

Instruction of “Provisional Regulations on cross-border auditing business of accounting firms (Draft)”

In order to regulate the accounting firm cross-border auditing business behavior, to promote Chinese mainland and overseas accounting firms to carry out cross-border cooperation according to law, and to maintain the interests of investors and capital market order, the accounting department of Ministry of Finance drafted “Provisional Regulations on cross-border auditing business of accounting firms (Draft)” (hereinafter referred to as the “Provisional Regulations”). The key instructions of the draft are as follows:

A. Background and significance

In recent years, in order to solve the capital bottleneck for enterprise development, some China mainland enterprises choose to go listing and financing in the US, HK and other mature capital market. One of the major problems the mainland enterprises face when list overseas is financial statement auditing. At present, China's regulations related to accounting firms cross-border auditing business are imperfect. Illegal entry of auditing business by some foreign accounting firms has increased a lot, and it has occurred from time to time that the division of right, responsibility and interest among domestic and foreign accounting firms is not clear. The audit quality of mainland enterprises listed overseas remains to be improved. Therefore, comprehensively regulating accounting firm cross-border auditing business behavior, and continuously improve audit quality of the enterprises listed overseas have become an important and urgent task of the financial accounting regulatory agency.

In this context, the issuing of the "Provisional Regulations" will play a positive role. First, it can fill the blank of regulations for accounting firms cross-border audit business, and regulate the behavior of accounting firms engaged in auditing business in the mainland enterprises listed overseas. Second, it establishes the legal way and thus prevents some foreign accounting firms from auditing business of mainland enterprises listed overseas through temporary practice. Third, it can improve the audit quality of mainland enterprises listed overseas, and better support and serve China enterprises "going out". Forth, it can promote the cooperation between mainland and overseas accounting firms in accordance with the law, and improve the public accounting firm level and international service capability.

B. Main content

a) Define the scope of cross-border auditing business and clarify the boundaries with the foreign accounting firms temporary practice

The “Provisional Regulations” No.2 regulates that cross-border auditing business refers to the behavior that Chinese mainland and overseas accounting firms engage in the audit business of mainland enterprises listed overseas. The

audit business of overseas listing includes auditing of IPO financial statements and periodic financial statements auditing or reviewing after IPO. In addition, in order to further clarify boundaries with temporary practice, and to prevent any foreign accounting firms from doing auditing business of mainland enterprises listed overseas in the name of temporary practice, “Provisional Regulations” regulate that the auditing of overseas listed firms that registered overseas but whose business entity locate in the Chinese mainland should comply with the provisional regulations, with particular emphasis that the auditing of firms that registered overseas, but whose business entity locates in the China mainland fall outside the scope of temporary practice, thus foreign accounting firms cannot do auditing or issue audit reports in the name of temporary practice.

b) Regulate domestic accounting firms engaged in auditing business of the mainland enterprises listed overseas

Since currently the USA, Canada and some other countries allow that foreign accounting firms registered with the local regulatory agencies audit the foreign companies listed in the local capital markets, the “Provisional Regulations” No.3 regulate that "accounting firms that registered with overseas regulators or approved by the overseas securities trading institutions, and that are allowed to provide audit services for the Chinese mainland enterprises listed overseas, should be in accordance with the laws, regulations and professional standards when doing audit business, and take the corresponding responsibility for their auditing". This regulation has two meanings. First mainland accounting firms engaged in overseas listing business should be registered with foreign regulators or approved by the overseas securities trading institutions in accordance with the law and regulations. Second licensed mainland accounting firms should be in accordance with the laws, regulations and professional standards when doing audit business, and take the corresponding responsibility for their auditing. No.4 of the “Provisional Regulations” about the H-share auditing identifies the existing mode of cooperation between the mainland and Hongkong in the form of documents.

c) Strictly regulate the foreign accounting firms engaged in the audit business of the mainland enterprises listed overseas

