



# Welcome!

This is the *second* webinar presentation within a series of  
Securities & International Transactional Services Practice  
Group Webinars

Today's Presentation will be in 2 parts:

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**First:** *Chinese Securities Law*, Margaret Perez & Robert Lee (Diaz Reus;  
Shanghai, China)

**Second:** *German Securities Law*, Martin Sach (WINHELLER, Attorneys at  
Law; Frankfurt, Germany)

*The Webinar will begin shortly. Thank You!*



# Welcome!

A brief introduction by the International Transactional  
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# Who Uses Our Services





# Chinese Capital Markets: Webinar Roadmap

- Applicable statutes and regulations
- Issuing and listing requirements
- Filing requirements and fees
- Compliance with anti-bribery and corruption laws



# Applicable Statutes and Regulations

1994 Company Law

1999 Securities Law



# Issuing Requirements: Shanghai Stock Exchange

- Required documents:
  - Listing application
  - Board of Directors' resolution
  - Sponsorship agreement
  - Letter of listing sponsorship
  - Capital verification report





# Listing Requirements: Shenzhen Stock Exchange

- Total share capital no less than RMB 30 million
- The amount of public offered shares account for more than 25% of total shares
- Issuer whose total share capital exceeds RMB 400 million, minimum percentage of 10%
- Number of shareholders no less than 200
- No false financial reports or other illegal acts reported in the past three years



# Listing IPO Shares: Shanghai Stock Exchange

- The following are not permitted during the first 36 months:
  - Transfer shares issued before the IPO listing, whether held directly or indirectly
  - Appoint others for the management of such shares
  - Permit repurchase of the shares by the issuer
  - The Exchange decides within seven trading days whether to grant approval



# Listing Requirements:

- Shares must:
  - Be approved by the State Securities Management Department
  - Be publicly issued
  - Have a minimum total share capacity of 50,000,000 RMB (\$7,800,000 USD)



## Listing Requirements:

- Company must have made profit for at least three years  
1,000 or more shareholders must have holdings valued at or above 1,000 RMB
- Publicly offered share must be more than 25% of company's total share capital
- Companies that exceed 400,000,000 RMB, the ratio of publicly offered shares must be greater than 15%



## Listing Requirements:

- No convictions of major illegal activities in the past three years
- The State Council may also set fact-specific conditions for companies involved in “high and new technology”



# Classifications of Shares

- State shares
- Legal person shares
- Individual shares
- Foreign investment shares



# A-Class Shares

- Stocks listed locally in PRC
- Designated for:
  - PRC citizens
  - Permanent residents
  - Selected foreign institutional investors



# A-Class Shares

- Listing Requirements
  - IPO granted by the China Securities Regulatory Commission
  - Gross capital stock of 50 million shares
  - Minimum three-year operating history
  - Positive annual earnings and good credit records in the preceding three years
  - Public holdings of no less than 25%





## B-Class Shares: Foreign Investment Shares

- Special RMB shares
- Stocks listed locally in PRC
- Designated for:
  - Foreign investors
  - PRC residents with appropriate foreign currency dealing accounts
- Lower-cost listing alternative than the H-class share market



# H-Class Shares: Foreign Investment Shares

- Special RMB shares
- These shares are made available only to overseas investors



# Red Chip Shares

- Available only to companies incorporated in Hong Kong which have a majority of their business activity in PRC
  - Typically, parent companies of red chip share issuers are former PRC SOEs
- Stocks listed on the Hong Kong Exchange
- Hong Kong Exchange must view that the business and the issue are suitable for listing



# Key Steps For Going Public

- **1. Preparation of the transaction**
  - -Project initiation
  - -Appointment of advisors
- **2. Due Diligence**
  - -Auditing financial statements
  - -Asset valuation
  - -Internal control review
  - -Draft prospectus and listing documents
- **3. Obtaining regulatory approval**
  - -Submission of documents to stock exchange
  - -Listing hearing
- **4. Marketing and pricing**
  - -Road show and marketing
  - -Book building
  - - Pricing
- **5. Listing**
  - Trading of shares
  - Fulfillment of listing and regulatory requirements



# Listing Procedural Requirements

- CSRC approval
- Submission of listing application documents
- Disclosure of share custody
- Determination of the date of listing
- Listing and trading of the company's shares



# Filing Requirements: Application Procedures

Following documents must be submitted in accordance with the Securities Law of PRC

