

Law reflects the objective need of reform and the open policy and is also the outcome of the reform and open policy. The fact that the reform and open policy needs the building and development of a securities market provides the prerequisite for the formulation of the Securities Law, in which the experience from the practice of reform and opening to the outside and the policy decisions made for the reform and open policy are embodied and which serves the reform and opening to the outside. Therefore, the Securities Law of China, from its initiation through its contents as a whole, constitutes one of the great achievements in the reform and open policy in China.

The enactment of the Securities Law conspicuously manifests the vitality of the socialist market economy

In order to meet the need of developing the productive forces, China not only makes the building up of a socialist market economy its goal of reform, but also requires that the socialist market economy be full of vitality. The purposes of enacting the Securities Law are precisely to meet this requirement, to enable the most active part of the market economy, ie, the securities market, to develop in good order, to raise the marketing level of the economy as a whole, to encourage keen competition in which only the fittest survives and to instill more vitality into the mechanism of the economy today. Hence, the positive role played by the Securities Law not only lies in promoting the building up of the socialist market economy but also in helping to increase the vigour of such an economy, strengthening its function of resources distribution and giving full to its vitality.

The enactment of the Securities Law is one of the significant achievements in Chinese legislation

Over the past 20 years China has formulated a number of economic laws in succession. Especially after it was decided to build a socialist market economy, legislation in the economic field has been accelerated and a number of laws for re-adjusting the relationship in the market economy have been enacted, which represents a significant achievement. However, the laws designed to regulate the securities market still left something to be desired. The present Securities Law, together with the other relevant laws, provides the basic legal system for the securities market. In view of the need to form a socialist legal system with Chinese characteristics in the next ten years, the Securities Law will be an important, indispensable component part of the system. Therefore, the enactment of the Securities Law represents not only an important progress in the current legislation in the economic field but also an important success in the building of a socialist legal system in China.

The enactment of the Securities Law provides a strong legal guarantee for the healthy development of China's securities market

Although China's securities market has been built up only for a short period of time, it develops rapidly. Its positive function is manifested chiefly in the following five areas:

First, in the raising of funds. That is to say, the securities market can help gather the scattered idle funds together to meet the long-term need of funds for large-scale socialized production, which is of strategic importance to the development of the Chinese economy. Practice over recent years has proved that funds raised in this way can be an enormous sum of money which can be used steadily for a long time to come, hence they provide the major source of funds for expanded production and operation.

Second, in the provision of a means for investment. In the Chinese society today many people have idle money in their hands. They deposit some of the money in the bank and wish to invest the rest in some spheres of endeavour, so they need a means of or channel for investment. It is precisely to suit this need that securities are issued and securities market is built up. This will help exploit the potential and expand the sources of investment.

Third, in the improvement of the rational distribution of the resources. Funds on the securities market constitute important social resources in China. The direction they flow in is determined by the efficiency of their use. That is, they flow to the place where the operation performance is good and the rates of earnings are high. The fact that the direction in which the funds flow is determined in the course of fair competition represents an important change in China. The securities market's function for rational distribution of resources in promoting sustained development and reinforcing the vitality of the Chinese economy has been valued highly.

Fourth, in the promoting of a renovated system for enterprises. The goal of China's reform of enterprises lies in establishing a modern system, a typical form for which is the company. The company system provides the pre-requisite for the securities market, which in turn makes it necessary for the listed companies to adopt scientific management, regulate their stock issuing, and work for great successes and the maximum earnings for the stock-holders. Thus, the workings of the securities market have a positive impact on the reform of enterprises, demonstrating the advantages of the company system and pushing forward the reform and renovation of the system of enterprises in China.

Fifth, in the promoting of the establishment and development of the capital market. The securities market in China can effectively put together the party that has the surplus funds and the party that needs the funds. Through issue of and subscription to securities, the investors provide the funds and the fund-raisers obtain the right to use the funds. This

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Chapter I

General Provisions

Article 1 — This Law is enacted in order to standardize the issuing and trading of securities, protect the lawful rights and interests of investors, safeguard the economic order and public interests of society and promote the development of the socialist market economy.

