

**Announcement of China Securities Regulatory Commission, State Secrecy Bureau,
State Archives Administration
([2009] No. 29)**

The China Securities Regulatory Commission, the State Secrecy Bureau, and the State Archives Administration jointly formulate the *Provisions on Strengthening Confidentiality and Archives Administration in Overseas Issuance and Listing of Securities*. These Provisions are hereby issued and shall come into effect on the date of promulgation.

China Securities Regulatory Commission

State Archives Administration

State Archives Administration

October 20, 2009

**Provisions on Strengthening Confidentiality and Archives Administration in
Overseas Issuance and Listing of Securities**

1. For the purposes of safeguarding the stability of the State's economy and protecting the interests of the general public, these Provisions are formulated in accordance with the relevant provisions in the laws and regulations, including the *Law of the People's Republic of China on Securities*, the *Law of the People's Republic of China on Guarding State Secrets* and the *Archives Law of the People's Republic of China*.
2. An overseas listed company, hereinafter including those to be listed, as well as the securities company and securities service institution which provide the relevant securities services shall, in the course of any overseas issuance and listing of the securities of such company, strictly and consistently implement the relevant laws and regulations as well as the requirements of these Provisions to raise the legal awareness of state secrets protection and archives administration, develop and improve the relevant rules and regulations, strengthen the education and management of the relevant personnel, implement detailed measures and make further efforts in the protection of secrets and archive administration.
3. In the event that an overseas listed company shall provide or publicly disclose to the relevant securities company, securities service institution and overseas regulatory authority any document, material or other items which involve any state secrets in the course of any overseas issuance and listing of the securities of such company, the

overseas listed company shall report the same to the in-charge authorities with examination and approval power for approval in accordance with the law and shall make a filing with the secrecy administrative department at the same level for records. Where it is uncertain or in dispute whether such item contains state secrets, such issue shall be submitted to the relevant secrecy administrative department for determination.

4. In the event that an overseas listed company shall provide or disclose to the relevant securities company, securities service institution and overseas regulatory authority any archives that involve national security or vital interests of the State in the course of any overseas issuance and listing of the securities of such company, an application for such provision or disclosure shall be made to the State Archives Administration for approval in accordance with the law.
5. When an overseas listed company enters into any service agreement with the relevant securities company and securities service institution, the scope of obligation of confidentiality on the part of the relevant securities company and securities service institution shall be clearly stipulated in accordance with the relevant laws and regulations, including the *Law of the People's Republic of China on Guarding State Secrets*, and these Provisions; where any provisions on the governing law and obligation of confidentiality on the part of the relevant securities company and securities service institution in the service agreement are not in compliance with the requirements stipulated in the relevant PRC laws and regulations or these Provisions, such provisions shall be promptly revised.
6. Any archives, including workpapers, which are created in mainland China by the securities company and securities service institution providing relevant securities service in the course of any overseas issuance and listing of the securities, shall be stored in mainland China.

In the event that the workpapers referred to in the preceding paragraph involve any state secrets, national security or vital interests of the State, such workpapers shall not be stored in, processed with or transferred via any non-confidential computer information systems; without the approval of the relevant in-charge authorities, such workpapers shall not be carried or shipped overseas, or delivered to overseas institutions or individuals through any means such as information technology.

7. The relevant in-charge authorities such as the China Securities Regulatory Commission, the State Secrecy Bureau and the State Archives Administration shall establish a coordination mechanism to regulate and inspect, within their respective scopes of authority and in accordance with the law, matters arising from the course of any overseas issuance and listing of the securities of an overseas listed company which involve the protection of secrets and archive administration.

The term “inspect” as referred to in the preceding paragraph shall include on-site inspection and off-site inspection.

8. CSRC shall be responsible for carrying out exchanges and co-operation with overseas securities regulatory authorities and other relevant bodies with regard to cross-border securities regulatory matters involved in the confidentiality and archives administration during the process of overseas issuance and listing of securities.

Where overseas securities regulatory authorities and other relevant entities propose to conduct on-site inspection in mainland China on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report the same to the China Securities Regulatory Commission and the relevant in-charge authorities in advance, and shall obtain prior approvals from the relevant authorities for matters for which such prior approvals are required to be obtained. On-site inspection shall be conducted mainly by the regulatory authorities of the PRC, or shall rely on the results of the inspection conducted by the regulatory authorities of the PRC.

Where overseas securities regulatory authorities and other relevant entities propose to conduct off-site inspection on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report any matter involving state secrets to the in-charge authorities with examination and approval power for approval in accordance with the law and shall make a filing with the secrecy administrative department at the same level for records. The relevant overseas listed company, securities company and securities service institution shall report any matter involving archives administration to the State Archives Administration for approval in accordance with the law. If any matter is required to be approved in advance by any other relevant authorities, the relevant overseas listed company, securities company or securities service institution shall obtain approval from such other relevant authorities in advance.

9. Where an entity or individual violates laws and regulations such as the *Law of the People's Republic of China on Guarding State Secrets* and the *Archives Law of the*

People's Republic of China in the course of any overseas issuance and listing of securities, the relevant authorities shall pursue the legal liabilities of such entity or individual in accordance with the law; in case of suspected crime, such entity or individual shall be referred to the judicial authorities in order for the criminal liability to be pursued.