1. Listing announcement
2. General “meeting of shareholder resolution”
3. Company ordinance
4. Business license
5. Financial accounting materials for the last three years
6. Legal opinions supporting the issuance and letter of recommendation from a securities company
7. Most recent share prospectus



# Filing Requirements: Application Procedures

Additional requirements promulgated by the Shanghai Stock Exchange:

1. Listing application
2. Documents from the CSRC approving its share issue
3. New financial disclosures
4. Photocopy of business license
4. Biographical and contact information
5. Report detailing shares held by the company directors, supervisors, and senior management of company
6. Circular providing the listing abbreviations of company stock
7. Written pledge of company's largest shareholder not to sell or repurchase shares for 12 months
8. Documents detailing the full custody of the company's stock



# Listing Fees

- A Shares
  - Initial fee
    - 0.03% of total share capital
    - Maximum of 30,000 RMB (approx. \$4,700 USD)
  - Monthly fee
    - 0.001% of per value of listing shares
    - Maximum of 500 RMB (approx. \$78 USD)





# Listing Fees

- B Shares

- Initial fee

- 0.1% of total share capital
    - Maximum of \$5,000 USD

- Monthly fee

- Maximum of \$50 USD



# Private Placements

- Article 10 of Securities Law: no public offering of securities is allowed unless approved by CSRC or other ministries authorized by the State Council
- Any of the following considered a public offering:
  - (i) any open issuance of securities to non-specific offerees;
  - (ii) any issuance of securities to more than 200 specific people;
  - (iii) any other issuance activity as stipulated by laws or administrative regulations



# Private Placements

- Conclusion: non-public offerings are for targeted investors not more than 200



# Foreign Corrupt Practices Act: Purpose

- Prohibiting bribery of foreign officials for the purpose of obtaining or retaining business or securing any improper business advantage
- Enforcement by the Department of Justice and Securities and Exchange Commission
- The FCPA targets actions of issuers of securities, public concerns, and individuals and entities that fall outside of the first two groups



# Foreign Corrupt Practices Act: Overview

- Entities subject to enforcement actions: U.S. companies along with U.S. citizens living anywhere in the world
- People and corporations are prohibited from providing “anything of value” to any foreign official or political candidate with the purpose of
  - Influencing the official’s acts or decisions made within his official capacity
  - Securing an improper advantage
  - Inducing the foreign official to use his influence to affect governmental decisions



# Foreign Corrupt Practices Act: Penalties

- Penalties for corporate violations of the FCPA
  - Up to a \$2,000,000 criminal fine
  - Up to \$10,000 civil penalty
  - Monitoring by the U.S. government
- Penalties for individual violations of the FCPA
  - Up to five years imprisonment
  - Up to \$10,000 criminal fine
  - Fines imposed against individuals may not be paid by the corporation for which they work



# Foreign Corrupt Practices Act: Permissible Payments

- Meals, gifts and entertainment are allowed as long as
  - Those items are *related to* a real business purpose
  - These expenditures are infrequent
  - These expenditures are of a low (*i.e.*, reasonable) value
- Traveling expenses as long as
  - There is a real business purpose *directly related* to company products or services
  - Foreign government selects visiting officials

But no compensation for side trips and expenses for spouses



# Foreign Corrupt Practices Act: Accounting Provisions

- Requirements
  - Securities issues must maintain their books and records in a way that the transactions are
    - Accurately described
    - Transparent
    - Sufficiently detailed
  - Securities issuers must have in place appropriate internal accounting controls





# Foreign Corrupt Practices Act: Accounting Provisions

- Criminal penalties require knowing circumvention or failure to comply with the FCPA accounting provisions
- Penalties for violations of the accounting provisions of the FCPA
  - Up to \$5,000,000
  - Up to imprisonment for 20 years



## U.K. Bribery Act: Purpose

- A criminal statute with provisions similar to the FCPA but with broader scope
- Reaches activity worldwide by U.K. nationals, residents, and organizations that do some business in the U.K.
- Targets bribery of foreign public officials

Includes behavior of third parties acting on behalf of a company



# U.K. Bribery Act: Novel Provisions

- Covers bribery of non-government employees
- No exception for facilitating payments
- No bona fide business expenditures exception if such expenditures were made with the intent to influence an official
- Requires that corporations work to *prevent* bribery
- Penalties for receiving bribes