Article 2 — This Law is applicable to the issuing and trading in China of shares, corporate bonds and such other securities as are lawfully recognized by the State Council. Where their issuing and trading are not covered by this Law, the provisions of the Company Law and other laws and administrative regulations shall apply.

The issuing and trading of government bonds shall be separately provided for in laws and administrative regulations.

Article 3 — Securities shall be issued and traded in line with the principles of openness, fairness and equitability.

Article 4 — The parties involved in the issuing and trading of securities shall have equal legal status and adhere to the principles of voluntariness, compensation and good faith.

Article 5 — Securities shall be issued and traded in accordance with laws and administrative regulations. Fraudulent and insider trading and manipulation of the securities trading market are prohibited.

Article 6 — Securities business shall be engaged in and administered as a business separate from the banking business, trust business and insurance business. Securities companies shall be established separately from banks, trust companies and insurance companies.

Article 7 — The securities regulatory authority under the State Council shall, in accordance with law, implement centralized and unified regulation of the securities market nationwide.

The securities regulatory authority under the State Council may, where necessary, establish offices which shall perform the regulatory functions as authorized.

Article 8 — On condition that the State regulates the issuing and trading of securities on a centralized and unified basis, a Securities Industry Association shall, in accordance with law, be established for self-regulation.

Article 9 — The State audit authority shall, in accordance with law and through auditing, supervise stock exchanges, securities companies, securities registration and clearing institutions and the securities regulatory authority.

Chapter II

Issuing of Securities

Article 10 — Public offers of securities shall meet the conditions prescribed in laws and administrative regulations and shall, in accordance with law, be reported to the securities regulatory authority under the State Council or the department authorized by the State Council for verification or examination and approval. No unit or individual may make a public offer of securities if the same has not been verified or examined and approved according to law.

Article 11 — Public offers of shares shall, in compliance with the conditions provided for in the Company Law, be reported to the securities regulatory authority under the State Council for verification. The issuer shall submit to the said authority the application documents prescribed in the Company Law and the relevant documents specified by the authority.

The issuing of corporate bonds shall, in compliance with the conditions provided for in the Company Law, be reported to the department authorized by the State Council for examination and approval. The issuer shall submit to the department authorized by the State Council the application documents prescribed in the Company Law and the relevant documents specified by the said department.

Article 12 — The formats and ways of delivery of the application documents to be submitted by an issuer who applies, according to law, for public offer of securities shall be prescribed by the authority or department legally responsible for verification or examination and approval.

Article 13 — The application documents for the issuing of securities submitted by an issuer to the securities regulatory authority under the State Council or the department authorized by the State Council shall be truthful, accurate and complete.

Professional institutions and individuals that produce relevant documents for the issuance of securities shall strictly perform their statutory duties and warrant the truthfulness, accuracy and completeness of the documents that they produce.

Article 14 — In the securities regulatory authority under the State Council an issuance examination commission shall be established to examine according to law applications for issuance of shares.

The issuance examination commission shall be composed of professionals from the securities regulatory authority under the State Council and other relevant specialists engaged from outside the said authority, who shall vote on applications for issuance of shares and state their opinions after examination.

The specific measures for forming the issuance examination commission, the term of office of its members and its working procedures shall be formulated by the securities regulatory authority under the State Council and submitted to the State Council for approval.

Article 15 — The securities regulatory authority under the State Council shall, in accordance with the statutory conditions, be responsible for verification of applications for issuance of shares. The verification procedures shall be made public and shall be subject to supervision according to law.

The persons involved in the verification of an application for issuance of shares may not have any interests to share with or accept gifts from the applicant, or hold shares the application for the issuance of which they have verified, or have any private contact with the applicant.

The department authorized by the State Council shall examine and approve applications for issuance of corporate bonds by reference to the provisions in the preceding two paragraphs.

Article 16 — The securities regulatory authority under the State Council or the department authorized by the State Council shall make a decision on application documents for the issuing of securities within three months from the date of acceptance of the same. If it refuses to verify the application documents or to grant approval to the same upon examination, it shall state its reasons.

