

DEVELOPMENT AND REGULATION OF NEEQ

NEEQ, the so called New Third Board, keeps booming in 2016, along with the stricter and more comprehensive regulations from Chinese authorities.

Introduction

Chinese regulations on National Equities Exchange and Quotations (NEEQ) are tightened up in order to keep pace with China's booming market economy. NEEQ is also known as the New Third Board, providing a financing platform for unlisted public companies, especially for high-tech enterprises. In 2016, the China Securities Regulatory Commission (CSRC) imposed several regulations on NEEQ and relevant market subjects. Regulations on hierarchical management of listed companies are one of the latest, but most significant regulations that affect the NEEQ market. Meanwhile, the fast growing NEEQ market attracts more and more attention from Foreign Invested Enterprises (FIE).

Listed company data on 24 February 2017

Items	Transfer Forms	
	Market Making	Agreement
Listed Companies	1,635	9,080
Total Capital (billion shares)	157.041	451.400
Circulating Capital (billion shares)	87.076	169.340
Trading Stocks (one day)	762	386
Turnover (thousand yuan)	682,791.4	633,512.3

Table 1

Items	Market Hierarchy	
	Basic	Innovation
Listed Companies	9,766	949
Total Capital (billion shares)	505.890	102.551
Circulating Capital (billion shares)	197.542	58.874
Trading Stocks (one day)	606	542
Turnover (thousand yuan)	479,629.6	836,674.1

Table 2

Items	Total
Listed Companies	10,715
Total Capital (billion shares)	608.441
Circulating Capital (billion shares)	256.416
Trading Stocks (one day)	1,148
Turnover (thousand yuan)	1,316,303.7
Average Multipliers	25
Agricultural / Education	80

Table 3

Structural regulation: Hierarchical management of listed companies of NEEQ

According to the Administrative Measures for the Hierarchical Management of Companies Listed on

the National Equities Exchange and Quotations (for Trial Implementation), there are two levels of companies listed on the NEEQ market, namely the basic level and the innovation level.

The entry thresholds for innovation level companies are based on three different but parallel criteria, inspecting the profitability, growth ability and liquidity of the enterprises respectively. As long as the listed companies of NEEQ fulfill one of these three criteria, they may enter the innovation level directly. Listed companies of NEEQ that fulfill none of these three criteria will stay on the basic level. In addition, non-listed enterprises can enter the innovation level when they apply for listing, if they fulfill one of the three criteria and other legal formalities.

The first criterion inspects profitability and adopts the standards of “net profit + return on equity + number of shareholders”, which is in favor of well-developed companies with good revenue. In accordance with this criterion:

A. The enterprises shall gain profits for two consecutive years with annual average net profits no less than 20 million yuan (calculation is based on the lower profit before or after deducting the non-recurring profit and loss).

AND

B. The weighted average return on equity shall not be lower than 10% in average in the past two years (calculation is based on the lower profit before or after deducting the non-recurring profit and loss).

AND

C. The enterprise shall issue equity at the same time as applying for listing, to be no less than 10 million yuan (only for enterprises that have not been listed on NEEQ).

The second criterion inspects growth ability and adopts the standards of “compound growth rate of business revenue + revenue + equity capital”, which is aimed at start-up SMEs.

The third criterion inspects liquidity of the companies and adopts the standards of “market value + shareholders’ equity + the number of market makers”, which is aimed at innovative companies or companies with new business models. The application and the fulfillment of relevant criteria will be reviewed by the authority of NEEQ (listing department) instead of the CSRC. The qualified securities companies may

submit the application and relevant documents through “Hierarchical Support Platform of NEEQ” on behalf of the applicant enterprises.

However, the classification of companies on innovation level is not permanent. The list of companies will be reassessed in May every year by the NEEQ authority. Companies will be moved out of innovation level if they no longer meet the maintenance criteria. The maintenance criteria are less strict compared to the entry criteria in order to tolerate the fluctuation of the market.

In terms of legal capacity, companies listed on innovation level will be entitled to more rights than those on basic level. In accordance with the interpretation of the NEEQ authority, companies on innovation level will have more discretion and better treatment in terms of preference shares, equity pledge buybacks and qualified investors. To this effect, further measures and rules will be implemented in the future.

Requirements for FIEs listed on NEEQ

In accordance with Paragraph 1.2, Article 1 of The Basic Guidelines of Stock Listing Conditions for the National Equities Exchange and Quotation (Trial) (the “Basic Guidelines”) issued by the NEEQ authority, FIE applicants may be listed on the NEEQ market and shall be subject to the approval or registration of the competent commerce departments. In addition, FIEs shall equally be in compliance with the general listing requirements applying to domestic invested enterprises.

In practice, most FIEs in China are incorporated as WFOE or JV, which are limited liability companies. Therefore, they are required to be restructured to stock limited companies under China’s company law, for the purpose of being listed on NEEQ.

For further information please contact

Jan Holthuis

j.holthuis@burenlegal.com

T +86(10) 85235780

Yijia Wu

y.wu@burenlegal.com

T +86(10) 85235780

Iris Kuijken

i.kuijken@burenlegal.com