# U.K. Bribery Act: Penalties

- Unlimited monetary fines
- Up to 10 years' imprisonment



# U.K. Bribery Act: Preventative Measures

- Establish procedures that are proportionate to the level of risk
- Commitment by the corporation's management-level to combat bribery
- Due diligence
- Publish bribery prevention policies
- Periodic review of anti-bribery procedures



# China Anti-Money Laundering Law: Overview

- Supervision by the People's Bank of China
- Additionally regulation by China Banking Regulatory Commission, China Securities Regulatory Commission, and China Insurance Regulatory Commission



# China Anti-Money Laundering Law: Overview

- Supervision by the People's Bank of China
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# China Anti-Money Laundering Law: Reporting Requirements

- Single day transactions exceeding \$10,000 USD
- Single day intra-organization transfers exceeding \$200,000 USD
- Single day transfers exceeding \$100,000 USD
- Cross-border transactions exceeding \$10,000 USD





# China Anti-Money Laundering Law: Penalties

- Up to five million RMB for violations that result in money laundering
- Cease and desist order
- Revocation of financial permit
- Directors and officers liable if they do not fulfill their legal obligations
  - Not permitted to enter into transactions with suspicious individuals; must maintain proper records and report suspicious transactions



# **Presentation #2: German Capital Markets Law**



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# Agenda

1. The most important forms of securities
2. The German stock exchanges and their market segments
3. Securities issuance
4. Ongoing compliance for securities issuers



# The Most Important Forms of German Securities Law

- **Shares**

- The issuance of shares requires the legal form of a Joint Stock Company – AG.
- Shares certify the shareholders' rights on dividends, subscription of new shares and votes in the general meeting.
- Share capital is treated as **equity capital**.

- Three significant classes of shares:

*1. Original Stock:* Full rights to shareholders;

*2. Preference Shares:* Certain privileges to shareholders (in particular on higher dividend); votes often excluded;

*3. Registered Shares* (mandatory if equity capital has not been fully paid in): Full rights to shareholders; fungibility restricted.



# The Most Important Forms of German Securities

- **Bonds**

- Bonds certify the bondholders' claims against the issuer on a certain payment.
- Bond capital is treated as **debt capital**.
- Two significant forms:
  1. *Registered Bonds* are made out in the name of a certain creditor.
  2. *Bearer Bonds* grant claims of the respective bond holder.
- *Certificates* as a special type of bonds are derivatives linked to the performance of another financial instrument.



# The Most Important Forms of German Securities

- **Participation Certificates**
- Participation Certificates certify certain proprietary rights of their owners, e.g.:
  - Profit sharing rights;
  - Rights on sharing the issuer's proceeds of liquidation (often in connection with closed-end funds);
  - Subscription rights as to issuers' shares and new participation certificates.
- Capital risen from participation certificates is treated as **debt capital**.



# The Most Important Forms of German Securities

- **Other common types of securities:**
- *Convertible Bonds* certify the bondholders' right to trade the bonds in for issuer's shares.
- *Optional Bonds* certify the bondholder's rights on interest and subscription of issuer's shares.
- *Warrants* certify their holders' right to buy or sell the underlying for a certain price.





# Germany's Stock Exchanges

- Stock exchanges are located in Frankfurt, Stuttgart, Hamburg, München, Berlin and Leipzig.
- The Frankfurt Stock Exchange:
  - Germany's major stock exchange and one of the biggest exchanges in the world
  - 3,300 employees worldwide
  - Up to 2.1 million orders placed by 250 participants in the XETRA exchange in 2010
  - 280,000 different financial instruments (12/31/2007).



# Market Segments of the Frankfurt Stock Exchange

- **EU-regulated market (= Official regulated Markets)**
  - Public-law stock exchange: **Securities Trading Act applies.**
  - 1. General Standard
  - 2. Prime Standard
- **Unofficial Regulated Market (= Open Market)**
  - Private-law governed stock exchange: **Securities Trading Act does not apply.**
  - 1. First Quotation Board
  - 2. Entry Standard

Main difference between EU-regulated and Open Market:  
Compliance and transparency regulations.