In order to facilitate the overseas listing of mainland enterprises, at the same time considering the audit regulations of main developed capital market, “Provisional Regulations” No.5 regulate those accounting firms that have to entrust an overseas accounting firm to provide audit services. The requirements are as follows. First, the foreign accounting firms should cooperate with mainland accounting firms with securities qualification or accounting firms ranking the top 100 in the industry comprehensive evaluation last year. Second, it should be clearly agreed that the audit reports are issued

by foreign accounting firms, audit responsibilities are taken by foreign accounting firms, and the audit reports do not have the force of law in China mainland. Third, they should strictly obey the relevant laws and regulations, and be in accordance with the requirements of Chinese mainland and overseas relevant regulators. The above provisions are aimed at satisfying listing regulatory requirements, and at the same time ensuring the cooperation between foreign accounting firms and large and medium-sized mainland accounting firms with richer audit experience and better internal management, as well as improving the audit quality of the mainland enterprises listed overseas and strengthening the audit accountability. It should be emphasized that the above provisions are well-directed and practically significant. In practice, some foreign accounting firms issued the audit report for Chinese enterprises listed overseas. But when the company was accused of financial fraud, some foreign institutions particularly short sellers attributed the audit responsibility to the relevant Chinese accounting firms. This is obviously unfair from any perspectives of law, motion or logic. We should clearly define responsibilities and strengthen the audit responsibility of the party signing the audit reports.

d) Strengthen the supervision of China mainland and overseas accounting firms cross-border auditing business

In order to grasp the situation of mainland and overseas accounting firms cross-border auditing business, the “Provisional Regulations” No.6 to 9 combine the annual reporting system used for several years, further improve the business reporting requirements, and strengthen supervision and management. Specific measures include: first, the domestic accounting firms should be in accordance with the annual reporting requirements and report to the provincial finance department on the annual auditing business of mainland enterprises listed overseas during last year. Those that do not report in accordance with the provisions will be informed by the local provincial financial departments, and will be ordered to make corrections as a key regulatory object. Second, the foreign accounting firms should provide written report to the Ministry of Finance on the cooperation with mainland accounting firms within 45 days following the audit report date. Those that do not report in accordance with the provisions will be informed by the Ministry of Finance, and will be ordered to make corrections and transferred to the regulators of their country (region). Third, the domestic accounting firms that violate the provisions when engaging the audit business of mainland enterprises listed overseas will be informed by the local provincial financial departments, and will be ordered to suspend relevant business as a key regulatory object. Forth, the foreign accounting firms who violate the provisions with unauthorized engagement in the audit business of mainland enterprises listed overseas, will be informed by the Ministry of Finance, and be ordered to suspend the relevant business and transferred to the regulators of their country (region).

e) Further emphasize the secrecy of China mainland enterprises and relevant accounting firms and requirements for archives management

In order to guarantee the safety of national economic information, to protect public interests, and to regulate archives management of audit work, the "Provisional Regulations" No.10 further emphasizes the secrecy of China mainland enterprises listed overseas and requirements for archives management. Namely, overseas listed mainland enterprises and the China mainland accounting firms auditing or involved in the audit business should be strictly in accordance with the "Regulations on strengthening confidentiality of overseas listing and archives management" by the Chinese Securities Regulatory Commission, the State Secrecy Bureau and bureau of National Archives, and keep security and do good archives management.

关于《会计师事务所跨境执行审计业务暂行规定 (征求意见稿)》的起草说明

为了规范会计师事务所跨境执行审计业务行为,促进中国内地和境外会计师事务所依法开展跨境业务合作,维护投资者利益和资本市场秩序,财政部会计司研究起草了《会计师事务所跨境执行审计业务的暂行规定(征求意见稿)》(以下简称《暂行规定》)。现就起草工作有关情况重点说明如下:

一、背景和意义

近年来,为了解决企业发展遭遇的资金瓶颈等问题,一些中国内地企业选择赴美国、香港等境外成熟资本市场上市融资。内地企业赴境外上市面临的主要问题之一即财务报表审计。目前,我国对会计师事务所跨境执行审计业务相关制度规范尚不健全,

一些境外会计师事务所违规入境执业问题日渐突出，境内外会计师事务所业务合作中权责利不清晰、不匹配等问题也时有发生，内地企业境外上市审计质量有待进一步提高。因此，全面规范会计师事务所跨境执行审计业务行为、不断提高企业境外上市审计质量成为财政会计管理机构一项重要而紧迫的任务。

在此背景下，制定发布《暂行规定》将发挥以下积极作用：
一是填补会计师事务所跨境执行审计业务的制度空白，规范会计师事务所从事内地企业境外上市审计业务。二是“修明渠、堵暗道”，防止个别境外会计师事务所通过临时执业途径入境执行内地企业境外上市审计业务。三是提升内地企业境外上市审计质量，更好地支持和服务中国企业“走出去”。四是促进内地会计师事务所与境外会计师事务所依法规范开展业务合作，推动内地会计师事务所执业水平和国际服务能力的提升。

