Amendments to the regulatory framework of listing global depository receipts at SIX Swiss Exchange AG

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Key takeaways

- **SIX Swiss Exchange (SIX) has launched the China-Switzerland Stock Connect, allowing Chinese companies to list global depository receipts (GDRs) at SIX.**
- **As of 25 July 2022, a new trading segment called 'Global Depository Receipts' was introduced at SIX, for the trading of GDRs.**
- **With the introduction of this new trading segment, SIX has amended its listing and trading rules regarding GDRs, expanding in particular its rules on disclosure.**
- **The trading model of GDRs is based on the trading model for mid-/small-cap shares, with a narrow trading window.**

Introduction

In February 2022, China expanded the scope of its Stock Connect program to cover more domestic and overseas stock exchanges, including capital markets in Switzerland. The China-Switzerland Stock Connect program allows eligible companies listed on the Shanghai Stock Exchange, the Shenzhen Stock Exchange and the SIX Swiss Exchange to raise funds by listing GDRs on the other participating stock exchanges, which are then traded under local rules in the local time zone.

To enable the listing and trading of Chinese GDRs under the Stock Connect program, SIX has amended its current regulatory framework on GDRs, which became effective as of 25 July 2022.

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Global depository receipts

According to Art. 90 of the SIX Listing Rules (LR), global depository receipts (GDRs) are tradable certificates which are issued to represent deposited equity securities, i.e. underlying shares. These GDRs permit the indirect exercise of the membership and property rights attached to the deposited equity securities, by depositing the underlying shares with a depository. The relationship between the company and the depository is governed by a depository agreement, which regulates inter alia how membership and property rights attached to the deposited underlying shares may be exercised.

New trading segment 'Global Depository Receipts'

On 25 July 2022, SIX introduced the new trading segment 'Global Depository Receipts' and SIX Exchange Regulation amended its listing and trading rules with regards to GDRs to make GDRs more attractive, while at the same time ensuring that the interests of investors are protected.

The requirements to be fulfilled by issuers of GDRs remain unchanged and are the same as for the main market segment. These requirements include the rules on the required minimum equity capital of at least CHF 25 million, a company track record of three years, application of the recognised account standards and compliance with the rules regarding auditors and audit reports (see Art. 11 et seqq. LR). With respect to Chinese GDRs, SIX accepts the Accounting Standard of the People's Republic of China for Business Enterprises (ASBE) as an accounting standard.

Introduction of further listing requirements

According to the current rules (Art. 93 LR), the depository agreement must provide for the underlying shares to be held by the depository on a fiduciary basis and for the depository to exercise all property and membership rights attached to the underlying shares in the interests of the investors. In addition to this, the depository agreement must now also oblige the depository to provide to the Regulatory Board and/or SIX Exchange Regulation upon request all information and documentation in connection with the implementation of the depository agreement. In particular, information must be disclosed to the Regulatory Board and/or SIX Exchange Regulation with respect to the number of underlying shares deposited and GDRs issued.

Further, according to Art. 95 LR, the prospectus (or in case no prospectus must be prepared due the application of an exemption, in an additional document), must contain appropriate information about the depository, the GDRs and the depository agreement. With regard to the depository agreement, the prospectus must in particular disclose the rights of the investor, provisions on insolvency protection and the risks related to the construct.

The prospectus must be approved by a prospectus office in accordance with the Federal Act on Financial Services (FinSA).

Amendments to the conditions to maintain the listing

The amendments to the listing rules also contain certain amendments with regard to the provisions regulating the obligations and conditions to maintain a listing of GDRs at SIX.

The rule exempting companies which have issued GDRs from disclosing management transactions has been abolished and management transactions in GDRs and in underlying shares by members of the board of directors and the management of the issuer must now be disclosed in accordance with Art. 56 LR and the SIX Directive on the Disclosure of Management Transactions (Art. 100 LR).

Concerning information on corporate governance, the issuer is required to declare in the prospectus and in the annual report that it adheres to the corporate governance standards of its domestic market (Art. 101 LR). The disclosure obligations according to Swiss law and the SIX Directive on Information relating to Corporate Governance is not applicable to GDRs.

In addition, as of 25 July 2022 the issuer is required to publish interim financial statements and comply with the obligations on ad hoc publicity according to Art. 53 et seq. LR and the SIX Directive on Ad hoc Publicity. Issuers of GDRs must therefore not only disclose ad hoc information of price-sensitive facts in the market the underlying shares are publicly traded in, but also in Switzerland (Art. 103 LR).

Amendments in the trading rules

Trading of GDRs on SIX will occur in the new trading segment ‘Global Depository Receipts’, whereas the trading model is based on the model for the ‘Mid-/Small-Cap Shares’ trading segment. This means that shorter trading hours apply. Accordingly, trading will open at 15.00 (CET), enabling issuers to comply with ad hoc obligations in China and in Switzerland.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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