# German Financial Services Supervisory Authorities

- **Federal Financial Services Supervisory Authority (BaFin)**
- Securities Supervisory Department
  - Compliance with the Securities Trading Act (insider trading, market manipulation, mandatory announcements, issuance prospectuses)
- **Local Exchange Supervisory Authorities**
- - Compliance with the Stock Exchange Act (proper execution of single trades in listed securities)



# Admissions Requirements (Official Regulated Market)

- Application for admission
- BaFin-approved prospectus
- Approved Articles of Incorporation
- Approved extract from the commercial register
- Formation report, if issuer has been existing for less than three years
- Annual reports and management reports for the last three years, including audit certificates
- Proofs of issuance resolutions
- Copy of multiple share document



# LISTING OF DEPOSITARY RECEIPTS

Legal sources:

- Stock Exchange Act
- Securities Trading Act

Main compliance and transparency obligations:

| Obligation                                         | General Standard | Prime Standard |
|----------------------------------------------------|------------------|----------------|
| Legal sources:                                     |                  |                |
| –Stock Exchange Act                                |                  |                |
| –Securities Trading Act                            |                  |                |
| Main compliance and transparency obligations:      |                  |                |
| – Prospectus                                       | Yes              | Yes            |
| – Annual accounts                                  | Yes              | Yes            |
| – Semiannual statement                             | Yes              | Yes            |
| – Quarterly updates on general financial situation | Yes              | No             |
| – Quarterly financial statements                   | No               | Yes            |
| – Ad-hoc announcements                             | Yes              | Yes            |
| – Annual analysts' conferences                     | No               | Yes            |



# The Unofficial Regulated Market

- Legal sources:
  - General Terms and Conditions for the Open Market
- Issuers' main obligations

| Type of obligation         | First Quotation Board                                                                                                          | Entry Standard                                                                                                                 |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| – Prospectus               | Yes, or, alternatively:<br>Certified equity capital of 500,000<br>Euro or more and certified<br>minimum par value of 0.10 Euro | Yes, or, alternatively:<br>Certified equity capital of 500,000<br>Euro or more and certified<br>minimum par value of 0.10 Euro |
| – Company profile          | No                                                                                                                             | Yes                                                                                                                            |
| – Annual statements        | No                                                                                                                             | Yes                                                                                                                            |
| – Semiannual<br>statements | No                                                                                                                             | Yes                                                                                                                            |
| – Ad-hoc<br>announcements  | No                                                                                                                             | Yes                                                                                                                            |



# Format and Content of a Prospectus (1/4)

- 1. Index of contents**
- 2. Summary**
- 3. Information on major risk factors**
  - a. Specific risks arising from the issuer and its business activities
  - b. Common risks arising from the securities and the market they are traded in
- 4. Common information**
  - a. Persons responsible for the offering
  - b. Subject of the prospectus
  - c. Notices on future-related statements
  - d. Notices on information provided by third parties
  - e. Available documents
  - f. Experts' statements



## **Format and Content of a Prospectus (2/4)**

### **5. Information on the offering**

- a. Subject and structure
- b. Terms and Conditions
- c. Time schedule
- d. Common and special information on the securities
- e. Market stabilization measures (lock-up agreements, „Green shoe“ options)
- f. Application for admission to stock exchange
- g. ISIN
- h. Designated Sponsors

### **6. Information on the reasons for the offering and the intended application of the raised funds**





## **Format and Contents of a Prospectus (3/4)**

7. Information on the pattern of dividends
8. Information on issuer's equity capital and indebtedness
9. Information on equity dilution
10. Selected historical financial data
  - a. Annual accounts of the last three years
  - b. Quarterly statements for the last business year
  - c. Internationally accepted accounting standards (IFRS/IAS, US GAAP, etc.)
11. Description and analysis of the issuer's proprietary, profit and financial situation
12. Description of the issuer's business
13. Information on major shareholders
14. Information on transactions with affiliated persons



# **Format and Contents of a Prospectus (4/4)**

## **15. Common information on the issuer**

- a. Trade name, date of formation, registered office, accounting year
- b. Subject of business
- c. Issuer's history and development
- d. Organizational structure
- e. Major holdings and interests
- f. Paying agents and custodians
- g. Annual auditors

## **16. Information on the issuer's organs and employees**

## **17. Statements on the share capital**

## **18. Statements on the take-over agreements**

## **19. Schedules**



# Ongoing Compliance For Securities Issuers

## **General Standard**

Annual and semiannual statements under IRFS or US GAAP

Disclosure of directors' dealings

Ad-hoc announcements

Announcements as to notification thresholds

Mandatory offers in connection with changes in control

Interim reports for Q1 and Q3

## **Prime Standard (additionally to obligation in General Standard)**

Quarterly statements

Publishing of a company calendar in the internet

Yearly analysts' conference



# END

Thank you for joining the International Transactional Services Practice Group  
Securities Webinar!

Please stay online to learn more from the presenters during the **Q&A Session**