二、主要内容

(一)明确跨境执行审计业务的范围并厘清与境外事务所临时执业的界限

《暂行规定》第二条规定，跨境执行审计业务是指中国内地及境外会计师事务所从事中国内地企业境外上市审计业务的行为。境外上市审计业务包括首次公开发行财务报表审计以及首次公开发行之后的定期财务报表审计或审阅。此外，为进一步厘清与临时执业的界限，防止个别境外事务所借临时执业名义入境执行内地企业境外上市审计业务，《暂行规定》要求注册地在境外、

但经营实体在中国内地的企业的境外上市审计业务参照本暂行规定执行，并特别强调注册地在境外、但经营实体在中国内地的企业的境外上市审计不属于临时执业范畴，境外会计师事务所不得通过临时执业方式对其执行审计业务、出具审计报告。

(二)全面规范内地会计师事务所从事内地企业境外上市审计业务

鉴于目前美国、加拿大等地均允许经当地监管机构注册、登记的外国会计师事务所从事在其上市外国公司的审计服务，《暂行规定》第三条规定，“在境外监管机构注册、登记或经境外证券交易机构认可，获准为我国内地企业境外上市提供审计服务的内地会计师事务所，应当按照法律法规和执业准则执行相关审计业务，并承担相应的审计责任”。该项规定有两层含义：一是内地事务所从事境外上市业务应当依法依规在境外监管机构注册、登记或经境外证券交易机构认可；二是获准执业的内地事务所应当按照法律法规和执业准则执行相关业务，并承担相应责任。第四条关于 H 股审计的规定是将内地与香港特区现有的合作模式以文件形式予以固化。

(三)严格规范境外会计师事务所从事内地企业境外上市审计业务

为了便利中国内地企业境外上市，并综合考虑主要发达资本市场的审计监管规定，《暂行规定》第五条对确需委托境外会计师事务所提供审计服务的，提出以下要求：一是境外会计师事务所

所应与中国内地具有证券资格或者上一年度行业综合评价排名前 100 名的会计师事务所开展业务合作。二是明确约定审计报告由境外会计师事务所出具，审计责任由境外会计师事务所承担，审计报告在中国内地不具有法律效力。三是应当严格遵守相关法律法规，并符合中国内地和境外相关监管机构的要求。上述规定的目的在于既满足上市地的监管要求，又确保境外事务所与审计经验更丰富、内部管理更规范的内地大中型事务所开展合作，提升内地企业境外上市审计质量，强化审计责任归属。应当强调指出，上述规定具有较强的针对性和现实意义。实践中，部分境外会计师事务所为中国企业境外上市出具了审计报告，但当该企业被指涉嫌财务造假时，境外一些机构特别是做空机构却把审计责任归咎于中国内地有关会计师事务所，这于法、于情、于理都是显失公平、严重不当的，应当明确界定权责，强化审计报告签署方的审计责任。

(四) 切实强化对中国内地和境外会计师事务所跨境执行审计业务的监督管理

为了全面掌握内地和境外会计师事务所跨境执行审计业务的情况，《暂行规定》第六条至第九条结合执行多年的年度报备制度，进一步完善了业务报告要求，强化了监督管理措施。具体包括：一是内地会计师事务所应当按照年度报备工作要求向省级财政部门报备上年度执行内地企业境外上市审计业务情况。未按照规定报备的，由所在地省级财政部门予以通报，责令限期改正

并列为重点监管对象。二是境外会计师事务所在审计报告日后 45 日内应当向中国财政部书面报告与内地会计师事务所开展业务合作的情况。未按照规定报告的，由财政部予以通报，责令限期改正并转送其所在国家（地区）监管机构处理。三是内地会计师事务所违反规定执行内地企业境外上市审计业务的，由所在地省级财政部门予以通报，责令暂停执行相关业务并列为重点监管对象。四是境外会计师事务所违反规定擅自入境执行内地企业境外上市审计业务的，由财政部予以通报，责令停止执行相关业务并转送其所在国家（地区）监管机构处理。

（五）进一步强调中国内地企业及相关会计师事务所的保密和档案管理工作要求

为了保障国家经济信息安全，保护社会公共利益，规范审计工作档案管理，《暂行规定》第十条进一步强调了中国内地企业境外上市的保密和档案管理工作要求。即，境外上市内地企业和受其委托执行审计业务及通过业务合作参与审计业务的中国内地会计师事务所应当严格按照中国证券监督管理委员会、国家保密局和国家档案局发布的《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》做好保密和档案管理工作。