Article 17 — Once an application for issuance of securities has been verified or approved upon examination, the issuer shall announce the public offer documents prior to the public issuing of the securities, as prescribed in laws and administrative regulations, and make the said documents available at the designated places for the public to consult.

Before information about the issuing of securities is announced according to law, no person in the know may make public or divulge such information.

No issuer may issue securities before announcing the public offer documents.

Article 18 — If the securities regulatory authority under the State Council or the department authorized by the State Council discovers

that a decision it has made to verify or approve upon examination the issuing of securities does not conform to the provisions of laws or administrative regulations, it shall revoke the decision. If the relevant securities have not yet been issued, they shall be kept from being issued; if they have already been issued, the holders of the securities may require the issuer to refund their money at the issue price plus bank deposit interest for the same period.

Article 19 — After shares have been issued according to law, the issuer shall itself be responsible for any change in its operation or earnings; and the investors shall themselves be responsible for any investment risks caused by such change.

Article 20 — To issue new shares, listed companies shall meet the conditions provided for in the Company Law for the issuance of new shares. Such shares may be issued in the form of a public offer or be rationed among existing shareholders.

The proceeds of a share issue by a listed company shall be used in adherence to the purpose of the funds as described in the share prospectus. Any change in the purpose of the funds described in the share prospectus shall be subject to approval by the shareholders' general meeting. If a change in the purpose is made without authorization and is not rectified, or if such a change is not subsequently ratified by the shareholders' general meeting, no new shares may be issued.

Article 21 — Securities companies shall, in accordance with the provisions of laws and administrative regulations, underwrite the securities to be issued to the public by issuers. Securities shall be underwritten on an agency basis or on a sole agency basis.

"Underwriting securities on an agency basis" means the way whereby the securities company sells securities as the agent of the issuer and, at the end of the underwriting period, returns to the issuer all the securities that remain unsold.

"Underwriting securities on a sole agency basis" means the way whereby the securities company purchases, pursuant to an agreement, all the securities to be issued by the issuer or whereby it purchases, at the end of the underwriting period, all the securities that remain after sale.

Article 22 — An issuer that makes a public offer of securities shall have the right, independently and according to law, to select a securities company to underwrite its securities. Securities companies may not solicit securities underwriting business by means of unfair competition.

Article 23 — To underwrite securities, the securities company shall enter into an agreement with the issuer for underwriting as an agent or as a sole agent. Such agreement shall include the following:

- (1) the names and domiciles of the parties and the names of their legal representatives;
- (2) the type, quantity, amount and issuing price of the securities to be underwritten on an agency basis or on a sole agency basis;
- (3) the period during which securities are issued on an agency basis or on a sole agency basis, including the commencement and termination dates of the period;
- (4) the means and date of payment of the proceeds from sale on an agency basis or on a sole agency basis;
- (5) the fees for sale on an agency basis or on a sole agency basis and the means of settlement thereof;
- (6) liability for breach of contract; and
- (7) other matters prescribed by the securities regulatory authority under the State Council.

Article 24 — To underwrite securities, a securities company shall examine the truthfulness, accuracy and completeness of the public offer documents. If it finds any falsehoods, misleading statements or major omissions in such documents, it may not carry out the sales activities. If it has already begun to sell the securities, it shall immediately discontinue the sales activities and adopt remedial measures.

Article 25 — Securities to be offered to the public with a total face value exceeding RMB 50 million yuan shall be underwritten by an underwriting syndicate. An underwriting syndicate shall be composed of a securities company acting as the lead underwriter and securities companies acting as participating underwriters.

Article 26 — The maximum period for underwriting securities on an agency basis or on a sole agency basis shall be 90 days.

During the period for securities underwritten on an agency basis or on a sole agency basis, securities companies shall ensure that such securities are first sold to subscribers. Securities companies may not reserve, in advance, for themselves securities which they underwrite as agents, or purchase, in advance, and retain securities which they underwrite as the sole agents.

Article 27 — Securities companies that underwrite securities as the sole agents, shall within 15 days after the expiration of the period for underwriting as the sole agents, report the details of such underwriting to the securities regulatory authority under the State Council for the record.