the securities'.

✧ **Simplifying the conditions and formalities of bond issuance and enhancing the protection of bondholders**

The New Securities Law simplifies the conditions and formalities of bond issuance in the following aspects:

1) Cancelling some previous requirements for bond issuance, such as 'the company shall have a minimum amount of net assets', 'the balance of the bonds shall not exceed 40% of the net assets of the company', 'the funds raised shall be invested in accordance with the requirements of the state industrial policy', and 'the interest

rate of the bonds shall not exceed the limit set by the State Council’;

2) Cancelling the requirements regarding submission of asset assessment reports and capital verification reports;

3) Revoking the original restriction that a company shall not make a new public offering of bonds in case its previous offering is under subscribed.



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