10. For the purpose of these Provisions, the term "overseas listed company" shall mean domestic companies limited by shares that issue overseas-listed stock to foreign investors.
11. Domestic persons holding equity in overseas listed companies with the controlling shareholder(s) being Chinese investor(s) and the securities companies and securities service institutions that provide securities service for such companies shall also follow these Provisions.
12. These Provisions shall come into effect on the date of promulgation.

**中国证券监督管理委员会、国家保密局、国家档案局公告
〔2009〕29号**

中国证券监督管理委员会会同国家保密局、国家档案局制定了《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》，现予公布，自公布之日起施行。

中国证券监督管理委员会
国家保密局
国家档案局
二〇〇九年十月二十日

关于加强在境外发行证券与上市相关保密和档案管理工作的规定

一、为保障国家经济安全，保护社会公共利益，根据《中华人民共和国证券法》、《中华人民共和国保守国家秘密法》和《中华人民共和国档案法》等法律法规的有关规定，制定本规定。

二、在境外发行证券与上市过程中，境外上市公司（包括拟上市公司，下同）以及提供相关证券服务的证券公司、证券服务机构应当严格贯彻执行有关法律法规的规定以及本规定的要求，增强保守国家秘密和加强档案管理的法律意识，建立和完善专项规章制度，加强对有关人员的教育和管理，认真落实各项具体措施，进一步做好保密和档案管理工作。

三、在境外发行证券与上市过程中，境外上市公司向有关证券公司、证券服务机构和境外监管机构提供或者公开披露涉及国家秘密的文件、资料和其他物品的，应当依法报有审批权限的主管部门批准，并报同级保密行政管理部门备案。是否属于国家秘密不明确或者有争议的，应当报有关保密行政管理部门确定。

四、在境外发行证券与上市过程中，境外上市公司向有关证券公司、证券服务机构和境外监管机构提供或者公开披露涉及国家安全或者重大利益的档案的，应当依法报国家档案局批准。

五、境外上市公司在与有关证券公司、证券服务机构签订服务协议时，应当依照《中华人民共和国保守国家秘密法》等法律法规及本规定，对有关证券公司、证券服务机构承担保密义务的范围等事项依法作出明确的约定；服务协议关于适用法律以及有关证券公司和证券服务机构承担保密义务的约定条款与中国有关法律法规的规定以及本规定不符的，应当及时修改。

六、在境外发行证券与上市过程中，提供相关证券服务的证券公司、证券服务机构在境内形成的工作底稿等档案应当存放在境内。

前款所称工作底稿涉及国家秘密、国家安全或者重大利益的，不得在非涉密计算机信息系统中存储、处理和传输；未经有关主管部门批准，也不得将其携带、寄运至境外或者通过信息技术等任何手段传递给境外机构或者个人。

七、证监会、国家保密局和国家档案局等有关主管部门建立协作机制，在各自的职权范围内依法对在境外发行证券与上市过程中涉及保密和档案管理的有关事项进行监督检查。

前款所称检查，包括现场检查和非现场检查。

八、证监会负责就在境外发行证券与上市保密和档案管理工作涉及的跨境证券监管事宜，与境外证券监管机构和其他相关机构开展交流与合作。

境外证券监管机构和其他相关机构提出对境外上市公司以及为境外发行证券与上市提供证券服务的证券公司、证券服务机构（包括境外证券公司和证券服务机构在境内设立的成员机构、代表机构、联营机构、合作机构等关联机构）在境内进行现场检查的，有关境外上市公司、证券公司和证券服务机构应当事先向证监会和有关主管部门报告，涉及需要事先经有关部门批准的事项，应当事先取得有关部门的批准。现场检查应以我国监管机构为主进行，或者依赖我国监管机构的检查结果。

境外证券监管机构和其他相关机构提出对境外上市公司以及为境外发行证券与上市提供证券服务的证券公司、证券服务机构（包括境外证券公司和证券服务机构在境内设立的成员机构、代表机构、联营机构、合作机构等关联机构）进行非现场检查的，涉及国家秘密的事项，有关境外上市公司、证券公司和证券服务机构应当依法报有审批权限的主管部门批准，并报同级保密行政管理部门备案；涉及档案管理的事项，有关境外上市公司、证券公司和证券服务机构应当依法报国家档案局批准。涉及需要事先经其他有关部门批准的事项，有关境外上市公司、证券公司和证券服务机构应当事先取得其他有关部门的批准。

九、在境外发行证券与上市过程中，任何单位和个人违反《中华人民共和国保守国家秘密法》和《中华人民共和国档案法》等法律法规的，由有关部门依法追究法律责任；涉嫌犯罪的，移送司法机关依法追究刑事责任。

十、本规定所称境外上市公司，是指发行境外上市外资股的境内股份有限公司。

十一、境外中资控股上市公司的境内股权持有单位以及为上述公司提供证券服务的证券公司和证券服务机构参照本规定执行。

十二、本规定自公布之日起施行。